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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Title: **PRIVATE FUEL STORAGE, L.L.C.**
(Independent Spent Fuel
Storage Installation)

Case No.: **72-22-ISFSI**

Location: **Rockville, Maryland**

Date: **Monday, September 28, 1998**

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

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

Monday, September 28, 1998

The above-entitled matter came on for prehearing
conference, pursuant to notice, at 1:11 p.m.

BEFORE:

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

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

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

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P R O C E E D I N G S

[1:11 p.m.]

JUDGE BOLLWERK: In accordance with our Memorandum and Order of September 2nd, 1998, we are conducting this pre-hearing conference today in the Private Fuel Storage proceeding to discuss the status of the parties' ongoing informal discovery efforts.

I am Administrative Judge Paul Bollwerk, the Chairman of the Licensing Board. With me in the room are two other Licensing Board members, Administrative Judge Jerry Kline and Administrative Judge Peter Lam. Also in the room with us today is Jennifer Tyree, an American University law student who is serving as an intern with the Licensing Board panel this fall.

At this point why don't we let counsel for each of the participating parties identify themselves for the record. Let's start with the Intervenor, then move on to the Applicant and, finally, the NRC staff. And for the Intervenor, why don't we start with counsel for the State of Utah.

MS. NAKAHARA: Connie Nakahara.

MS. CHANCELLOR: I am Denise Chancellor, and in the room with us is Jean Braxton, paralegal.

MS. CURRAN: And this is Diane Curran.

JUDGE BOLLWERK: All right. How about the --

1 let's have somebody -- anyone from Castle Rock? Mr. Allen?

2 MS. CHANCELLOR: Oh, Bryan is here. I am just --
3 he is just on another line.

4 JUDGE BOLLWERK: Okay.

5 MS. CHANCELLOR: Bryan. We need you. He'll be
6 right here.

7 JUDGE BOLLWERK: How about Mr. -- how about
8 someone for Confederated Tribes?

9 MR. KENNEDY: This is John Kennedy for the
10 Confederated Tribes of the Goshute Reservation.

11 JUDGE BOLLWERK: Thank you, sir. Mr. Quintana?

12 MR. QUINTANA: Danny Quintana for Skull Valley
13 Band of Goshute, so --

14 JUDGE BOLLWERK: And --

15 MS. WALKER: Joro Walker for OGD.

16 JUDGE BOLLWERK: All right. And is anyone there
17 for Castle Rock?

18 MR. ALLEN: Yeah, Bryan Allen for Castle Rock.

19 JUDGE BOLLWERK: All right. Thank you, sir.
20 Anyone else for any of the Intervenor?

21 [No response.]

22 JUDGE BOLLWERK: All right. Then for the
23 Applicant, please?

24 MR. GAUKLER: Paul Gaukler and Ernie Blake on
25 behalf of the Applicant, PFS.

1 JUDGE BOLLWERK: All right. And then the NRC
2 staff.

3 MR. TURK: Sherwin Turk and Catherine Marco, and
4 with is Mark Delegadi.

5 JUDGE BOLLWERK: All right. And I take it Mr.
6 Blake is not with us -- I'm sorry, Mr. Silber is not with us
7 today?

8 MR. TURK: Correct.

9 JUDGE BOLLWERK: Okay. All right. And, again, we
10 -- I have just reminded counsel we are having this
11 transcribed, so if you could identify yourselves before you
12 speak so that the court reporter will be able to accurately
13 attribute your remarks.

14 In our September 2nd Order we requested that one
15 of the parties be prepared at the outset to give us a brief,
16 perhaps joint synopsis of the state of discovery efforts.
17 Is there someone who is prepared to make that presentation?

18 MR. BLAKE: This is Ernie Blake, I will give it a
19 try, Judge Bollwerk, --

20 JUDGE BOLLWERK: All right.

21 MR. BLAKE: -- and then the other parties can
22 chime in to add. PFS, some of this will be a repeat from
23 past status reports to the Board, but I will try to cover
24 where we are by going back a little bit.

25 PFS started with a reading room set up in Salt

1 Lake City for each of the Intervenor's to participate in.
2 And that reading room -- we first gathered all of the
3 documents from the project, which we got from Stone &
4 Webster's offices in Denver, Colorado. And that was the
5 bulk of the project's documents. Those were shipped to Salt
6 Lake and made available in the law firm's offices there.

7 Subsequently, we added to that as additional
8 documents have been generated within the project, and we
9 have also gone to each of the owning utilities, the eight
10 participating utilities and gotten from each of those
11 utilities all documents that they have that were related to
12 any of the contentions, and we have been sending those out
13 to Salt Lake as we got them, received from the utilities,
14 and put them in the same format and sent them out.

15 I think we are about there. There may be some
16 cats and dogs, some catch-up from some of the utilities.
17 Obviously, there will be additional documents generated
18 within the project which will add, but the bulk of our
19 documents, we think, from many of these participants,
20 related to any of the contentions, are now out there. So
21 that is in terms of PFS's provision of documents.

22 That has led to a round to questions, for example,
23 from Castle Rock, once they looked at the documents, and we
24 are looking at Castle Rock's request of us, and it would be
25 our expectation to provide those within the next couple of

1 weeks.

2 We also have contacted Danny and the tribe as to
3 lead on our side of the fence to make available in the same
4 room any additional documents that the tribe has related to
5 any of the contentions. And Danny and the tribe are working
6 on that. We are hopeful of hearing from them by the end of
7 this week.

8 MR. QUINTANA: If I may address that. This is
9 Danny Quintana. We are trying to gather up all of those
10 documents over the last nine years that we have been
11 investigating the project. That is going to be quite a
12 considerable effort. A lot of those have already been
13 turned over. But, anyway, we will supplement those and make
14 those available to the reading room and to Ernie Blake and
15 all of the parties. Most of those are addressed in the web
16 site, so the tribe put together a web site to specifically
17 address this project. -

18 JUDGE BOLLWERK: All right.

19 MR. BLAKE: I am expecting, as Danny said, that we
20 will have those here shortly. We will put them in the same
21 format in which we have put all the other documents so that
22 they are more readily available to the Intervenors, and get
23 them out to the same reading room there in Salt Lake.

24 We, in terms of our discovery of the others, we
25 initially got a pile of documents from the state. We went

1 through those documents, generated some additional questions
2 of our own. Asked them about different kinds of documents.
3 This past week, in response to that, we have had two lawyers
4 go, Paul Gaukler and a younger associate from our firm, go
5 out to Salt Lake and work directly with Connie and people
6 within the state that Connie put Paul in touch with, to look
7 through additional documents related to the contentions.

8 It has been a very cooperative effort and a lot
9 more documents have been identified. The state is making up
10 copies of some. Some that we identified with the individual
11 managers, they are still locating and putting together.
12 But, all in all, a cooperative and I think a worthwhile
13 effort.

14 On Castle Rock, we are anticipating some documents
15 from -- over the next several weeks. And with Ms. Walker,
16 we had earlier sent a specific request to Ms. Walker. She
17 has answered with a set -- a copy of documents which has
18 sent to us in Washington. We are reviewing with the
19 prospect of some additional questions of her on documents.

20 Confederated Tribes doesn't have the lead on any
21 of the contentions, so there hadn't been any direct,
22 although we have talked with Mr. Kennedy about coming to an
23 agreement on confidentiality. We already have a
24 confidentiality agreement signed with the state and don't
25 expect a problem with that with Castle Rock as well.

1 We do expect that, since we haven't seen among any
2 of the state's documents, any Confederated Tribes'
3 documents, that the state is probably doing the same thing
4 with them that we are doing with Danny, and that is taking
5 the lead of the lead Intervenor to bring in documents from
6 the other parties on any of the contentions where they are
7 the lead. We just haven't seen the results of that yet, but
8 I suspect they are working on as we are.

9 We are anticipating for PFS's side to be in touch
10 with the other parties about setting actual dates for
11 informal interviews, which I would expect to begin the last
12 week of this month. That is my report, Judge.

13 JUDGE BOLLWERK: When you say -- all right. Just
14 let me interrupt you one second. When you say this month,
15 you mean October or September?

16 MR. BLAKE: I meant October.

17 JUDGE BOLLWERK: Okay. We have got a couple of
18 days left, not much, but a little. Okay.

19 MR. BLAKE: Sure.

20 JUDGE BOLLWERK: No problem. All right. Let me
21 then go through -- I take it that fairly reflects sort of
22 the general status. Let me go through first, I guess the
23 Intervenor and hear from each of them, if they have
24 anything they want to add to what Mr. Blake has reported.
25 Why don't we start with the State of Utah?

1 MS. NAKAHARA: This is Connie Nakahara.
2 Basically, I agree with Mr. Blake's assessment of discovery.
3 The only other things that I would add are we looked at --
4 the state looked at the bulk of the information that was
5 provided through discovery at the Salt Lake reading room for
6 PFS, and we do need to go back and look at some additional
7 information that they have supplemented.

8 We will be following up with requests for
9 production of additional documents, and we are -- we plan to
10 offer to do informal interviews. We haven't finalized that
11 yet. But we will be sending notice to PFS shortly.

12 JUDGE BOLLWERK: Mr. Blake had sort of indicated
13 by the last week in October. Is that what you are aiming
14 for as well? Or sometime in October in terms of starting
15 this process?

16 MS. NAKAHARA: We haven't pinned down an exact
17 time frame. As soon as we finalize that, we will let -- we
18 will let PFS know.

19 JUDGE BOLLWERK: Has there at this point been any
20 kind of exchange of sort of witness lists at all, or is that
21 something you are looking toward in terms of the interviews,
22 when you do that?

23 MR. BLAKE: This is for PFS. We have not had any
24 specific exchanges. We have not even identified all of our
25 witnesses, Jude Bollwerk, at this point.

1 JUDGE BOLLWERK: All right.

2 MR. BLAKE: But we clearly, in terms of looking
3 through documents, are identifying those people who we will
4 be talking with, Connie and others, about having informal
5 interviews.

6 MS. NAKAHARA: And I probably -- this is Connie
7 again. We would probably agree, we have not identified all
8 our witnesses and those individuals that we would like to
9 interview are principally Stone & Webster and possibly some
10 of the subcontractors who we have identified through
11 discovery of the documents.

12 JUDGE BOLLWERK: All right. Anything else you
13 want to say on the subject, Ms. Nakahara, at least at this
14 point?

15 MS. NAKAHARA: Only that we also need to work out
16 a location of doing the interviews with the Stone & Webster
17 people.

18 JUDGE BOLLWERK: My recollection -- do they have
19 an office in Utah or is their office in Denver?

20 MR. BLAKE: The office that is working on this
21 project is in a suburb just south of Denver.

22 JUDGE BOLLWERK: Is that where you would generally
23 make them available or is that something you need to work
24 on?

25 MR. BLAKE: I don't know, I don't think we have

1 talked about it at all.

2 JUDGE BOLLWERK: All right.

3 MR. BLAKE: But I don't think this will be a
4 problem. I figure we will find a way to work our way
5 through it.

6 JUDGE BOLLWERK: All right. All right. Ms.
7 Nakahara, anything else you want to say at this point?

8 MS. NAKAHARA: No.

9 JUDGE BOLLWERK: All right. Let's see, Mr. Allen?

10 MR. ALLEN: Yes.

11 JUDGE BOLLWERK: Anything you want to say on the
12 subject of discovery?

13 MR. ALLEN: No, I think what Ernie said was
14 accurate, that we have both requested additional documents
15 and expect to be producing them within the next couple of
16 weeks.

17 JUDGE BOLLWERK: All right. Mr. Kennedy?

18 MR. KENNEDY: Not on this point.

19 JUDGE BOLLWERK: All right. Have you and Ms.
20 Chancellor, and Ms. Nakahara been working together in terms
21 of producing anything you might have that has been talked
22 about?

23 MR. KENNEDY: We have discussed it very briefly
24 and, frankly, I don't know that there will be a lot that the
25 tribe have. I am not aware of any specific request that PFS

1 has made, but we are anxious to cooperate.

2 JUDGE BOLLWERK: All right. And, Ms. Joro.

3 MS. WALKER: Walker, you mean?

4 JUDGE BOLLWERK: I'm sorry, Ms. Walker. It's my
5 fault, I am looking at the wrong list here, the one that has
6 got names in reverse order. Ms. Walker.

7 MS. WALKER: Yeah, I agree with the assessment,
8 from our point of view. We have requests going out to the
9 state and to PFS, it should be out within a week.

10 JUDGE BOLLWERK: So you are going to be asking the
11 state some questions as well? Or asking for documents, I
12 take it?

13 MS. WALKER: Yes.

14 JUDGE BOLLWERK: All right. All right. Let me
15 ask you, do you plan on conducting informal interviews as
16 well? Ms. Walker?

17 MS. WALKER: I am thinking. It is certainly not
18 out of the question, and I am sure that others might want to
19 interview our client.

20 JUDGE BOLLWERK: All right. And, Mr. Allen, let
21 me ask you the same question. Are you thinking about
22 interviews?

23 MR. ALLEN: Yeah, we would anticipate one or two
24 informal interviews and we would try to be prepared for them
25 by the end of the month.

1 JUDGE BOLLWERK: All right. Is that something you
2 could look toward as well, Ms. Allen -- I'm sorry, Ms.
3 Walker, maybe getting together and looking toward interviews
4 at the end of the month?

5 MS. WALKER: Yes, that is reasonable.

6 JUDGE BOLLWERK: All right. At this point is
7 there anything that any of the Intervenors want to say on
8 the subject of discovery?

9 [No response.]

10 JUDGE BOLLWERK: All right. Let me then ask the
11 staff if they have any comments?

12 MR. TURK: Very briefly, Your Honor. As you may
13 recall, the Applicant in the past has acceded to our request
14 that we be permitted to look at the documents that PFS is
15 producing, as well as the documents which PFS has copied in
16 their document searches of other parties. And PFS has told
17 us that they would allow us to come into their attorneys'
18 offices in Washington for that purpose.

19 Now that PFS has done the traditional document
20 review last week in Salt Lake City, I expect that as soon as
21 they tell me that those documents are available for review,
22 we will go down to the Shaw Pittman offices in Washington to
23 look at the documents that have been produced by PFS and
24 collected by PFS. And although we have not planned any
25 informal interviews as yet, after looking at those

1 documents, it is possible that we will be interested in
2 conducting informal interviews of the other parties. And I
3 would imagine we could do that at the end of the month as
4 well. But at this point I am not sure that we will have a
5 need to do that. We will wait to see the documents.

6 JUDGE BOLLWERK: All right. Anything else?

7 [No response.]

8 JUDGE BOLLWERK: Let me ask a couple of specific
9 questions. By the way, just as an overall, I appreciate the
10 report, Mr. Blake, and the statements from everyone else. I
11 am glad you can characterize it as cooperative, that is a
12 good word, that is a word I like, obviously, a word the
13 Board likes. It sounds like you have been able to make a
14 large group -- if I want to use a colloquial term, your
15 document dump up front without having to go through all the
16 exchanging papers in terms of at least production requests,
17 and some interrogatories, hopefully. So I hope it has been
18 useful in that respect, it sounds like it may have been.

19 Let me ask you, has anyone started thinking about
20 documents that are going to be considered privileged or
21 protected in some way in terms of at least identifying those
22 internally? Given that there has been some exchange of
23 questions back and forth or identifying certain areas that
24 people are interested in?

25 MR. BLAKE: Let me speak for PFS. In a number of

1 instances, we have provided even documents which have been
2 treated for the proprietary nature or confidentiality
3 nature, and have deleted portions of documents among those
4 that we are providing. So to that extent, we have.
5 Obviously, we have also identified a number of documents
6 from our clients that we regarded as privileged and have no
7 provided.

8 JUDGE BOLLWERK: All right. So you have told them
9 there are some documents that are privileged that you are
10 withholding then, I take it?

11 MR. BLAKE: Yeah. And I think even the documents
12 that they have gotten already, at least the state has looked
13 through, they would see portions of the documents that's
14 alluded.

15 JUDGE BOLLWERK: All right.

16 MS. NAKAHARA: If I could interject, this is
17 Connie Nakahara. I had difficulty in identifying all the
18 documents in which statements were redacted, and that is one
19 of the requests that we will be making is whether certain
20 documents in fact had redactions and what the redactions
21 were related to.

22 JUDGE BOLLWERK: All right. Is that -- I take it
23 you are going to be making some kind of a written
24 presentation or calling someone? I don't know what your
25 plan is.

1 MS. NAKAHARA: Probably make a written request
2 identifying the documents that we are interested in. In
3 some cases, the redactions were obviously and in other
4 cases, they weren't. I don't know if it was just how the
5 document was spaced or whether there were actual redactions,
6 and that was one of our difficulties.

7 MR. BLAKE: That should be fairly for us to react
8 to, because if we have done our job, we will have copies in
9 our offices of both the complete and the redacted versions.
10 So I think we will be able to react to that pretty easily,
11 Connie.

12 MS. NAKAHARA: Okay. Thank you.

13 JUDGE BOLLWERK: All right. Again, I would urge
14 you, as you come across things which -- and, again, as you
15 are exchanging requests back and forth, documents that
16 appear to be privileged are protected, go ahead and identify
17 those, at least for yourselves. And I would urge you maybe
18 to make the other party aware that you have them and you
19 intend to treat them as privileged. The more things that we
20 know about that up front, I think the better off we are.
21 And, hopefully, when we move to the formal stage, we can get
22 those kinds of matters taken care of up front in some way
23 perhaps with some kind of an omnibus motion or something,
24 you know, of that nature, to get these documents taken care
25 of quickly, to the degree they have been already identified

1 as privileged or protected in some way.

2 All right. Anyone else want to say anything on
3 the subject of privileged or protected documents?

4 MS. NAKAHARA: This is Connie Nakahara again. Mr.
5 Gaukler and I discussed last week, and I will make this
6 notice for all parties, that the state is claiming a number
7 of documents, relatively few documents, with attorney work
8 product or attorney-client privilege and we are beginning to
9 make a log to justify the claims.

10 JUDGE BOLLWERK: Okay. That is a good -- that
11 sounds like the kind of thing we want to -- we would
12 encourage you to do.

13 MR. BLAKE: I think also, Judge Bollwerk, what
14 came out of part of Mr. Gaukler's review out there was that
15 there was a much larger number of documents which the state
16 initially had believed might be subject to attorney-client
17 or, more properly, work product, which they had now decided,
18 more properly, maybe shouldn't be, and have made them
19 available, to their credit, without us ever really
20 challenging or needing to.

21 So I think that each of the parties are focused on
22 this and moving ahead.

23 JUDGE BOLLWERK: I appreciate that. And one of
24 the things I am hoping is if you look, have a chance to look
25 at these up front a little bit and think about them, as

1 opposed to simply reacting quickly in a formal setting, that
2 you will be able to perhaps reflect on them a little bit,
3 and maybe see, as the state apparently has in this instance,
4 that maybe these aren't -- don't necessarily need to be
5 protected. So, again, I hope this process, in giving you a
6 little more time to think about some of these things, may
7 work to everyone's benefit in terms of -- I guess, for want
8 of better terms, let's fight over the things that are really
9 important and not over the things that aren't. All right.

10 Just let me -- someone had mentioned the question
11 of protective orders. Do you all see any need for
12 additional protective orders for anyone, in terms of any
13 particular set of documents or anything coming up that the
14 board ought to be aware of?

15 MS. NAKAHARA: This is Connie Nakahara. The only
16 thing, FFS has requested documents that state agencies may
17 have relating to terrorist plans or sabotage. And right now
18 I have got agencies trying to identify any documents within
19 the state. There may be documents that are protected for
20 security reasons and, depending upon the purpose of
21 protection of the documents, we may or may not be able to
22 enter into agreement to give PFS access. But in that case,
23 we may need some protective orders.

24 JUDGE BOLLWERK: All right. Anyone else on the
25 subject of protective orders?

1 [No response.]

2 JUDGE BOLLWERK: Well, again, if that is something
3 we can identify up front, that's something let's take care
4 of now and not wait until we get into formal discovery, so
5 that we, again, don't have to spend time on something that
6 needs to be taken care of but can be, you know, kind of --
7 hopefully, a pro forma thing, depending on what it says, and
8 we get it taken care of up front.

9 All right. Anything else on protective orders
10 from anybody?

11 [No response.]

12 JUDGE BOLLWERK: All right. I had mentioned
13 witness lists and it sounds like you all are thinking about
14 those. I, again, encourage you to think about getting
15 witness lists together or however you want to exchange names
16 of individuals that you would like to -- that you plan on
17 perhaps using as your witnesses or people that you might
18 want to talk with in terms of especially the informal
19 interviews that sound like they are going to be looking
20 toward the end of the month and into the beginning of
21 November.

22 Anyone want to say anything about witness lists or
23 about informal interviews?

24 [No response.]

25 JUDGE BOLLWERK: One thing to make you aware of, I

1 think we probably, as informal -- or as formal discovery
2 gets closer, we will looking at some kind of a Board Order
3 that sets out certain disclosures for expert witnesses along
4 the lines of Rule 26(a)(2) of the Federal Rules. We will
5 probably wait a little while on that, just give you all a
6 chance to work through the informal interview process, but,
7 again, I think probably some disclosure of expert witnesses.
8 In this context particularly, that can be -- it may well be
9 everyone you have, depending on how you are going to put
10 them forth, along the lines of Rule 26(a)(2), so that is
11 something to be aware of.

12 Anyone want to say anything on that subject?

13 [No response.]

14 JUDGE BOLLWERK: All right. Let me raise a couple
15 of things that are sort of related, although not directly,
16 to discovery. I had come across some information that there
17 was apparently an FOIA suit relating to the Goshute
18 agreement with PFS and some kind of -- in federal Court. Is
19 that correct?

20 MR. QUINTANA: That is, Your Honor. This is Danny
21 Quintana. My office is working with Paul Estol and a motion
22 to dismiss will be filed on that within the end of the week.

23 MS. CHANCELLOR: Judge Bollwerk, this is Denise
24 Chancellor. There is another attorney in our office who
25 does Indian law and he is responsible for the lawsuit that

1 was filed in Federal District Court.

2 JUDGE BOLLWERK: All right.

3 MS. CHANCELLOR: It deals with both a FOIA request
4 and the state tried to intervene in administrative
5 procedures before the Bureau of Indian Affairs, and we went
6 through the administrative process through -- before the BIA
7 and were denied status at all levels and we appealed that
8 final agency action by filing a complaint in District Court,
9 and we combined with that complaint the denial of our FOIA
10 request to receive a full copy of the lease between the
11 tribe and PFS. So that is what that lawsuit in Federal
12 District Court is about.

13 JUDGE BOLLWERK: All right. Does that lawsuit
14 have any kind of a time -- I understand Mr. Quintana has
15 just indicated he is filing a motion to dismiss. Does it
16 have any kind of time schedules the Board ought to be aware
17 of?

18 MS. CHANCELLOR: My understanding is that the
19 state has filed a motion for summary disposition. I don't
20 -- summary judgment, and I don't know whether PFS and the
21 federal government have responded to that. I think their
22 time to respond to that is up fairly shortly.

23 MR. QUINTANA: It is. The case is considered by
24 the tribe and by my co-counsel to be completely frivolous
25 and we expect it to be dismissed.

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1 JUDGE BOLLWERK: All right. Mr. Blake, is PFS
2 part -- I take it, I just heard they are. They are part of
3 that case, I take it? Are you an Intervenor?

4 MR. BLAKE: I don't know beans about it, Judge?

5 JUDGE BOLLWERK: Okay.

6 MR. BLAKE: Do you know anything?

7 JUDGE BOLLWERK: Mr. Gaukler?

8 MR. GAUKLER: I don't know anything.

9 JUDGE BOLLWERK: All right. Well, then --

10 MR. BLAKE: Other than its existence. Okay.

11 JUDGE BOLLWERK: Okay.

12 MS. CHANCELLOR: Your Honor, PFS is a party to the
13 lawsuit. They did request intervention status in that
14 lawsuit and the state didn't oppose that. And there is
15 another law firm representing PFS, I understand.

16 JUDGE BOLLWERK: Okay. If Mr. Blake and Mr.
17 Gaukler don't know anything about it, I am obviously not
18 going to press them for information they haven't got. So,
19 all right. Well, it sounds like that is proceeding along.

20 To the degree that that will have any impact on
21 this case, in terms of any of the documents that might be
22 involved, I would appreciate someone letting us know, you
23 know, if there something, some disposition that is recent we
24 ought to be aware of on any of that.

25 MR. QUINTANA: I will send the court copies of all

1 the final pleadings on this.

2 JUDGE BOLLWERK: Okay.

3 MR. QUINTANA: Should I do that to all of the
4 parties?

5 JUDGE BOLLWERK: I don't know that it is necessary
6 for everyone. If someone wants it and you are willing to
7 send it out, I certainly don't have an objection to that,
8 but I don't think you necessarily have to. My request is
9 simply to sort of be -- if someone grants, for instance, if
10 the District Court were to grant its motion for summary
11 judgment, or make some kind of a dispositive ruling, I would
12 like to know about that.

13 MS. WALKER: This is Joro Walker. I would
14 appreciate copies of the pleadings.

15 MR. TURK: So would the staff, and I think under
16 ex parte rule you really have to serve everyone including
17 secretaries.

18 JUDGE BOLLWERK: Well, obviously, he is going to
19 provide -- anything he is going to provide to the Board,
20 that is true. If it is simply a document exchange among the
21 parties, that is up to you all.

22 MR. QUINTANA: Yeah, these are just pleadings of
23 an existing case.

24 JUDGE BOLLWERK: Okay. From the Board's
25 perspective, the only thing I would like to see, if there is

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1 some kind of a ruling on the dispositive motion, for
2 instance, a motion for summary judgment, or motion to
3 dismiss. It isn't necessary to send us all the pleadings
4 for the case. And in terms of the other parties, you all
5 can exchange those, work out whatever you would like in
6 terms of everybody seeing the documents. It sounds like Mr.
7 Quintana is willing to make them available to whoever wants
8 to see them, so.

9 Any questions about that, Mr. Turk? Is that --

10 MR. TURK: No, that's fine, Your Honor.

11 JUDGE BOLLWERK: All right. Since we raised the
12 question of summary judgment, just let me ask you a
13 question. We're still early on in this in terms of at least
14 the formal -- obviously we haven't started formal discovery.
15 Any thoughts yet in terms of summary disposition at least
16 with respect to the Group 1 issues? Anybody thinking of
17 filing motions?

18 I'll take that as a no.

19 All right. Well, again, from the schedule we set,
20 which we modified somewhat given I guess some of the
21 suggestions from PFS and the staff, obviously the earlier
22 you get your summary disposition motions in, the better, in
23 terms of the number of pages that you have to address the
24 issues.

25 Let me just raise one related question with the

1 staff. Have there been any changes in the staff schedule
2 that the Board ought to be aware of or the other parties?

3 MR. TURK: No, Your Honor.

4 JUDGE BOLLWERK: So basically what you've
5 represented to us in the past still seems to be on track.

6 MR. TURK: Yes, Your Honor.

7 JUDGE BOLLWERK: All right.

8 All right, anything that anyone else then wants to
9 raise with the Board at this point in terms of discovery or
10 anything else in the proceeding?

11 MR. KENNEDY: Your Honor, this is John Kennedy.
12 In speaking with the State today, I was informed that some
13 kind of an amended application was submitted. Is that true?

14 JUDGE BOLLWERK: I can -- what I can -- well, what
15 I can tell you is that I received a copy of an amendment to
16 the application -- I believe it was dated approximately
17 August 28; don't hold me to that date exactly -- in which
18 there were some changes of various types made. It seemed to
19 me the main one was an alternate rail route down the west
20 side of the Skull Valley. And if Mr. Blake wants to say
21 anything about that, I'll let him at this point.

22 MR. BLAKE: No, that's a fair characterization,
23 and I don't know, we've had -- we've not been perfect before
24 in the distribution of things to everybody. I will have to
25 double-check to find out what distribution was made. I

1 think some of the parties at least must have received -- did
2 you get one, Denise?

3 MS. CHANCELLOR: Yes. We received a copy of the
4 application on the 31st of August, and I have a question and
5 we're waiting for that after we get through with this issue.

6 MR. BLAKE: I don't really know, Judge, but I'll
7 double-check.

8 JUDGE BOLLWERK: All right. I know it had a
9 distribution list on it. I must admit I did not check it
10 carefully in terms of who -- I think I saw Ms. Chancellor's
11 name on there. I don't know if I saw Mr. Kennedy's name or
12 not. But --

13 MR. KENNEDY: I'm wondering if any of the other
14 intervenors have received or not received copies of this
15 amended application.

16 MS. WALKER: This is Joro Walker for OGDE. I did
17 not receive a copy of the amended application.

18 MR. ALLEN: Bryan Allen for Castle Rock. We did
19 not receive one either.

20 MR. BLAKE: Well, it's pretty well narrowed down.

21 JUDGE BOLLWERK: I'm sorry, who was that?

22 MR. BLAKE: I'll follow up, Judge.

23 JUDGE BOLLWERK: All right.

24 MS. WALKER: This is Joro Walker again. I was
25 wondering, is there going to be a notice of this amendment

1 in the FR -- Federal Register.

2 MR. BLAKE: No, I wouldn't expect one. I guess
3 Jeff would have to answer for sure.

4 JUDGE BOLLWERK: Mr. Turk, do you want to say
5 anything about the staff's practice?

6 MR. TURK: We normally do not notice revisions to
7 applications, but -- and I don't think this one will be
8 noticed either.

9 MS. WALKER: Is a revision different than
10 amendment?

11 MR. TURK: In my mind it's the same.

12 MS. WALKER: Do the regulations speak to that?

13 MR. TURK: In terms of notices?

14 MS. WALKER: Um-hum.

15 MR. TURK: No.

16 MS. WALKER: They don't.

17 MR. TURK: No. Essentially what the applicant
18 submitted were page changes, came in with a set of pages for
19 each of the different volumes of the application,
20 environmental report, emergency plans, and safety analysis
21 report, and said please insert these pages in lieu of the
22 pages that were there.

23 MR. BLAKE: That's what I've received.

24 MS. WALKER: Well, it's my understanding that the
25 transportation route is now going to go over BLM land, and I

1 would think that that would raise issues -- there might be
2 concern of people that are not intervenors right now because
3 of the environmental consequences of a route like that.

4 MR. KENNEDY: I would agree with -- this is
5 Kennedy -- I would agree with that, and there may also be
6 additional contentions that existing parties would want to
7 raise and possibly it would make sense at this point to try
8 to set some sort of a timetable for submitting additional
9 contentions upon receipt of a copy of whatever has been --

10 MS. CHANCELLOR: Judge Bollwerk, this is Denise
11 Chancellor. I would not describe the license amendment as
12 merely some pages to insert in the license application.
13 While that is the way the amendment is structured, it is a
14 significant amendment to the license application. It
15 changes the point of where the casks will be transported by
16 rail. There's significant changes to the environmental
17 report in terms of describing the vegetation, habitat, and
18 other impacts that will occur because of this amendment.

19 And the State has reviewed the amendment and we're
20 in the process of getting ready to file new contentions
21 based on that license amendment. And I have contacted the
22 parties to get their approval to file additional pages
23 because of the nature of the license amendment. And I've
24 requested a limit of 20 pages rather than the 10 pages you
25 set back in a previous order.

1 JUDGE BOLLWERK: All right.

2 MS. CHANCELLOR: And none of the parties have
3 objected to that. So I thought I would take this
4 opportunity to request from the Board permission to file up
5 to 20 pages for the new contentions relating to the low new
6 rail transportation corridor.

7 JUDGE BOLLWERK: All right. I take it that the 20
8 pages is for all contentions you're going to file, I take
9 it.

10 MS. CHANCELLOR: That's correct. That would
11 include the introduction, the late-filed factors as well --

12 JUDGE BOLLWERK: Okay.

13 MS. CHANCELLOR: As the actual contentions
14 themselves.

15 JUDGE BOLLWERK: From the Board's perspective I
16 don't see, especially if everyone seems to agree to it, I
17 don't see a problem. I would appreciate though if you would
18 just file a brief motion so that we can put it on the record
19 and have the papers there.

20 MS. CHANCELLOR: Could I file that at the same
21 time that I file the contentions?

22 JUDGE BOLLWERK: Why don't you go ahead and file
23 it now if you plan on -- if you know that's what you want.
24 Go ahead and do it now.

25 MS. CHANCELLOR: Okay. Do I have to wait for a

1 response? I'm about to file the contentions within the next
2 day or so is the reason why I'm asking these questions.

3 JUDGE BOLLWERK: Wait for a response from?

4 MS. CHANCELLOR: From you for permission to do
5 that, or can I take our conversation today as permission?

6 JUDGE BOLLWERK: Well, put it this way. If you
7 file the motion promptly, I don't think you're going to have
8 any problem. I mean, the rule I set up is that we ought to
9 have any page extensions I think it was three business days
10 before the filing. So my suggestion then would be just to
11 get the motion in properly. And it doesn't have to be
12 particularly long. It sounds like everybody's in agreement,
13 okay?

14 MS. CHANCELLOR: Okay.

15 MR. TURK: Your Honor, I would note for the staff
16 that we do not object to the 20-page request from Ms.
17 Chancellor when she called this morning.

18 JUDGE BOLLWERK: Right.

19 MR. TURK: She did indicate in her conversation
20 with me that she would not oppose the same sort of a page
21 limit being given to parties who respond, if they need it.

22 JUDGE BOLLWERK: All right.

23 MS. CHANCELLOR: That's correct, Your Honor. I
24 have no objection to that.

25 JUDGE BOLLWERK: All right. Then I think from the

1 Board's perspective the best thing to do would be to get
2 that motion in promptly, and then we'll rule on it, and
3 then, you know, you can take that into account when you file
4 your pleading.

5 MS. CHANCELLOR: Okay.

6 JUDGE BOLLWERK: And I can promise you if we have
7 it, you'll get a response within 24 hours, so --

8 MS. CHANCELLOR: Okay. You'll get an e-mail
9 today.

10 JUDGE BOLLWERK: All right. Very good.
11 Anything else on that subject?

12 MS. WALKER: Yes, this is Joro Walker. What about
13 setting up some sort of timetable for new contentions based
14 on the amendment of the application?

15 JUDGE BOLLWERK: Well, in terms of a timetable, I
16 mean, normally what happens is people file late-filed
17 contentions and at that point there are then motions or
18 responses that are filed as to whether the contentions meet
19 the late-filing requirements, one of which is timeliness.

20 MS. WALKER: I mean, because we didn't get a copy
21 of the application --

22 JUDGE BOLLWERK: Um-hum. Then I take it that's
23 one of the arguments you would be making in terms of, you
24 know, the timeliness of any contentions you're filing.

25 MS. WALKER: Okay. And --

1 JUDGE BOLLWERK: I'm not trying to put words in
2 your mouth here, but that strikes me -- now I'll let the
3 staff or the applicant say something about that if they want
4 to, but --

5 MR. BLAKE: It sounds like a pretty good argument
6 to me, Judge.

7 MS. WALKER: Well, thank you for your advice. I
8 don't know, am I reading the regulations wrong, because I'm
9 looking at 72.16 with regard to notice of amendments, public
10 notice in the Federal Register. Am I making a mistake here?

11 MR. BLAKE: You're talking about amendments to an
12 existing license which typically is noticed by the staff, or
13 just an amendment or revision to an application? I don't
14 have the regulations in front of me.

15 MS. WALKER: So that's what it means, that it's an
16 existing license. Okay. So then in terms of getting other
17 parties who might be interested in this new alignment
18 involved, then they just have to rely on word of mouth.

19 JUDGE BOLLWERK: Again, I'm not -- they say there
20 was a distribution list with this. I don't know how that
21 list was drawn up. I know Ms. Chancellor's on it, the Board
22 is on it. That's something that you need to talk with Mr.
23 Blake about.

24 MR. TURK: In response to Ms. Walker's question
25 about 72.16 --

1 MS. WALKER: Yes, I've been -- it's been explained
2 to me. It's an existing license as opposed to a license
3 application.

4 MR. TURK: Oh, no, 72.16 says it relates to a
5 filing of an application as opposed to amendments to an
6 application. So you have to initially --

7 MS. WALKER: Well, it says application for a
8 license or a license amendment.

9 MR. TURK: Okay.

10 MS. WALKER: Under this part. So I took that to
11 mean an amendment to a license application, as opposed to an
12 amendment to a license.

13 MR. TURK: I think we're on the same track right
14 now.

15 JUDGE BOLLWERK: All right, anything anyone else
16 wants to say on this subject?

17 MR. KENNEDY: Well, I just want to make clear --
18 this is Kennedy.

19 JUDGE BOLLWERK: Yes, sir.

20 MR. KENNEDY: Federated Tribes. That we have not
21 received a copy of this amended application. As I
22 understand it, neither has OGD nor Castle Rock. So I just
23 think that ought to be clear on the record of today's
24 discussion.

25 JUDGE BOLLWERK: All right.

1 MR. TURK: I wonder if the applications are -- I'm
2 sorry, if the amendment is in the PFS document room in Salt
3 Lake City.

4 MR. BLAKE: Jeff, I don't know the answer, but you
5 can rest assured we'll be on this immediately after we hang
6 up, and try to find out.

7 MR. TURK: I don't know the answer. It may be
8 there. It may be in the NRC's LPDR. I don't know if enough
9 time has lapsed for it to get there by now. It's about a
10 month. It should be there by now. Maybe even --

11 MR. KENNEDY: Well, it seems to me that there's an
12 affirmative obligation to serve an amended application on
13 people who've been granted intervenor status, and we
14 shouldn't have to be going down to find out if something's
15 been put --

16 MR. BLAKE: I don't really want to argue the point
17 at this point unless you want us to, Judge.

18 MR. TURK: I suspect also that it is at the LPDR,
19 because I received my copy through the formal writs
20 distribution process at least a week -- I think about two
21 weeks ago. So you may find it there already. I just don't
22 know for a fact because I haven't seen the -- I haven't been
23 to the PDR to examine that.

24 JUDGE BOLLWERK: All right. Well, at this point I
25 take it, Mr. Blake, you're going to be looking into this.

1 MR. BLAKE: Yes.

2 JUDGE BOLLWERK: All right.

3 MR. BLAKE: I've already told Ms. Walker. I
4 thought she had a dandy argument.

5 JUDGE BOLLWERK: Okay. The other thing I'll say
6 is that, you know, whenever there's something filed, the
7 Board will rule on it, and whatever you want to ask us for
8 or whatever you want to put in the form of a motion, or
9 obviously Ms. Chancellor apparently is planning on filing a
10 motion to have the late -- certain late-filed contentions
11 admitted. So we'll wait to hear from you all in terms of
12 what further filings you want to make relative to the
13 amendment to the application.

14 MR. BLAKE: I would really encourage Ms. Walker
15 and Mr. Kennedy or anybody else to give us a call, too, and
16 if you think there's something out there and you haven't
17 gotten it, let us know. On this one in particular, we'll
18 look into it now and follow up and do the things that are
19 right about distributing anything extra that needs to be,
20 and then I want to talk with you about what you'd like in
21 the way of time and see if we can come to an agreement
22 rather than necessarily coming to a big squawk that we have
23 to take to the Board.

24 I understand what you're saying. You haven't
25 gotten a copy, and you'd like a copy before you have to file

1 contentions. It all makes sense to me. Obviously we'd like
2 to get on with it as quickly as we can, and I'd like an
3 opportunity to talk with you before we turn it into a war.

4 JUDGE BOLLWERK: All right. It's also possible --
5 and I'm not going to -- well, if you want to talk to Ms.
6 Chancellor, feel free to do that as well. Maybe what she
7 has is something you can use. I have no idea. There's
8 nothing wrong with joint contentions, either, a joint
9 late-filed motion -- motion for late-filed contentions. So
10 I don't want to hold her up. She obviously has other, you
11 know, a timetable in mind. So -- all right, any other
12 questions or comments on that subject?

13 All right, anything else in terms of anything we
14 talked about or anything anybody wants to raise with the
15 Board?

16 All right, hearing nothing, again I appreciate --

17 MR. QUINTANA: This --

18 JUDGE BOLLWERK: Yes.

19 MR. QUINTANA: This is Danny Quintana.

20 JUDGE BOLLWERK: Yes, Mr. Quintana.

21 MR. QUINTANA: On the lawsuit that was filed by
22 the State of Utah that's currently pending in district
23 court, which Hol Estol is counsel on, did you want me to
24 just send a copy of the final motions on that to the
25 parties, because to send all of the pleadings on everything

1 to all of the parties is going to require some effort on the
2 part of the staff, and again dispositive motions are being
3 filed on that this week.

4 JUDGE BOLLWERK: It's sort of really up to you all
5 as to how you want to work it out. As I said, all the Board
6 is interested in, if there's a ruling on a dispositive
7 motion, we'd like to know about that. If you want to attach
8 the ruling, that's fine too. I'm more interested in seeing
9 the actual rulings when something comes out from the court
10 rather than simply the motions that go in.

11 MR. QUINTANA: That's what I would recommend. Why
12 don't I just do that?

13 JUDGE BOLLWERK: All right. And then in terms of
14 anything that you want to work out with Ms. Walker or
15 anybody else on any other filings, I'll leave that up to you
16 all. It's really --

17 MR. QUINTANA: Yes, they're free to obtain those
18 documents from the Federal Court themselves.

19 MS. WALKER: Yes. Do you have a case number on
20 this?

21 MR. QUINTANA: Not in front of me.

22 MS. WALKER: Do you know the title of it?

23 MR. QUINTANA: Actually the State of Utah could
24 probably give you the best information on that, since it's
25 their case.

1 MS. CHANCELLOR: I'd be happy to provide you with
2 any information you need.

3 MS. WALKER: Great. Thanks, Denise.

4 JUDGE BOLLWERK: All right. Just let me mention
5 in terms of future scheduling, I think we will ask for
6 another status report, and perhaps in about three weeks, and
7 I think this one we'll have it done in writing, given it
8 looks like you're headed toward informal interviews at that
9 point. And I guess one of the things we'd like to hear
10 about in that status report, and I'll put out an order and
11 give you a specific date, is the status of informal
12 interviews. It sounds like that's the next major step here.
13 Also, anything you want to provide the Board, additional
14 information about discovery, document exchanges, or
15 privileged documents, the sort of thing we talked about
16 here.

17 Would the parties be amenable to having the next
18 status report in writing rather than having a conference
19 call, or what do you prefer? Any preference one way or the
20 other?

21 MR. KENNEDY: I think the status call over the
22 phone is fine, Your Honor. This is Kennedy.

23 MR. ALLEN: This is Bryan Allen. I think a
24 conference call is easier, too. I think by the time you
25 circulate multiple drafts of a written report, it takes much

1 more time.

2 JUDGE BOLLWERK: All right.

3 MR. ALLEN: Phone call.

4 JUDGE BOLLWERK: Anyone else have any feelings on
5 that?

6 MR. TURK: Your Honor, for the staff, I think the
7 written filing has always proven to be pretty easy to
8 coordinate. When Mr. Blake has put together a draft and
9 e-mailed it to people, I think it's been agreed on pretty
10 quickly. I think we can save the expense of a court
11 reporter and all the time involved in trying to set up a
12 conference call by doing it that way.

13 JUDGE BOLLWERK: Mr. Blake, do you have any
14 comments on this, since you probably -- this looks like
15 everybody's looking to you to --

16 MR. BLAKE: I don't want to break this tie, Judge.

17 JUDGE BOLLWERK: All right. Okay. We'll think
18 about this. I'm perhaps inclined to go ahead with something
19 in writing, because I think it probably is not going to be
20 too extensive. But we'll talk about that and then we'll
21 give you something and a date on which we'd like to see it.
22 Just so you know, probably something toward the middle to
23 end of October we'll be looking for another status report or
24 a conference perhaps in November, and then a final one
25 perhaps in the middle of December. All right? So we're

1 looking kind of following this in at least twice more or
2 probably three times more.

3 All right, any other comments from anyone?

4 Okay, at this point again I like the word
5 "cooperation," go forward in that spirit, we appreciate
6 everyone making themselves available, and if anyone has any
7 motions or whatever they're going to file, we'll respond to
8 them when we see them.

9 At this point we stand adjourned. I thank you
10 very much.

11 [Whereupon, at 1:56 p.m., the prehearing
12 conference was concluded.]
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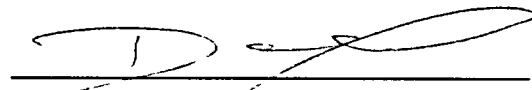
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PRE-HEARING CONFERENCE

CASE NUMBER: 72-22-ISFSI

PLACE OF PROCEEDING: Rockville, MD

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