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Title: Private Fuel Storage
Pre-Hearing Conference

Docket Number: 72-22-ISFSI

Location: Rockville, Maryland

Date: Thursday, May 29, 2003

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

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4 ATOMIC SAFETY AND LICENSING BOARD PANEL

5 PRE-HEARING CONFERENCE

6 -----X

7 IN THE MATTER OF: :

8 PRIVATE FUEL STORAGE LLC : Docket No.

9 (Independent Spent Fuel Storage : 72-22-ISFSI

10 Installation) :

11 -----X

12 Thursday, May 29, 2003

13
14 ASLBP Hearing Room, T3-B45

15 Two White Flint North

16 11545 Rockville Pike

17 Rockville, Maryland

18
19 The above-entitled matter came on for hearing,
20 pursuant to notice, at 2:09 p.m.

21 BEFORE:

22 MICHAEL C. FARRAR, Chairman

23 PETER S. LAM, Administrative Judge

24 JERRY R. KLINE, Administrative Judge

25
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P-R-O-C-E-E-D-I-N-G-S

2:09 p.m.

CHAIRMAN FARRAR: Going back on the record. We are now in session a little later than we anticipated. We have less than an hour to conduct the Pre-Hearing Conference on the consequences issue. Staff was supposed to let us know a couple of weeks ago if you were going to file something.

MR. TURK: We had proposed that we file something by May 16 in the way of a notice. We didn't do that. (1) We weren't able to. (2) We didn't see that we were required to. So we were waiting until today to give you notice.

CHAIRMAN FARRAR: Okay.

MR. TURK: The notice I would provide you is that in light of the Commission's decision to expedite this proceeding, the staff has determined that we will not do our own independent analysis but rather we will review the analysis that PFS ("Private Fuel Storage") presents to us because if we were going to do our own analysis we foresee that we won't be able to be concluded until sometime in mid-autumn when the Commission we suspect will have completed hearings by that time.

MR. SILBERG: Mr. Silberg. Does what you

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1 are going to present have any national security
2 information in it?

3 MR. GAUKLER: We don't know that yet. It
4 won't have any national security information. The
5 question is whether we'll have any safeguards
6 information. We do not know that yet.

7 CHAIRMAN FARRAR: I'll ask Cindy Harbaugh
8 to be here, since I've never dealt with national
9 security information before, to help us arrange the
10 procedures. So the studies you are going to rely on
11 are not something that Tom Ridge had somebody develop
12 in terms of anti-terrorism.

13 MR. GAUKLER: No, not involving any
14 national security information.

15 MR. TURK: May I address that, Your Honor?

16 CHAIRMAN FARRAR: Yes.

17 MR. TURK: We would expect that what PFS
18 submits will be submitted as safeguards information.
19 The staff upon receiving it would determine whether it
20 needs to be classified to a higher level. It is
21 possible that it would be classified higher and that
22 we would get into one of the NSI determinations, one
23 of those classifications.

24 JUDGE LAM: Now, Mr. Turk, that being the
25 case, as soon as that information is received how

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1 should it be handled? Should it be handled as a
2 potentially higher classification information?

3 MR. TURK: It should be handled initially
4 as safeguards information which would require its
5 being kept in locked safes or filing cabinets that are
6 locked. It would require work being done on stand-
7 alone computers and all of the other provisions that
8 we addressed once before when we were dealing with
9 security plan contentions.

10 JUDGE LAM: So it would only be down-
11 graded.

12 MR. TURK: It could be elevated to a
13 higher classification than that. At the beginning, we
14 would expect it to be treated as safeguards.

15 MR. SILBERG: Whether or not it's
16 safeguards, I don't know that we necessarily agree if
17 we don't know exactly what the study will include or
18 what information it has. That may be something we
19 need to dialogue with the staff as the study is closer
20 to being developed.

21 CHAIRMAN FARRAR: I asked the question for
22 two reasons: (1) to know what kind of procedures we
23 have to involve and (2) the Commission had said
24 notwithstanding our usual practice in holding the
25 hearing at this location. One option would be to

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1 conduct hearings here rather than in Salt Lake.

2 One factor effecting our decision on that
3 is the character of the information would bring the
4 Board back to Salt Lake. If you are talking safes, I
5 can't see us doing a safeguards type or national
6 security hearing in a hotel somewhere. We just don't
7 have the controls that we have here. So that will be
8 a factor in where we hold the hearing.

9 MR. TURK: Here's one thing that occurs to
10 me as we sit here in trying to meet the Commission's
11 schedule for expedited proceeding. If the material is
12 deemed to require higher classification, then the
13 State and PFS would have to have people cleared to
14 consider that material. That clearance could take us
15 a significant amount of time.

16 CHAIRMAN FARRAR: Cindy, what are we
17 running? In other words, if we tell people this is
18 really important and this is a hearing that has to go
19 forward, Tom Ridge is going to say I have a lot of
20 things that are important. Who does these clearances?

21 MS. HARBAUGH: (Inaudible.)

22 CHAIRMAN FARRAR: Meaning? It took you a
23 year to do me.

24 MS. HARBAUGH: Close to a year.

25 CHAIRMAN FARRAR: Close to a year. I

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1 think I asked you once before do you get special
2 treatment if you are Assistant Attorney General in a
3 State Attorney General's Office and you said no.

4 MS. HARBAUGH: Probably not. (Inaudible.)

5 MR. GAUKLER: We would dialogue with the
6 staff. I don't believe it will reach that level of
7 security. It may not reach safeguards level either.
8 We will definitely dialogue with the staff.

9 CHAIRMAN FARRAR: You have hired someone
10 to do a study. Is that where we are?

11 MR. GAUKLER: Yes.

12 CHAIRMAN FARRAR: Where are all these
13 studies that I keep reading about in the trade press
14 that the Swedes have done this and somebody else has
15 done that? What are all of those about?

16 MR. TURK: I'm not aware of a Swedish
17 study. I know the Commission is involved in different
18 vulnerability assessments. I understand that NEI has
19 done one as well.

20 CHAIRMAN FARRAR: Do you have the NEI one?

21 MR. TURK: The staff has it.

22 CHAIRMAN FARRAR: Is that different from
23 the one that you are talking about?

24 MR. TURK: I'm not sure how that's
25 classified. That's different from what PFS is

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1 thinking about.

2 MR. GAUKLER: It's different from what
3 we're doing.

4 CHAIRMAN FARRAR: Would no one introduce
5 the NEI study?

6 MR. TURK: The NEI study as I understand
7 it is not specific to the PFS application. I don't
8 know off hand the nature of the planes or plane that
9 they considered. But I would expect that what PFS is
10 doing is going to be unique to PFS, and that is they
11 would be doing an F-16 crash.

12 MR. GAUKLER: That's correct, Your Honor.
13 We're working on using F-16 aircraft. NEI studied
14 some type of commercial aircraft.

15 MR. TURK: They would also be studying the
16 Holtec cask that is being closer places at the PFS
17 site. It was not our intention to introduce any other
18 study since we're not going to be doing our own
19 analysis at this time of the PFS proposal.

20 MR. SOPER: Could we ask that we be
21 provided with a copy of that NEI study just to cut
22 down the time to gather this material?

23 MR. TURK: The NEI study is probably
24 classified. They would have to show a need-to-know.
25 But they can make their request in writing. The staff

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1 would consider it. They can make their request
2 directly to NEI. But the Board can't grant the
3 request without having it before you and without
4 knowing whether or not it's something within your
5 authority to grant you permission to see.

6 MR. SOPER: I think that the Board can.
7 The Board has subpoena power. It can grant whatever
8 it wants.

9 CHAIRMAN FARRAR: What he is saying is we
10 can't rule on something until you make a request and
11 so forth. Under the Commission's order of yesterday,
12 you are right that we can probably do things that we
13 couldn't do before, but this is one of these deals
14 that the more you do to share with the State the
15 faster this goes. If they have to file pleadings to
16 get hold of documents, then we send a note up to the
17 Commission saying sorry we can't do it by December
18 because the parties aren't playing nice.

19 MR. TURK: It's not a question of playing
20 nice, Your Honor. The State in fact has submitted a
21 request to get the NEI study. Correct me if I'm
22 wrong. Didn't Dr. Nielsen send the request in writing
23 to obtain that study?

24 MR. SOPER: I don't know. I believe she
25 has.

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1 MR. TURK: The question is not playing
2 nice. The question is national security. We will do
3 whatever we are required to do in order to act
4 consistently with the common defense and security.

5 CHAIRMAN FARRAR: But if the answer is
6 national security tell them sooner rather than later.
7 If that's the answer, then that's the answer, and
8 we'll see how we proceed from there.

9 MR. SOPER: We're talking about national
10 security here. Are we not? How can we be denied this
11 information that's relevant out there on this subject
12 because it's too secret for us to see yet we have to
13 address this issue?

14 CHAIRMAN FARRAR: The reason you couldn't
15 see it was if it's national security and you are not
16 cleared to see that then you can't see it. Now, that
17 gives you another argument which is how can I
18 participate in the proceeding if I can't see the
19 information. That may be a valid argument.

20 MR. SOPER: It seems to me if the industry
21 is doing stuff too secret for us to see when we are
22 considering that there's something vastly wrong.

23 CHAIRMAN FARRAR: Or that sounds wrong
24 superficially. But I think the answer is to the
25 extent that these are documents that terrorists might

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1 want to have to decide what their next target is
2 that's why you can't see them because you are not
3 cleared even though you work for a State Attorney
4 General which would be fine with me. But from talking
5 to Cindy over the course of the past year, people
6 aren't making exceptions. I can't send them a letter
7 and say Denise and Jim are good people, we can trust
8 them, and give them a clearance. That's not how it
9 works.

10 MR. SOPER: Well, the NEI isn't a
11 government agency entitled to any protection. Let's
12 suppose that our experts come up with something that
13 we think a terrorist might want to see and is too
14 important to let the staff or PFS or the Board see.

15 CHAIRMAN FARRAR: That's a good point if
16 NEI's people who don't have national security
17 clearances have seen it.

18 MR. TURK: I don't want to speculate, Your
19 Honor. I don't know who has seen it. I don't know
20 what clearances they have. I know that within the
21 staff if we have people who do not have the proper
22 clearance even though they are employed by the U.S.
23 Government they would not be permitted to see it.
24 We're talking in a vacuum without knowing whether that
25 document is classified, and if it is classified at

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1 what level.

2 CHAIRMAN FARRAR: Let's do this. Mr.
3 Turk, you or one of your people find out the facts,
4 communicate to Mr. Soper and Mr. Silberg, and we'll go
5 from there. Mr. Soper, I understand your position.
6 It may be that we come down to a point that says these
7 people aren't cleared, they can't see the evidence,
8 and so we can't go ahead with the hearing. Or maybe
9 you say they can't see the evidence and too bad for
10 them. But that's not a decision we have to make
11 today.

12 MR. SOPER: Could I just ask how this
13 level of security became attached to it? Private
14 people do a study, and then somebody comes along and
15 says nobody can see the study these private people do
16 because it's too secret. Who said that?

17 CHAIRMAN FARRAR: Mr. Turk is going to
18 report to us on that. I understand your position.
19 Assuming many of their people are not cleared, NEI
20 hires somebody to do a study. They look at it. They
21 send it to the government. The government says this
22 is classified but you have a fair point. It may be
23 highly classified but people who aren't cleared have
24 seen it.

25 MR. SOPER: I'm just asking who is it in

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1 the government who says this is too secret for anybody
2 to see. Mr. Turk said that?

3 CHAIRMAN FARRAR: No, Mr. Turk is going to
4 find that out for us. He and his numerous minions are
5 going to track this down and let us know how it
6 stands.

7 MR. SOPER: Could we have that within five
8 days or so? We're on a tight schedule here. I can
9 see this drifting into oblivion and never getting an
10 answer, frankly.

11 CHAIRMAN FARRAR: We have a tough time
12 deadline. Mr. Silberg, the Commission's order
13 generally tracks roughly the schedule you had
14 suggested.

15 MR. SILBERG: It's somewhat more
16 aggressive. We're prepared to talk about the
17 differences of what we would propose. I think we may
18 be getting horses and carts ahead of each other.
19 There's no indication that the NEI study is going to
20 be introduced in evidence or that it's relevant.

21 CHAIRMAN FARRAR: But Mr. Silberg might
22 want to see it even if you don't plan to introduce it.

23 MR. SILBERG: He may, and he has the right
24 to try to see it.

25 CHAIRMAN FARRAR: Let's forget it. One of

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1 the options for us is disclosure in lieu of discovery.
2 Let's not get all tied up with motion practice.

3 MR. SILBERG: No, we were planning as part
4 of our proposal to turn over our studies as soon as
5 they are ready and to make the experts available to be
6 questioned by the State as soon as possible. We're
7 going to share all of that with them. I don't know
8 whether the NEI study is something that our people
9 rely on or that NRC staff is relying on or that it's
10 relevant.

11 MR. SOPER: Do you have a copy, Jay?

12 MR. SILBERG: I don't know. I don't.

13 MR. SOPER: How about your experts?

14 MR. SILBERG: I don't know.

15 CHAIRMAN FARRAR: We understand this.
16 We're on horses and carts. Let's not beat those poor
17 horses that may be behind their carts. Last year, you
18 snookered me. I was new on the job, and you said we
19 were going to do a seismic hearing in two weeks. I
20 said that sounds good. Then all of a sudden I get
21 testimony from 22 panels of witnesses.

22 So before we set any dates for hearing and
23 any times for hearing, you are going to tell us how
24 many witnesses you have and you are going to tell us
25 what they are going to talk about. We may say you are

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1 not going to have that many. Then we'll set a time
2 for hearing. We're going to have more pre-hearing
3 conferences rather than fewer because I found that
4 part of the problem in a seismic decision was by not
5 knowing enough ahead of time about where you were
6 going. We just went there.

7 The way to have a fast hearing and a fast
8 decision is to do more work ahead of time to limit
9 things. Even though that delays the start of the
10 hearing, it advances the release of the decision. If
11 you recall the last time we did key determinations
12 ahead of time, you filed a synopsis of each witness'
13 testimony and not proposed findings and conclusions
14 but key determinations which told us where you were
15 trying to take the case. This time we will want that
16 with maybe a little more detail.

17 Again, the more we know ahead of time the
18 more we can control the course of the hearing and the
19 more we can be planning the writing of our decision as
20 we go along. Who wants to speak to timetables?
21 Silberg, you said the Commission's order is more
22 aggressive than yours or Mr. Gaukler. Why don't you
23 start with how we see this going?

24 MR. GAUKLER: We were working from the
25 draft schedule that we put together in our joint

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1 report. We saw us providing our expert reports and
2 back up to the expert reports, the calculations, the
3 references at the same time as we provided the expert
4 reports so we wouldn't have to have any discovery with
5 respect to the documents relied upon and things like
6 that. We would provide them in conjunction with the
7 expert report. It's our intent to do that by June 27.
8 We then had a time --

9 CHAIRMAN FARRAR: Mr. Gaukler, hold on a
10 second while I get your document in front of me.

11 JUDGE LAM: How big of a report do you
12 have in mind, Mr. Gaukler, in terms of volume?

13 MR. GAUKLER: I don't know how big the
14 report will be. There may be several reports that go
15 together. It will be a report with respect to
16 potential damage to the cask. Right now I'm
17 envisioning something with respect to potential damage
18 or lack of damage to the Canister Transfer
19 Building. Then we may need some supporting
20 testimony or documents with respect to what we expect
21 in terms of types of impacts from the crash of an F-16
22 at the site. So those are the three things we're
23 thinking of at this point in time in terms of
24 supporting our case. We would provide them at the end
25 of the month by June 27. That's what we're working

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1 towards at this point in time.

2 JUDGE LAM: So they could be big ones.

3 MR. GAUKLER: They could be. I don't
4 think they are necessarily going to be big. I think
5 about the study that was done on cask stability or
6 something like that might be analogous to that. In
7 terms of the seismic studies we have in cask
8 stability, that might be analogous to those type of
9 reports in terms of size and type and complexity.

10 I think there will be a fair amount of
11 analysis. I don't know how thick the report itself
12 will be that we actually produce. There would be a
13 report with respect to the potential for cask damage
14 and Canister Transfer Building damage. I see
15 something with respect to information on F-16 impact
16 ground just based upon what we know from this hearing
17 before.

18 JUDGE LAM: So your focus would be
19 primarily on cask damage and penetration.

20 MR. GAUKLER: Yes.

21 JUDGE LAM: Do you intend to go into
22 meteorology, plume dispersal, modeling?

23 MR. GAUKLER: We have not decided that.
24 At this point in time, it's something that's on our
25 plate to decide in the near future. We may do that.

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1 We may not. Whatever we produce we would produce at
2 the end of June, the reports, the back up, the
3 documents relied upon, et cetera that go with it.

4 So we're basically trying to produce
5 things that relate to the expert report. Reports that
6 our expert would rely upon would be produced at that
7 same time in the effort to speed up the discovery
8 process. That is something we had suggested in the
9 direct report.

10 Also, we had suggested a different date
11 for the staff based upon discussions at that point in
12 time with the staff which we thought they might be
13 able to do. To speed the process up, the State ought
14 to produce its own expert reports as early as possible
15 so that we know early on where they are going to be
16 coming from in terms of the issues as far as
17 consequences are concerned. I would suggest moving up
18 what I had suggested for the State and staff to an
19 earlier date for the State's expert reports.

20 I haven't had a chance to talk to the
21 State about this. I have talked with Mr. Turk. That
22 maybe we have a set of agreed upon questions that we
23 just will answer. That will be our discovery in terms
24 of it will be similar to the general interrogatories
25 that we worked out with the State on contentions for

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1 all the safety contentions.

2 So I would try to work out a general set
3 of questions and answers that they would provide with
4 respect to their witnesses and their case. I would
5 propose a date maybe two or three weeks after we file
6 our expert reports where you will identify your
7 witnesses. You may have to supplement that later on,
8 but you would identify your witnesses on the basis of
9 the case that you intend to present.

10 Then I would see the primary thing being
11 depositions. I would see that being the primary focus
12 since you would have experts. That's where I think we
13 should do most discovery with respect to depositions.
14 I would say that we should try to start depositions
15 maybe a week or two earlier than what I have set forth
16 in the proposed schedule in the joint report. If we
17 completed depositions by August 8 or August 15 and
18 then have pre-filed testimony three weeks later,
19 approximately September 5, we could be in hearing at
20 the end of September.

21 CHAIRMAN FARRAR: How long is this hearing
22 going to take?

23 MR. GAUKLER: I had estimated two weeks
24 trying to take into account Your Honor's observation
25 about having underestimated before and trying to

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1 estimate all of seismic in two weeks. We will know
2 more once we have all of the witnesses identified
3 exactly as Your Honor says.

4 CHAIRMAN FARRAR: Mr. Turk, what was your
5 estimate for time of hearing?

6 MR. TURK: For seismic?

7 CHAIRMAN FARRAR: No, for this.

8 MR. TURK: First of all, for seismic, I
9 thought that estimate was way understated, and I
10 didn't buy into it.

11 CHAIRMAN FARRAR: Did you blow the whistle
12 and tell me that?

13 MR. TURK: No, I told the other parties
14 that I thought they were being too unrealistic.

15 CHAIRMAN FARRAR: Thanks for telling me.

16 MR. TURK: I don't think you were involved
17 yet, Your Honor. It was before you stepped into the
18 case. For this one though, I think we can finish
19 within the two week period particularly if the staff
20 is not doing its own analysis. I guess it would help
21 to know is the State going to do an analysis.

22 CHAIRMAN FARRAR: The thing we're going to
23 start with is the company's report.

24 MR. GAUKLER: Yes.

25 CHAIRMAN FARRAR: Now, that may be good,

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1 bad, or indifferent, but that's the base we start
2 with. Staff will not do its own report, but you would
3 turn your people loose on that report and file a
4 report or just have people testify that this is good
5 and this is bad.

6 MR. TURK: What I envision is we will
7 assess the analysis that PFS gives us. We may ask
8 them questions in the nature of an RAI, maybe not
9 labeled as such, to the point where we can develop our
10 own position on their analysis. We will then slap one
11 or two sheets of paper on top of that analysis and say
12 I'm the witness, here's my name, here are my
13 qualifications, and I subscribe to what's attached to
14 my testimony just as a means of trying to save the
15 step of writing both the report and testimony.

16 CHAIRMAN FARRAR: Right. And Mr. Soper.

17 MR. SOPER: I think it's interesting that
18 the staff envisions very little that will need to be
19 done to the PFS report when it comes out.

20 CHAIRMAN FARRAR: I'm not sure that's what
21 they said, but we need not belabor that here.

22 MR. SOPER: I heard a "slap a page or two
23 on top of it."

24 CHAIRMAN FARRAR: No, the report would be
25 substantial and whoever the witness is who understand

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1 the report would say I'm Joe Smith, the report
2 contains the staff's conclusions, and I'm here to
3 defend them or something.

4 MR. TURK: I think Mr. Soper thought we
5 were going to slap our okay on the Applicant's
6 analysis. No, what I said was we'll do our evaluation
7 and then we'll put the testimony on top of our
8 evaluation and say I subscribe to that evaluation.

9 MR. SOPER: I see. Excuse me.

10 CHAIRMAN FARRAR: Mr. Soper, what will you
11 do?

12 MR. SOPER: I apologize, Your Honor.

13 CHAIRMAN FARRAR: That's all right. You
14 have not commissioned your own study.

15 MR. SOPER: Well, we've had people looking
16 at this ever since it was pre-filed as part of the
17 testimony on K (PH). There was analysis done. In
18 fact, it will be something like that. I notice that
19 the Board in asking for an expedited hearing says "PFS
20 sought to introduce at the probability hearing
21 evidence that the cask would not be penetrated in the
22 unlikely event of a crash in order to demonstrate its
23 calculations conservatism. Considering that the
24 parties have had some opportunity to investigate the
25 consequences, we urge the Board to expedite the

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1 hearing."

2 It's a Stone & Webster analysis. It has
3 certain calculations in it. To the extent that we've
4 been looking at the kind of methodology that's going
5 to be forthcoming, we've had some opportunity. I
6 suspect that this is not going to be just a
7 modification of that particularly when PFS is saying
8 we don't know if we're going to do a dispersion
9 analysis or what our report will contain. I'm not
10 sure that we even have identified the type of
11 expertise that we need to evaluate this at this time.

12 CHAIRMAN FARRAR: Mr. Gaukler, is the
13 penetration issue just a simple non-nuclear physics
14 issue?

15 MR. GAUKLER: The penetration issue is a -
16 -

17 CHAIRMAN FARRAR: If it's a body weighing
18 a certain amount with a certain configuration and so
19 forth.

20 MR. GAUKLER: Impacting with certain
21 force, a source impact type of --

22 CHAIRMAN FARRAR: So whether that could
23 breach the cask and get to the canister is a non-
24 nuclear subject.

25 MR. GAUKLER: Yes.

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1 CHAIRMAN FARRAR: So Mr. Soper there is an
2 area where I assume the university's physics people
3 could be helpful.

4 MR. SOPER: We hope to do better than
5 that. Somebody that's had some specialized experience
6 in this area -- I'm not putting down the university,
7 but we need to know a little bit more than that. Is
8 this going to be the methodology that Stone & Webster
9 originally contemplated in the report that was filed?

10 MR. GAUKLER: We're doing a different
11 modeling methodology at this point in time. We're
12 modeling the cask and modeling based upon test data
13 that we know is available with respect to tests that
14 have been done in the area modeling what we will
15 expect the F-16 impact to be on the cask.

16 MR. SOPER: I'm not sure that this is a
17 physics question at all or a mechanical engineering
18 question. If it relies on modeling on tests that have
19 been done - and I suspect NEI study is probably one of
20 them - this is going to be very difficult for us to do
21 much on it until we see the report, identify the
22 expertise, and then contract for some sort of study.
23 So we're going to need some time after we see what
24 this is all about I'm afraid.

25 CHAIRMAN FARRAR: In other words, unlike

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1 the staff, you don't have these people on your staff.

2 MR. SOPER: No, and I'm not even sure --

3 CHAIRMAN FARRAR: In other words, the
4 staff gets a document in and they know it goes to so-
5 and-so who has been doing this for 20 years.

6 MR. SOPER: Exactly.

7 CHAIRMAN FARRAR: You get it, and you have
8 to have someone analyze it to tell you to whom it has
9 to go. Then you have to find those people.

10 MR. SOPER: That's right. And if it's
11 based on studies that we don't have, we almost need to
12 get that back up. Again, that's why I asked for the
13 NEI study. I suspect that everybody has it and is
14 using it except us. That's why I wanted a little help
15 on that. We got side tracked on whether Mr. Turk
16 would do something in five days to let us know about
17 it.

18 CHAIRMAN FARRAR: Well, here's the thing.
19 We want to follow the Commission's order. The company
20 wants to move as quickly as possible. Presumably the
21 staff would like to follow the Commission's order
22 because they aren't blessed with the independence that
23 we are. Then it's certain in the company and the
24 staff's interest to make sure that we don't lose time
25 moving these documents around because every moment we

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1 lose moving the documents around and getting the State
2 able to participate fully is time that sooner or later
3 we have to report to the Commission that this all took
4 too long. Now, this is putting aside the question of
5 the security clearances. If we run into that, we'll
6 deal with that. Cindy?

7 MS. HARBAUGH: (Inaudible.)

8 MR. SOPER: I appreciate you explaining
9 that, but I'm not even familiar with how something
10 gets a safeguards classification or what that means we
11 can't have.

12 MR. GAUKLER: Your Honor, if I could
13 suggest something with respect to the security
14 clearance, that actually happened with the license
15 application. I think the State had gotten a copy of
16 the security clearance because it was the State. In
17 terms of the State attorneys working with it, the
18 Board established a protective order for attorneys and
19 staff working with --

20 MS. CHANCELLOR: -- staff and any
21 necessary experts that we needed. We had to fill out
22 an affidavit and submit that to the Board and the
23 Board would issue a protective order.

24 CHAIRMAN FARRAR: Cindy, but I can't do
25 that with national security information.

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1 MS. HARBAUGH: (Inaudible.)

2 MR. GAUKLER: That's how we dealt with
3 safeguards information.

4 MS. CHANCELLOR: That's right. And I
5 think I got designated as the Governor's designee for
6 safeguards as well.

7 MS. HARBAUGH: (Inaudible.)

8 MS. CHANCELLOR: But if we have to treat
9 all of the documents as safeguards, it's going to be
10 difficult. We're probably going to have to FedEx
11 documents rather than e-mailing them. It's a much
12 more cumbersome procedure. We have to use stand-alone
13 computers. So extra time has to be built in for
14 exchanging documents within the State, for their
15 experts, as well as between the parties and the Board.
16 It's much more cumbersome.

17 MR. GAUKLER: And based upon what
18 safeguards information is involved, we're going to try
19 to structure our reports so they don't involve
20 safeguards. I have talked some with the staff and our
21 own people in terms of what may or may not constitute
22 safeguards information. So we're going to make every
23 effort to try to structure the reports such that you
24 get the necessary information that everybody needs but
25 without adding safeguards information in them.

1 MR. TURK: Safeguards or NSI?

2 MR. GAUKLER: Safeguards, based on what my
3 understanding of what safeguards is as far as it may
4 apply to this type of situation.

5 MR. SOPER: Your Honor, as I look at the
6 schedule here, the staff is saying they are not going
7 to file a report. What is the requirement that the
8 State file a report?

9 CHAIRMAN FARRAR: None.

10 MR. SOPER: So that's not contemplated by
11 this schedule.

12 CHAIRMAN FARRAR: Well, are you talking
13 about the staff schedule and the second joint?

14 MR. SOPER: PFS's schedule.

15 MR. GAUKLER: Actually, I was going to
16 say, Your Honor, to the extent that they are going to
17 put forward something like they did in Dr. Resnikoff's
18 testimony initially I think they ought to file an
19 expert report on that so that we have a time to review
20 that and examine that just as they have time to review
21 our expert reports. To the extent that they are going
22 to put something forward independently of our expert
23 reports, I think they should have the obligation to go
24 forward so that we don't see something for the first
25 time in their prefiled testimony.

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1 MR. SOPER: Well, we would have to
2 disclose our experts, so they would know who they are
3 and they will be deposed. I'm just wondering why we
4 have any obligation to produce a report in this case.
5 The staff is electing not to.

6 MR. TURK: But there is no obligation on
7 any party to produce a report. You litigate according
8 to the way you think best for your client to proceed
9 with cross examination alone.

10 CHAIRMAN FARRAR: This was just a --

11 MR. TURK: It gave them the opportunity to
12 file a report if they cared to.

13 CHAIRMAN FARRAR: And remember, we never
14 blessed this. This was just a joint report where
15 people were starting to outline how things would go.
16 The schedule is now by the boards anyhow. I would
17 agree with Mr. Turk's explanation that you could just
18 cross examine the authors of the reports.

19 Mr. Gaukler is right as he needs to know
20 what your expert is going to say ahead of time, but I
21 wouldn't think the expert has to file a formal report.
22 The expert can say I don't have any opinion myself but
23 I know that this report that came to me from someone
24 else isn't worth anything for the following reasons:
25 a, b, and c. But he wants to know that's what the

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1 person is going to testify to.

2 MR. SOPER: Well, even if he has opinions
3 of his own, they could be discovered on the deposition
4 rather than a report.

5 CHAIRMAN FARRAR: Right.

6 JUDGE LAM: But it certainly would be
7 helpful if, Mr. Soper, your expert can independently
8 develop an analysis to clearly demonstrate the cask
9 not surviving a direct hit.

10 MR. SOPER: And it may be that, Your
11 Honor. The only thing I was wondering is in the event
12 that he does do his own analysis are we required to
13 gather that together and produce a report or can he
14 simply tell Mr. Gaukler when he asks him do you have
15 any opinions on that and he could say yes I do. They
16 are 1, 2, and 3. He may have done his own analysis to
17 support that. I'm just wondering if that's okay.

18 If we're trying to streamline this,
19 turning out a report is a lot of work particularly
20 when we have to do it in view of safeguards and after
21 we've seen Mr. Gaukler's report. It takes time to
22 find the people to do the analysis. To have a
23 deadline to produce a report is just an extra burden
24 that maybe we don't need in this proceeding.

25 MR. GAUKLER: That may be true, Your

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1 Honor, but also I know in terms of my past history of
2 deposing some of the State's witnesses in terms of
3 what they are going to do, they basically say we don't
4 know and I haven't done that yet. So then we're faced
5 with getting whatever they do for the first time in
6 the pre-filed testimony. Particularly we are trying
7 to move this along. I believe we should know whether
8 or not they are going to be doing some extensive
9 analysis or something akin to an expert report so that
10 we have the ability to review and examine the back up
11 to that report and take their depositions with respect
12 to that report if they are going to do it similar to
13 the opportunity that they will have with our experts.

14 CHAIRMAN FARRAR: That seems like a fair
15 request, Mr. Soper.

16 MR. SOPER: Wouldn't that apply to the
17 staff as well, Your Honor?

18 CHAIRMAN FARRAR: That applies to
19 everybody. By the time we get to depositions, people
20 need to know what they are going to say. It's not a
21 valid answer for an expert - and I don't know where or
22 when this happened. Mr. Gaukler made a
23 representation. It seems to me it's not fair for an
24 expert to be deposed and say I don't know what I'm
25 going to say particularly with the schedule we're on

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1 here. We need to have people ready at the appropriate
2 time.

3 MR. TURK: But what the previous schedule
4 had contemplated, Your Honor, is that if a party was
5 going to do an independent analysis that's the report
6 that they would have turned in ahead of time. Later
7 on in discovery, they would identify any other views
8 that they have perhaps relating to the other parties'
9 reports.

10 CHAIRMAN FARRAR: The point is they have
11 to reveal them in discovery. They can't say well I
12 haven't thought about that yet and then file pre-filed
13 testimony.

14 MR. TURK: Definitely. The proposal also
15 contemplates that if they are going to do an
16 independent analysis do that first so that all parties
17 have a chance to evaluate before we even get to
18 discovery. That would be the first part of discovery.

19 MR. SOPER: Whether it's an independent of
20 analysis or an analysis of somebody else's and it's
21 your opinion, it ought to be disclosed in a report.
22 I don't think the staff ought to be the only party
23 here that says we're not going to disclose what our
24 folks are going to say. If there are reports, they
25 ought to come from all parties.

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1 CHAIRMAN FARRAR: Certainly if the staff
2 adopts some approach to this, you are welcome to adopt
3 the same approach. In other words, we're not going to
4 make you do something that they choose not to do.
5 Doing an independent report seems to be an option that
6 a party has, not a mandate on a party.

7 MR. SOPER: Very well. In view of the
8 fact that we don't have people on staff waiting to do
9 this, could we have 45 days after PFS produces their
10 report to produce ours, keeping in mind we have to
11 find the experts, hope they are not too busy, and get
12 them on a contract?

13 CHAIRMAN FARRAR: That would be August 11.

14 MR. TURK: May I address that for a
15 moment, Your Honor?

16 CHAIRMAN FARRAR: Discovery was supposed
17 to be August 8 to 15 under somebody's proposal.

18 MR. TURK: Mr. Sober confuses two
19 different types of reports. The first thing that this
20 schedule had asked for is that if a party knows they
21 are going to do an independent analysis, disclose that
22 up front. We had proposed a May 16 date for that
23 disclosure. Turn out that report early. That's a
24 different report than an evaluation of other
25 parties. So what Mr. Sober appears to be

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1 asking for now is 45 days after the PFS report to
2 issue an independent analysis. I don't see a reason
3 why they would have to do that. They could start an
4 independent analysis now without waiting to see how
5 PFS does theirs. That report could come out more
6 promptly. And later on, 45 days or whatever time you
7 think is appropriate after the PFS report comes out,
8 they could issue their views on the PFS report or
9 maybe a consolidated view of what their testimony will
10 be.

11 CHAIRMAN FARRAR: Doesn't that depend on
12 what their strategy is? In other words, they can try
13 to prove that a plane would penetrate a cask. Or they
14 can sit back and just take pot shots at the other side
15 who has the burden of proof and say we don't know what
16 the answer is but we know that your answer isn't good
17 enough.

18 MR. TURK: That's fine. But they should
19 be telling people up front are they going to be doing
20 an independent analysis or not and if they are, turn
21 that over as promptly as possible without waiting to
22 see the other parties' independent reports.

23 MR. SOPER: Mr. Gaukler doesn't even know
24 if he's going to do a dose dispersion analysis as we
25 sit here. This really is an amendment to the crash

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1 report. This is an update to the crash report that
2 we're asking to comment on. We don't have the burden
3 of going forward here.

4 CHAIRMAN FARRAR: Mr. Gaukler, when are
5 you telling everyone the areas your report will
6 consider?

7 MR. GAUKLER: I hadn't thought of a time,
8 but we can pick a date. We'll tell you as soon as we
9 know.

10 CHAIRMAN FARRAR: We have eight minutes
11 left here. We've had a lot of good discussion and
12 good ideas. We're starting to get our arms around
13 this, but I don't know that we've come to any firm
14 conclusions about dates. Maybe that's incumbent on
15 Mr. Gaukler, for you to find out what your report is
16 going to cover, Mr. Turk, for you to look into some of
17 these other reports and classifications, and the
18 parties to get together and file a proposed schedule
19 that meets the Commission's schedule on the assumption
20 that we don't get stuck with clearance problems.

21 Then that will be the schedule. If we
22 later find out it takes three months to get somebody
23 cleared, Cindy tells us that, then we tell the
24 Commission we just lost three months because we can't
25 move forward or we find some other way to skin that

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1 cat. Does that make sense? Today is the end of May.
2 When can we have that joint report, recognizing that
3 the State is busy the next two weeks?

4 MR. GAUKLER: Could I make a suggestion
5 that we have it as quickly as possible after the end
6 of the next two weeks? So I would say the first part
7 of the week of June 18.

8 CHAIRMAN FARRAR: Okay, June 18, we'll
9 expect a joint report. Mr. Gaukler, June 27 you said
10 you would have your expert report, but if it's
11 sometime before that you will let everyone know.

12 MR. GAUKLER: Yes.

13 CHAIRMAN FARRAR: The faster everyone lets
14 people know, the faster the proceeding stays on track.

15 MS. CHANCELLOR: So will we know on June
16 18 the scope of PFS's report?

17 CHAIRMAN FARRAR: You will know before you
18 sign off on the joint scheduling report, not the
19 contents, but the subject matter --

20 MR. GAUKLER: Subject matter.

21 CHAIRMAN FARRAR: -- addressed by the
22 expert report. To finish, let's work backwards from
23 December 31. When would we have to have a hearing?
24 You said a hearing at the end of September.

25 MR. GAUKLER: I had figured approximately

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1 five weeks for findings of fact in the schedule I put
2 together, Your Honor, three weeks for findings of
3 fact, two weeks for reply to findings and then you add
4 the time for the Board decision.

5 CHAIRMAN FARRAR: If we do this right, if
6 you give us enough in terms of those key
7 determinations or other proposals ahead of time in
8 giving this deadline, my inclination is you get a
9 short decision. We don't take the time to set up
10 background and so forth. We say here are the issues,
11 here are the key points, here is what we think about
12 them, here it is. I don't want to say it would use
13 less than 60 days, but my point is the more that is
14 done ahead of time, the faster we can do a decision.

15 MR. GAUKLER: I believe that if we get the
16 hearing done by the end of September, you would have
17 findings of fact done by November 3. But that means
18 that you would need to start early autumn for the
19 hearing, the last two weeks of September.

20 JUDGE LAM: Now, how many expert witnesses
21 do we have in this proceeding? Does anybody know?

22 MR. TURK: We don't know yet, Your Honor.
23 Part of that will depend on the scope of the testimony
24 that PFS develops. We don't know if the cask is going
25 to be breached in their analysis or not.

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1 JUDGE LAM: Because in the seismic
2 hearing, the length of the hearing is basically
3 determined by the number of expert witnesses. So the
4 two weeks estimate may not hold.

5 MR. TURK: There are some steps that we
6 can ask the Board to impose on all parties that would
7 advance the cause such as require parties to put on a
8 unified panel of witnesses rather than have each panel
9 come in with a different subset of information and
10 testimony, get them all introduced at one time and
11 move from one witness to the next. I think we'll save
12 time if a witness has a comment on what somebody else
13 said. They can present it at that time and try to do
14 things as --

15 CHAIRMAN FARRAR: A unified panel --

16 MR. TURK: For the party.

17 CHAIRMAN FARRAR: For that party.

18 MR. TURK: Yes.

19 CHAIRMAN FARRAR: Not a congressional
20 panel where you have the three parties together.

21 MR. TURK: I wasn't proposing that. I
22 think at least that each party should put on a unified
23 panel. These are our witnesses on the case.

24 CHAIRMAN FARRAR: How about pre-filed
25 reply testimony? It seems to me what happened last

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1 time is we had the 22 panelists. Then they all popped
2 back a day later. If we know in advance what the
3 reply is, isn't that a way to shorten the number of
4 appearances?

5 MR. GAUKLER: Yes it is, Your Honor.
6 That's also one reason I was suggesting that the
7 parties can do independent reports and get those out
8 because then you are able to address those in your
9 pre-filed testimony.

10 CHAIRMAN FARRAR: Right.

11 MS. CHANCELLOR: Your Honor, what ate up
12 the time in seismic was all the rebuttal testimony.
13 You mentioned during the seismic hearing if we ever
14 did this again that you would require rebuttal at the
15 same time as testimony.

16 CHAIRMAN FARRAR: That's right. Did I say
17 "reply?" I meant rebuttal.

18 MS. CHANCELLOR: Okay.

19 CHAIRMAN FARRAR: The person gets on there
20 and says here's what I think and says here's why the
21 other people are wrong. It seemed to me there was an
22 awful lot of repetition when they got onto the
23 rebuttal.

24 MR. GAUKLER: That's one thing we could
25 do, yes, you are exactly right. To the extent that we

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1 put our direct witnesses on, we will have the State's
2 testimony at that point in time. In other words, we
3 could put our rebuttal onto the State's pre-filed
4 testimony at that point in time either written or
5 oral, whichever the case may work out instead of
6 saving it until after the State puts on its witnesses.
7 Then any rebuttal you would have after the State's
8 witnesses would just be limited to whatever they may
9 say orally as opposed to what they said in their pre-
10 filed written testimony. That would make sense to me,
11 Your Honor, yes.

12 MR. TURK: Another thing we could ask,
13 Your Honor, is that you limit us in the space that we
14 have for findings. If you impose a page limitation on
15 all parties that would be fair equally to all parties,
16 that would cut down on the Board's job in trying to
17 craft its opinion. Parties would have to focus on
18 their key issues rather than issues that are
19 subsidiary.

20 CHAIRMAN FARRAR: All right. These are
21 all good ideas. It's now one minute to three. We
22 promised the State they would be out of here, so the
23 next thing we will look for is a joint report June 18.
24 Let's target tentatively the hearing for the last two
25 weeks of September, beginning September 15 and ending

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1 September 26. There might be a little flexibility
2 there, but let's pick a date now because that will
3 help drive the other steps we take if we have a fairly
4 rigid look at the hearing.

5 MR. TURK: I would note just one thing on
6 that, Your Honor. September 26 is the beginning of a
7 religious holiday for some of us. Maybe we need to
8 adjourn before September 26, on September 25 or
9 continue into September 30 to make up for lost time.

10 CHAIRMAN FARRAR: Rather than do that,
11 maybe we'll start a day or two early. Although it
12 would be nice to do --

13 MR. SILBERG: Well, we could go at least
14 a half day on September 26.

15 CHAIRMAN FARRAR: We'll build in a
16 flexibility, but let's look at those two weeks.

17 MR. SILBERG: I have three very minor
18 matters. One is a question. Does the Board have any
19 ideas as to when we might see a SUWA B decision? The
20 Commission said imminently. I assumed we would get it
21 yesterday afternoon, but that was not to be.

22 CHAIRMAN FARRAR: I know the Commission
23 said that, but they didn't see the footnote in seismic
24 where we indicated the financial were imminent.

25 MR. SILBERG: And you didn't say anything

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1 about SUWA B.

2 CHAIRMAN FARRAR: We didn't say anything
3 about the SUWA B.

4 MR. SILBERG: We noticed that.

5 CHAIRMAN FARRAR: But one of the reasons
6 for ruling from the bench today, which we don't prefer
7 to do, was if we hadn't rule from the bench today, we
8 would have had to put SUWA B again on the back burner
9 to do the opinion today.

10 MR. SILBERG: Do you have any estimate as
11 to the time?

12 CHAIRMAN FARRAR: It will be soon, but it
13 won't be imminent.

14 MR. SILBERG: The second question. This
15 is probably better for Judge Bollwerk, but maybe
16 through the staff, we were asked to do a proprietary
17 information review of the cross examination plans
18 which we don't have. We need to get those if we are
19 to review them for proprietary information.

20 CHAIRMAN FARRAR: Okay. We'll get that as
21 soon as we leave.

22 MR. SILBERG: One final thing. In the
23 order that Judge Bollwerk's Board issued, on page 2,
24 there's a reference to making a final determination
25 about whether the Utah E decision can be made part of

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1 the record, but it doesn't refer to the other two
2 decisions. I didn't know whether that was
3 inadvertently omitted.

4 CHAIRMAN FARRAR: Was that because there
5 was already something filed on those?

6 MS. CHANCELLOR: I think there's something
7 specific on each decision that general order only
8 refers to one of the decisions but it talks about
9 three.

10 MR. SILBERG: I think it was just an
11 oversight.

12 CHAIRMAN FARRAR: Susan, will you track
13 that down please?

14 MS. CHANCELLOR: Just a point of
15 procedure, Your Honor, I assume that because
16 consequences is still ongoing that the issues are
17 still alive before the Board and the State does not
18 yet have to file an appeal on its residual issues, the
19 issues that didn't go to hearing, the appeals after
20 the final initial decision.

21 For example, if you were to dismiss
22 consequences on a summary disposition motion, there
23 wouldn't be a final partial initial decision. Judge
24 Bollwerk's decision would be final initial decision as
25 to us. But we don't know now whether there's going to

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1 be a final partial initial decision on consequences.
2 We assume that there will be. But for purposes of
3 preserving our rights to appeal to the Commission we -
4 -

5 CHAIRMAN FARRAR: You mean appeal to the
6 Commission on things like rejected contention.

7 MS. CHANCELLOR: Yes, everything that
8 didn't go to hearing.

9 CHAIRMAN FARRAR: Things that didn't go to
10 hearing.

11 MS. CHANCELLOR: Exactly.

12 CHAIRMAN FARRAR: Procedural orders along
13 the way.

14 MS. CHANCELLOR: Right.

15 CHAIRMAN FARRAR: As I understand it,
16 those are not appealable until the case is over and
17 the final initial decision comes out. Partial initial
18 decisions that dispose of a particular issue are
19 appealable. Procedural rulings during the course of
20 the thing are not appealable until the final initial
21 decision. Am I correct, Mr. Silberg or Mr. Turk?

22 MS. CHANCELLOR: But is there going to be
23 a final initial decision on consequences is my
24 question. If you issued a summary disposition ruling,
25 that wouldn't be a final partial initial decision.

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1 MR. SILBERG: There isn't any summary
2 disposition planned on consequences.

3 MS. CHANCELLOR: Bad analogy, okay.

4 CHAIRMAN FARRAR: Forget that.

5 MS. CHANCELLOR: So I assume there will be
6 a final partial initial decision on consequences.

7 CHAIRMAN FARRAR: That would likely be the
8 last decision in the case.

9 MR. TURK: There is one qualification that
10 is appropriate. If for instance the State has
11 contentions that were rejected with respect to seismic
12 issues --

13 MS. CHANCELLOR: We understand that.

14 MR. TURK: Those that relate to the
15 seismic matter that has not been decided would be
16 appealable now rather than waiting.

17 MS. CHANCELLOR: We understand that, Your
18 Honor.

19 CHAIRMAN FARRAR: Good. Thank you, Mr.
20 Turk. All right. You are excused. Don't bother to
21 say your good-byes. Maybe we'll see you in Utah or
22 maybe we'll see you here. I will do some more pre-
23 hearing conferences which I think we can do by video
24 conferencing.

25 MS. CHANCELLOR: Thank you, Your Honor.

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1 CHAIRMAN FARRAR: I think that worked well
2 last year. Thank you all.

3 (Whereupon, the above-entitled matter
4 concluded at 3:06 p.m.)
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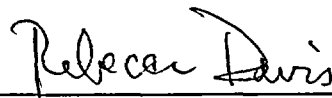
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