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Title: CFC Logistics, Inc.
Pre-Hearing Conference

August 13, 2003 (10:08AM)

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Docket Number: 03036239

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Pages 1-85

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

(ASLB)

+ + + + +

PRE-HEARING TELECONFERENCE

IN THE MATTER OF:

CFC LOGISTICS, INC.

Docket No.

03036239

(Materials License Application)

Thursday, August 7, 2003

The above-entitled matter came for
hearing, pursuant to notice, at 9:30 a.m.,
BEFORE:

MICHAEL C. FARRAR Administrative Judge

CHARLES N. KELBER Administrative Judge

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9 On Behalf of CFC Logistics, Inc.:

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1 ALSO PRESENT:

2 Courtney Bryan

3 Karl Farrar

4 Thomas Fredrichs

5 John Kinneman

6 Susan Lin

7 Sapper Lodhi

8 Karen Valloch

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

Time: 9:37 a.m.

ADMINISTRATIVE JUDGE FARRAR: Good morning. This is Mike Farrar. We are here for a pre-hearing conference by way of a conference call on the CFC Logistics proceeding.

I think everyone is on the call that we need to have. We are here at the Licensing Board headquarters with Judge Kelber. Karen Valloch who is one of our support people is here, as is Susan Lin, our Senior Law Clerk.

Who do we have for the company?

MR. THOMPSON: We have Anthony Thompson and Christopher Pugsley.

ADMINISTRATIVE JUDGE FARRAR: Good morning.

MR. THOMPSON: Good morning.

ADMINISTRATIVE JUDGE FARRAR: And for the Petitioners?

MR. SUGARMAN: Robert Sugarman.

ADMINISTRATIVE JUDGE FARRAR: All right. And for the staff?

MS. LEWIS: Steve Lewis -- Stephen Lewis, S-t-e-p-h-e-n. Judge Farrar, Judge Kelber, I am actually physically up in Region I, and I am going to

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1 let the other people who are here with me attending
2 address -- identify themselves for the benefit of the
3 court reporter.

4 ADMINISTRATIVE JUDGE FARRAR: All right,
5 go ahead, please.

6 MR. KINNEMAN: My name is John Kinneman,
7 K-i-n-n-e-m-a-n. I am Chief of the Nuclear Materials
8 Safety Branch in Region I.

9 MR. LODHI: My name is Sapper Lodhi, and
10 I am in Region I. I am a healthy physicist.

11 MR. FARRAR: My name is Karl Farrar, K-a-
12 r-l F-a-r-r-a-r, and I am Regional Counsel in Region
13 I. No relation to Judge Michael.

14 ADMINISTRATIVE JUDGE FARRAR: That saves
15 me the trouble of saying that.

16 MR. LEWIS: And we also have someone in
17 Headquarters.

18 MS. SCHWARTZ: This is Maria Schwartz with
19 the Office of General Counsel in Headquarters.

20 MR. FREDRICHS: And Tom Fredrichs, also in
21 Headquarters.

22 MR. LEWIS: Tom, why don't you give the
23 spelling of your name?

24 MR. FREDRICHS: F-r-e-d-r-i-c-h-s. Thanks
25 for asking. Everybody is wrong.

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1 ADMINISTRATIVE JUDGE FARRAR: Has everyone
2 who is on the call identified themselves?

3 MR. SUGARMAN: One other person, Your
4 Honor. This is Robert Sugarman again. My
5 paralegal/bar clerk, Courtney Bryan has joined us.

6 ADMINISTRATIVE JUDGE FARRAR: All right,
7 thank you. If anybody else comes in the room with
8 you, let us know.

9 MR. SUGARMAN: Very good.

10 ADMINISTRATIVE JUDGE FARRAR: Mr.
11 Sugarman, I heard you and staff counsel talking before
12 we got on the air officially. You were in the
13 Limerick proceeding earlier?

14 MR. SUGARMAN: I was in the Limerick
15 proceeding, yes.

16 ADMINISTRATIVE JUDGE FARRAR: Okay. Then
17 you are -- Then maybe what I am about to say is
18 unnecessary, but I usually do at the beginning of
19 these proceedings just talk about the role of the
20 Board.

21 In most cases, the Licensing Board
22 consists of a lawyer Chairman and two technical
23 members, who are actually members of the Board. In
24 these Subpart L informal proceedings the Board is
25 really a single presiding officer with one of the

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1 technical judges as a special assistant or technical
2 advisor, and that is why Dr. Kelber is here.

3 I also like to always point out that
4 within the Commission there are the five Commissioners
5 who are Presidentially appointed and Senate confirmed
6 who run the Commission. They have a large regulatory
7 staff that works with them, and then they have the
8 Licensing Boards which are set up to be independent,
9 autonomous, whatever word you want. We have no
10 relationship with the NRC staff except we are housed
11 in the same headquarters complex.

12 Mr. Lewis, I may have met you a long time
13 ago, back when I was on the Appeal Board, but I don't
14 think I have run into you in the two years that I have
15 been back here.

16 MR. LEWIS: Yes. Well, I am only -- I
17 have only recently rejoined the hearings.

18 ADMINISTRATIVE JUDGE FARRAR: Okay. Our
19 decisions are reviewed by the Commission, but our
20 performance is not. By that, I mean they can reverse
21 our decisions, but they can't fire us for rendering
22 them. We have no performance reviews, and that is
23 intended to assure independence in our ability to
24 reach a fair judgment.

25 The Commission, in addition to reviewing

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1 our decisions, enacts the rules that show up in the
2 Federal Register and the Code of Federal Regulations,
3 and we are bound not only by their decisions but also
4 by those rules unless exemption practice. So that is
5 our role.

6 Mr. Sugarman, have you ever been involved
7 in a Subpart L case before?

8 MR. SUGARMAN: Not by that name.

9 ADMINISTRATIVE JUDGE FARRAR: Okay.
10 Neither have I. So that makes us even, starting out.
11 Mr. Thompson, Mr. Pugsley, I know you have been
12 involved in several.

13 MR. THOMPSON: Yes, that is correct.

14 MR. PUGSLEY: Yes.

15 ADMINISTRATIVE JUDGE FARRAR: Not in front
16 of me, but I think Judge Rosenthal has had a number of
17 those.

18 MR. THOMPSON: Yes.

19 ADMINISTRATIVE JUDGE FARRAR: And, Mr.
20 Lewis, this is your line of work, as I understand it.

21 MR. LEWIS: Well, I don't do exclusively
22 Subpart L proceedings, but I have been involved in
23 Subpart L proceedings.

24 ADMINISTRATIVE JUDGE FARRAR: Okay. In
25 terms of the different parts of the Commission, it

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1 would help us in your briefs, instead of just
2 referring to Commission decisions, to distinguish
3 between the Commission, the Licensing Board, and the
4 late and lamented Appeal Board. The way you do that
5 is by the designation that goes with the decision, CLI
6 and a number for the Commission, LBP and a number for
7 us, and ALAB and a number for the former Appeal Board.
8 Not everyone has been doing that, and that would help
9 us.

10 We are here today, as we said in our
11 previous order of July 31st, for (quote) "further
12 proceedings that would aid in the resolution -- for
13 planning, planning that would aid in the resolution of
14 this matter."

15 In that regard, the way the case was
16 launched, the pleadings are somewhat diffuse, became
17 more focused toward the end, but I want to make sure
18 we know what we have and what needs to be developed
19 before we go ahead to talk about whether we need oral
20 argument and whether we want -- and how we go about
21 rendering a decision.

22 We will be talking -- We will be
23 mentioning touching on the merits of the issues but
24 not -- or touching on the legal issues but not arguing
25 their merits today.

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1 The first thing I want to know is does the
2 Board -- I'll say Board when I should say presiding
3 officer, which is just a habit. I want to make sure
4 we have all the documents that have been filed.

5 The company has referred to a second
6 request for hearing on July 15th, and I am not sure we
7 have that. We have a July 17th reply of requester
8 that Mr. Sugarman filed, but what is this July 15th
9 document, Mr. Pugsley, that you have been referring
10 to?

11 MR. PUGSLEY: What's the July 15th
12 document? The July 15th document, Your Honor, was a
13 re-file by -- that came through via Facsimile here.

14 ADMINISTRATIVE JUDGE FARRAR: Can you get
15 a little closer to the phone. We can't hear you.

16 MR. PUGSLEY: I apologize. There was a
17 filing that came in July 15th via Facsimile to our
18 office in which I believe Mr. Sugarman re-filed his
19 first hearing request, which was a two-page letter,
20 included some attachments and a list of potential
21 petitioners.

22 ADMINISTRATIVE JUDGE FARRAR: Okay. Was
23 there a brief with that?

24 MR. PUGSLEY: Yes. I believe the only
25 part that could be classified a brief was the two-page

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1 letter.

2 ADMINISTRATIVE JUDGE FARRAR: Okay. It
3 would help us -- I've been looking all around for a
4 document called Second Hearing Request, which you kept
5 referring to. It would help us in the future if you
6 refer to the document by its name, and then if you
7 want to characterize it as something, that's fine.
8 But that would save us some time, so we know what
9 document we are looking for.

10 MR. PUGSLEY: Yes, sir.

11 MR. LEWIS: This is Steve Lewis. I want
12 to make sure that we are referring to a document which
13 bore the title "Contingent Motion: A Waiver of
14 Regulation."

15 ADMINISTRATIVE JUDGE FARRAR: I think that
16 is -- Let me ask the court reporter. Do you know when
17 I'm talking or do you need me to identify myself each
18 time? Okay, Mike Farrar.

19 I have that, Mr. Lewis, as a separate
20 document, a contingent motion for waiver of
21 regulation, but then, Mr. Sugarman, do I understand
22 correctly, that was filed on July 15th, but there is
23 also re-filed your first hearing request?

24 MR. SUGARMAN: Yes, that's what we did in
25 order to address -- We addressed Mr. Thompson's motion

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1 to dismiss in several ways. One of them was to re-FAX
2 him a copy of what we had sent to the Commission, I
3 believe, on June 23rd.

4 ADMINISTRATIVE JUDGE FARRAR: That one
5 involved no new material?

6 MR. SUGARMAN: That is correct. We just
7 re-FAX'ed it to Mr. Thompson in order to make the
8 service on him.

9 ADMINISTRATIVE JUDGE FARRAR: Okay. But
10 then there was a separate document, a letter, short
11 letter, July 15th, called the Contingent Motion for
12 Waiver of Regulation?

13 MR. SUGARMAN: That is correct, and that
14 was filed with the Commission and with copies to
15 everybody, including Mr. Thompson.

16 ADMINISTRATIVE JUDGE FARRAR: Mr. Lewis,
17 does that answer your question?

18 MR. LEWIS: Yes.

19 ADMINISTRATIVE JUDGE FARRAR: Then I think
20 we have all the documents. Mr. Pugsley, I think, in
21 your response on July 28th you referred on page 13 --
22 If the pages are right, you quoted some material from
23 the second hearing request at page 10, but I think you
24 meant from that to quote from the reply of requester?

25 MR. PUGSLEY: Yes, sir.

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1 ADMINISTRATIVE JUDGE FARRAR: Okay. I
2 want to urge all of you to make sure that your
3 references and your citations are as accurate as you
4 can make them. I know in the haste of preparing
5 documents sometimes mistakes creep in, but it would be
6 very helpful to us if we are careful about that. And
7 of course, from everyone's perspective, I want you to
8 argue your case as forcefully as you can for your
9 client, but don't saddle us with any
10 misrepresentations of the case.

11 You can argue what you think it might
12 mean, but please make sure that everything is -- there
13 are no misrepresentations of things that creep in.

14 Mr. Lewis, let me ask you -- Well, let me
15 ask, are there any further questions about the
16 documents? I know we have had a lot of back and forth
17 here, and maybe two complete rounds of briefs where
18 usually you would have one. But do any of the parties
19 have any questions of the other parties about the
20 status of the documents?

21 MR. LEWIS: Staff does not.

22 ADMINISTRATIVE JUDGE FARRAR: Mr.
23 Sugarman?

24 MR. SUGARMAN: I just want to make sure
25 that Mr. Lewis and the staff have -- that we have the

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1 right people to serve, since the Board ordered them to
2 participate. I am looking that we are serving John
3 Kinneman in Region I and we are serving the Office of
4 the Secretary of the Commission, but I don't see that
5 we have anybody to serve for staff at this point.

6 So going forward, we would need an
7 address. Mr. Lewis, if you are missing any documents,
8 we will be happy to give them to you.

9 MR. LEWIS: This is Steve Lewis speaking.
10 Up until now, up until the order of the presiding
11 officer, I did not file a notice of appearance,
12 because we were not intending to be a party to the
13 proceeding. Judge Farrar, I guess this would be a
14 question of clarification to you.

15 In light of the fact that you have
16 directed us to participate at least at the stage of
17 determining whether or not the pleadings warrant a
18 hearing, I assume at this point you would like me to
19 file a notice of appearance?

20 ADMINISTRATIVE JUDGE FARRAR: That would
21 probably help things, and until then further notice,
22 Mr. Sugarman, if you would serve Mr. Lewis.

23 MR. SUGARMAN: Steve, you will give me
24 something with your address so I can serve you?

25 MR. LEWIS: Yes. I am going to file a

1 notice of appearance tomorrow.

2 MR. SUGARMAN: Very good. Thank you.

3 ADMINISTRATIVE JUDGE FARRAR: All right.
4 I might add, in terms of service, we have developed --
5 someday it will be formal, but right now it is an
6 informal practice of serving each other
7 electronically. I guess that is still not the
8 official copy, but it sure saves a lot of time, and
9 for us it is MCF@nrc.gov, and Dr. Kelber is CNK.

10 MR. SUGARMAN: Is that applied to service
11 between parties as well as to the Board?

12 ADMINISTRATIVE JUDGE FARRAR: Yes. Well,
13 I don't know if it is required by the rules, but we
14 have found that it certainly smooths the way. We have
15 been doing that in the PFS case in which I am
16 involved.

17 MR. SUGARMAN: But may I ask a question?
18 What do you do about exhibits, you know, where you
19 don't have a scanner or a direct electronic copy of an
20 exhibit, you know, some third party's document or
21 something?

22 ADMINISTRATIVE JUDGE FARRAR: Right. I
23 think in PFS that hasn't been a problem, but here, if
24 it is, just send electronically what you can, and
25 maybe your cover letter would indicate that there are

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1 exhibits that are only going to be furnished by hard
2 copy or so forth.

3 MR. SUGARMAN: That's fine. Should we,
4 Your Honor, have that arrangement among counsel in
5 this case by agreement?

6 ADMINISTRATIVE JUDGE FARRAR: Unless
7 anyone objects, that saves us a lot of time; and,
8 well, we also have the problem here in our mail room.
9 Ever since the anthrax business, mail that comes to us
10 has to be opened and checked in the mail room. If you
11 want us to know what is going on and have us react
12 quickly, this is the way to do it.

13 MR. SUGARMAN: One more question. Would
14 that include hard copy follow-up or not necessary?

15 ADMINISTRATIVE JUDGE FARRAR: No. Always
16 do the hard copy follow-up.

17 MR. SUGARMAN: Okay. Is that agreeable to
18 other counsel, that we would have electronic exchanges
19 of data -- of all filings?

20 MR. PUGSLEY: Yes, it is.

21 MR. LEWIS: Yes. Steve Lewis of the
22 staff. Yes.

23 ADMINISTRATIVE JUDGE FARRAR: That was you
24 saying yes?

25 MR. PUGSLEY: That's fine with me, Your

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1 Honor. I just have one question. As I am sure Mr.
2 Sugarman is aware, there are requirements, procedural
3 requirements, in the rules about allotting a certain
4 amount of days tacked onto the ten-day response period
5 for regular mail, two days for Express mail.

6 My question is, if we serve the filing via
7 e-mail, but we send hard copies of attachment, do we
8 allot the five extra days for regular mail because we
9 send the attachments by regular mail?

10 ADMINISTRATIVE JUDGE FARRAR: I think in
11 PFS we have not, but through scanning or whatever, we
12 have always gotten the documents. Mr. Lewis, how has
13 this been handled in other proceedings? Are you
14 aware?

15 MR. LEWIS: It has been at the ruling of
16 the Board.

17 MR. SUGARMAN: I would not be happy with
18 not having the extra time where we don't physically
19 have the exhibits.

20 ADMINISTRATIVE JUDGE FARRAR: That is
21 certainly a good point. Let's do this. If the entire
22 document -- You know, if the whole package is
23 transmitted by electronic means, then we will just use
24 the ten days. If, in fact, the package includes
25 materials that can only be sent in hard copy, then we

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1 will add the --

2 MR. SUGARMAN: Five? Two by Express and
3 five by regular?

4 ADMINISTRATIVE JUDGE FARRAR: Yes.

5 MR. SUGARMAN: That's fine.

6 MR. THOMPSON: Your Honor, this is Tony
7 Thompson. In a couple of other Subpart L proceedings,
8 we have -- The presiding officer has requested that
9 the hard copy things like the exhibits and stuff be
10 sent by Express.

11 ADMINISTRATIVE JUDGE FARRAR: Mr.
12 Sugarman, is that okay?

13 MR. SUGARMAN: If that's agreeable. What
14 do we mean by Express? U.S. Express Mail?

15 MR. THOMPSON: Well, Express mail, that's
16 fine.

17 ADMINISTRATIVE JUDGE FARRAR: Fed Ex --
18 any of the overnight delivery services.

19 MR. THOMPSON: Right. Any overnight
20 delivery service.

21 MR. SUGARMAN: But we are allowing two
22 days where we are using Express?

23 ADMINISTRATIVE JUDGE FARRAR: Let's do
24 that, because over the course of time the extra three
25 or five days does add up, and do this as efficiently

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1 as possible.

2 MR. SUGARMAN: That's fine. I just want
3 to make sure, because wherever we might be at some
4 point in time, if we can't get our -- we will use U.S.
5 Express mail. So I want to make sure U.S. Express
6 mail is acceptable.

7 ADMINISTRATIVE JUDGE FARRAR: yes, it is.
8 No, not the -- The Postal Service has an overnight
9 service, and they also have something else which is
10 not overnight, and I forget. Does anyone offhand know
11 the difference?

12 MR. SUGARMAN: No, I never heard of that
13 before, but we will use the fastest U.S. Post Office
14 or private service.

15 ADMINISTRATIVE JUDGE FARRAR: Right. They
16 have an overnight, and then they have something that
17 is pretty cheap that they call something else, but you
18 use the overnight one.

19 MS. SCHWARTZ: They call it Priority.

20 ADMINISTRATIVE JUDGE FARRAR: Yes. Okay,
21 Priority is the one that there is no guaranty.

22 MR. SUGARMAN: Oh, yes. To us, priority
23 works out the same as regular.

24 ADMINISTRATIVE JUDGE FARRAR: Right. Then
25 use the U.S. Express mail.

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1 MR. SUGARMAN: Okay.

2 ADMINISTRATIVE JUDGE FARRAR: All right.
3 Then thank you for your help on that one.

4 Mr. Lewis, let me ask you, where does the
5 staff stand on their review of the application, which
6 is independent of what we do?

7 MR. LEWIS: Do you mind if I -- I don't
8 want to -- This is an important point, and I don't
9 want to misspeak on it. Would you be willing to hear
10 from either Mr. Kinneman or Dr. Lodhi on this, because
11 --

12 ADMINISTRATIVE JUDGE FARRAR: That's fine.

13 MR. LEWIS: Thank you.

14 MR. KINNEMAN: This is John Kinneman. The
15 review is continuing. We are working to bring it to
16 completion as quickly as we can, and I expect that
17 over the next week or two that we will complete the
18 review, but by week or two I don't mean to represent
19 a very specific endpoint.

20 The reviewer and other resources of the
21 NRC are looking at information we gathered as recently
22 as yesterday to put together the review and document
23 it properly. So we are working toward the end, but we
24 are not quite there.

25 ADMINISTRATIVE JUDGE FARRAR: All right.

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1 Thank you for that information. The reason I asked
2 the question is I understand under Subpart L, unlike
3 the more formal proceedings, the staff is free -- Even
4 though we may have either this phase of the proceeding
5 or even an actual hearing going on, the rules permit
6 the staff, after the completion of their review, to
7 issue the license, notwithstanding the existence of
8 the proceeding. Is that correct, Mr. Lewis?

9 MR. LEWIS: That is correct.

10 ADMINISTRATIVE JUDGE FARRAR: Right. Do
11 the rules -- I guess it's only implicit that they
12 contemplate, if there were an intervention granted,
13 that the regular rules for stay would then come into
14 play and admitted intervenor could then ask for a
15 stay?

16 MR. LEWIS: Yes. We are searching for our
17 copy of 10 CFR. Maria, do you have yours in front of
18 you?

19 There are provisions, in fact, of Subpart
20 L that speak specifically to how the stay provisions
21 come in, and they -- I just need it in front of me in
22 order to make a representation about it.

23 ADMINISTRATIVE JUDGE FARRAR: All right.

24 MR. LEWIS: All right. Let me see. I am
25 going toward the back of Subpart L, and at the time of

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1 hearing or within 10 days of the action.

2 MR. KINNEMAN: It's 2.1263.

3 MR. LEWIS: Yes, 2.1263: Stays of NRC
4 staff licensing actions or of decisions of a presiding
5 officer or the Commission pending hearing review.
6 I'll just go ahead and read what it says for the
7 record.

8 ADMINISTRATIVE JUDGE FARRAR: Well, we
9 don't need to do that. We can all find it. That's at
10 the very end of Subpart L. Correct?

11 MR. LEWIS: Correct. It basically refers
12 -- For these purposes, the Subpart L defaults to the
13 Subpart G procedure.

14 ADMINISTRATIVE JUDGE FARRAR: All right,
15 fine. Then if and when the staff acts -- takes action
16 on this, and I don't suppose -- It's probably not
17 required, given the status of the case now, but we
18 would appreciate it if you would advise the Board and
19 Mr. Sugarman at the time you take any action, so we
20 don't learn about that through any other means.

21 MR. LEWIS: Well, I think that we would
22 promptly advise all of the parties and the Board of
23 the issuance of the license, and that seems to be
24 particularly important because, although there is a
25 default to the Subpart G provision, there is also an

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1 exception, which puts a very tight time frame on a
2 request for a stay of a staff licensing action.

3 It provides that such a request for a stay
4 must be filed within 10 days of the staff action. So
5 it is certainly, I would think, obligatory on our part
6 under those circumstances to promptly notify you when
7 we issue the license.

8 ADMINISTRATIVE JUDGE FARRAR: All right.
9 We will count on that being done.

10 MR. SUGARMAN: Excuse me, may I interrupt
11 for a second while we are on the subject, and make a
12 request of the staff to provide us with copies of the
13 material that's been received since the staff letter
14 of July -- I think it was July 16 or July 18?

15 ADMINISTRATIVE JUDGE FARRAR: Mr.
16 Sugarman, that was you speaking?

17 MR. SUGARMAN: Yes, Your Honor. May I
18 make that request?

19 MR. LEWIS: Since July --

20 MR. SUGARMAN: There was a letter issued
21 by the staff on July 16 or July 18, I believe, for
22 additional documentation. I'm asking for the
23 documents that have been received or the information
24 that has been received since that letter.

25 MR. LEWIS: Okay. My okay is an

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1 acknowledgement of what you just said. Let me just
2 focus on this for a moment.

3 MR. THOMPSON: Your Honor, this is Tony
4 Thompson. We need to be careful about what we are
5 talking about here, because there were some materials
6 filed with a request for production confidentiality
7 protection for trade secrets.

8 MR. SUGARMAN: We will enter into a
9 stipulation of confidentiality so we can have that
10 information.

11 ADMINISTRATIVE JUDGE FARRAR: Why don't we
12 leave it -- We have had good luck with this in the PFS
13 proceeding -- leave it to the three parties after this
14 call to work out how that will be handled.

15 Now I know in these Subpart L proceedings,
16 it talks about there is no discovery of any kind, but
17 it also talks about preparing a hearing file. As you
18 all discuss what documents you may or may not
19 exchange, let the Board count on all of you to work
20 out how we are going to do that.

21 MR. LEWIS: I think at the end of the
22 call, if the Board and the court reporter simply drop
23 off, then the three of us -- the staff, Mr. Sugarman
24 and Mr. Pugsley and Mr. Thompson will then be on the
25 line.

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1 ADMINISTRATIVE JUDGE FARRAR: That's a
2 great idea, Mr. Lewis. Why don't we -- We will do
3 that. The court reporter and we will sign off. You
4 can arrange that right now. If you have any problems,
5 we are here to resolve it, but we've found that good
6 lawyers working in good faith can sometimes come up
7 with better, faster, more sensible arrangements than
8 we can by orders. So we will try to give you that
9 chance all the time.

10 One more question the Board has. There
11 was no Notice of Hearing issued -- or no Notice of
12 Opportunity issued by the staff in advance. Is that
13 correct, Mr. Lewis?

14 MR. LEWIS: Correct.

15 ADMINISTRATIVE JUDGE FARRAR: So that
16 means that, if we -- As I understand the rules, if we
17 permit intervention and send this matter toward a
18 hearing, then it is our job at that point to put out
19 a Notice of Hearing --

20 MR. LEWIS: Correct.

21 ADMINISTRATIVE JUDGE FARRAR: -- and give
22 people another chance to come in.

23 MR. LEWIS: Yes, I think that is correct.

24 ADMINISTRATIVE JUDGE FARRAR: Is this the
25 usual practice of the staff? It seems to me that

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1 leads to a certain amount of inefficiency and delay,
2 if an intervention is granted. Is that the usual
3 practice or was there something unusual about the
4 case?

5 MR. LEWIS: In materials licensing the
6 practice has been not to notice receipt of
7 applications, because the licensees are in the
8 thousands, many thousands, and it just has not been --
9 It has not been the practice.

10 The only exception to that has been that
11 our Division of Waste Management within our Office of
12 Nuclear Material Safety and Safeguard has published,
13 based upon their own analysis of the situation,
14 decommissioning application.

15 So that is the practice that was -- The
16 practice that was followed in this case is consistent
17 with the practice for materials licenses other than
18 decommissioning action.

19 ADMINISTRATIVE JUDGE FARRAR: So that
20 doesn't depend on how much material is involved?

21 MR. LEWIS: Correct.

22 ADMINISTRATIVE JUDGE FARRAR: Okay. I
23 think that takes care of all of our kind of background
24 questions to make sure everyone is on the same page.
25 I would like to do several more things during the

1 course of the call: Talk about standing and how we
2 are going to come to resolve that, not to argue the
3 merits of it but how are we going to get our arms
4 properly around that question; talk about so called,
5 quote, "areas of concern," end quote, that the
6 petitioners are supposed to mention in Subpart L
7 proceedings; and talk about whether we need additional
8 briefs on these matters in order to focus the issues
9 better or whether we can go with what we have now, and
10 whether we need oral argument and when and where that
11 should be.

12 I might say, Mr. Lewis and Schwartz, we
13 are leaning toward asking the staff to brief these
14 standing and areas of concern issues, but we can be --
15 That is not a given, but our preliminary thoughts are
16 that that would be helpful to have the staff's view on
17 this.

18 In talking about standing, Mr. Sugarman,
19 who exactly are your petitioners? You filed a list.
20 Your opening document had 22 or 25 people listed.
21 Some of them were grouped together. Your second one
22 that was concerned about the timeliness had 14
23 included but did not include the three who live on Red
24 Bud Road, which I take it -- Are they the three who
25 are closest to the facility?

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1 MR. SUGARMAN: I can't answer that
2 question definitively without pulling a map and
3 parsing the distances. So I will have to take a
4 minute to answer that question.

5 ADMINISTRATIVE JUDGE FARRAR: And the
6 reason, of course, I ask is there is in the -- As I
7 read the standing precedents, distance does make a
8 difference, and I am wondering who are your closest
9 petitioners. I think you said they said they lived --
10 In some document they said -- the three on Red Bud
11 Road said they lived within a half a mile.

12 MR. SUGARMAN: That is true, but whether
13 there are others within a half a mile or whether they
14 are the closest, I can't answer that off the top of my
15 head. I am looking at a map now of Township area in
16 question. I misspoke. This map does not include
17 Milford Township.

18 I am trying to get a document to respond,
19 and I am not sure if you want to take the time for me
20 to find one.

21 ADMINISTRATIVE JUDGE FARRAR: Maybe you
22 said your paralegal was there?

23 MR. SUGARMAN: She is, yes.

24 ADMINISTRATIVE JUDGE FARRAR: Whose name
25 escapes me.

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1 MR. SUGARMAN: Courtney Bryan.

2 ADMINISTRATIVE JUDGE FARRAR: Okay. Maybe
3 the paralegal can do that while we are talking.

4 MR. SUGARMAN: All right. See if you can
5 find a map that includes Milford Township, upper Bucks
6 County.

7 ADMINISTRATIVE JUDGE FARRAR: As long as
8 you mentioned Milford Township, I have talked to a
9 number of my acquaintances from Pennsylvania. I'm not
10 sure I have a straight answer. Is every county
11 divided up into a number of townships?

12 MR. SUGARMAN: Yes.

13 ADMINISTRATIVE JUDGE FARRAR: And there is
14 no land in the county that is not in a particular
15 township?

16 MR. SUGARMAN: That's correct. Well, the
17 exception is that the township is the default entity,
18 and townships or portions of townships may become
19 boroughs or cities under certain rules and
20 regulations. But up in upper Bucks County, there are
21 some burroughs, but not -- I don't believe there are
22 any in Milford -- that are carved out of Milford
23 Township.

24 ADMINISTRATIVE JUDGE FARRAR: While
25 Quakertown is a place, I don't have a governing body

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1 that is relevant to this proceeding?

2 MR. SUGARMAN: No. I think Quakertown is
3 a borough, but I think it is carved out of Richmond
4 Township and not Milford. But I'm not sure of that,
5 but I believe that is correct. Quakertown is a
6 borough.

7 ADMINISTRATIVE JUDGE FARRAR: Okay. But
8 the facility is in Milford?

9 MR. SUGARMAN: Yes.

10 ADMINISTRATIVE JUDGE FARRAR: And they
11 have -- As we have seen from different papers that
12 have come our way, they have the zoning authority?

13 MR. SUGARMAN: That is correct.

14 ADMINISTRATIVE JUDGE FARRAR: Are they a
15 subdivision of the county or do they --

16 MR. SUGARMAN: Well, yes and no. It is
17 very mixed. The townships have direct authority under
18 the state law. There are certain activities that are
19 allocated to the counties, however, and for example,
20 the counties are responsible for prisons.

21 The townships have no role with respect to
22 prisons. There are some areas where both the counties
23 and townships have overlapping jurisdiction. Land use
24 and zoning is one of those areas, but the main
25 authority is with the township. The township is the

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1 only one that can adopt -- The county can and does
2 have a zoning ordinance, but it is supplanted wherever
3 a township adopts one.

4 ADMINISTRATIVE JUDGE FARRAR: Okay, that's
5 helpful. Thank you.

6 MR. SUGARMAN: All the townships in Bucks
7 County have now adopted zoning ordinances. So the
8 county zoning ordinance has only historical relevance.
9 The county's role in zoning and land use is an
10 advisory one under the statute. The county planning
11 commission is to give advice to the township
12 concerning various zoning activities.

13 ADMINISTRATIVE JUDGE FARRAR: All right.
14 Thank you, Mr. Sugarman. That's a useful explanation,
15 and I hasten to add that that was mainly just our
16 trying to understand the background and context of the
17 case and, of course, we have nothing to do with the
18 zoning, but we wanted to understand what other
19 governmental entities were involved and how they are
20 involved.

21 I think we even have a letter from Milford
22 Township asking that we hold up our decision pending
23 their review of the zoning, and someone remind me at
24 the end of -- later in the discussion to ask your
25 views on that.

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1 Mr. Pugsley, while Mr. Sugarman's people
2 are looking up the locations for standing purposes, on
3 this question of service Mr. Sugarman says there was
4 no prejudice from his failure to serve you initially.
5 Is that something, if we had oral argument or a
6 further round of briefs, you would want to address?

7 MR. PUGSLEY: Judge Farrar, if I could, I
8 would like to ask my colleague, Mr. Thompson, to
9 answer the rest of your questions.

10 ADMINISTRATIVE JUDGE FARRAR: All right.

11 MR. THOMPSON: I don't think we want to
12 get into a long argument on what is prejudice, but the
13 intervenors or would-be intervenors are represented by
14 counsel, and they didn't follow the rule. So if the
15 court deems that appropriate -- We have to be held to
16 rules. They should be held to rules, too.

17 MR. SUGARMAN: I take it, we are arguing
18 the motion now?

19 ADMINISTRATIVE JUDGE FARRAR: No, we are
20 not. A good point -- You know, I want to know -- We
21 are not arguing. I want to know what is at issue and
22 what isn't and what would be argued, because that will
23 help us define whether we need more argument. So, Mr.
24 Sugarman, you don't need to respond to that at this
25 point.

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1 I can assure you, we will never make any
2 ruling against anyone without giving you a chance to
3 respond.

4 Let me ask about the geographical test for
5 standing. As I have read the cases that, I think,
6 both sides have cited, we seem to come down to a
7 statement the Commission made and that various
8 licensing boards have applied in other cases talking
9 about a proximity presumption without showing specific
10 facts and pathways of proximity presumption if what is
11 involved is, quote, "a significance source of
12 radioactivity producing obvious potential for off-site
13 consequences."

14 Does everyone agree that is the test we
15 are dealing with? I'm not saying now what that test
16 means, because there are a number of words in there
17 that --

18 MR. THOMPSON: Your Honor, I think what
19 our position is, that the per se distance from the
20 source is -- a potential source is no longer in play
21 and that, as you have just described, it's the
22 question of what is the nature of the source and the
23 potential for it to have an adverse impact, and then
24 that requires also a pleading to show injury in fact
25 or potential injury in fact.

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1 ADMINISTRATIVE JUDGE FARRAR: Well, before
2 we get into what this test means, all I want to know -
3 - and we are not going to argue what it means. I just
4 want to know, do we all agree that is the test we are
5 dealing with?

6 MR. SUGARMAN: I agree, that is the test,
7 but I am getting a little frustrated at having
8 opposing counsel argue each point that you bring up.

9 ADMINISTRATIVE JUDGE FARRAR: Don't worry
10 about it. I understand your point.

11 MR. THOMPSON: I thought I was just
12 restating, Your Honor, what you said. I am not
13 intending to argue it. Yes, we agree, Your Honor,
14 that's the test.

15 ADMINISTRATIVE JUDGE FARRAR: Okay.

16 MR. SUGARMAN: Let me respond to that,
17 because that's not what you said.

18 ADMINISTRATIVE JUDGE FARRAR: Mr.
19 Sugarman, I understand your point, and I understand
20 it's a little difficult for us to talk about the
21 issues in terms of framing them for the future and
22 not stray into arguing the merits. So I ask everyone
23 to act in good faith.

24 You know, nothing is going to be done
25 without -- There will be no decisions made based on

1 anything -- no decisions made on the merits of any of
2 these issues based on what is said on this call. All
3 we are trying to do is --

4 MR. SUGARMAN: I understand that, Judge,
5 but my problem is that counsel's words are out there,
6 and he is making argument and, even though you are not
7 making a decision, you are hearing his argument. I'm
8 not criticizing you, because you've made it clear
9 twice now that that is not to happen. But opposing
10 counsel is not respecting what you said.

11 ADMINISTRATIVE JUDGE FARRAR: I count on
12 you to remind me of that every time, and --

13 MR. SUGARMAN: I don't know that that
14 solves the problem, because the arguments are out
15 there.

16 ADMINISTRATIVE JUDGE FARRAR: Yes, but we
17 are not a jury here. Let me reassure you again, no
18 decisions on the merits are going to be made here
19 today, and anything that opposing counsel says, you
20 will have a chance to respond to at the appropriate
21 time. I understand your concern, but we've all been
22 around a long time and --

23 MR. SUGARMAN: That's why it is
24 frustrating, because counsel is not -- Opposing
25 counsel is not stupid and not ignorant, and they know

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1 what they are doing.

2 ADMINISTRATIVE JUDGE FARRAR: Well, with
3 appropriate immodesty, Mr. Sugarman, so do I.

4 MR. SUGARMAN: All right.

5 ADMINISTRATIVE JUDGE FARRAR: Thank you.
6 I understand your point.

7 If this is the test, then the test has the
8 words in it "significant" as in "significant source of
9 radioactivity" producing an obvious potential -- I
10 pause on both of those words so the transcript will
11 reflect we are talking about the words "significant,"
12 "obvious," and "potential" as being embraced in this
13 test, and that makes the test a perhaps not -- It
14 makes the test one in which reasonable minds might
15 differ in particular circumstances.

16 We agree the facility, if licensed, would
17 have a million curies. Is that correct, Mr. Pugsley?

18 MR. PUGSLEY: Up to.

19 ADMINISTRATIVE JUDGE FARRAR: Up to a
20 million curies. But if we are considering standing,
21 I take it, we have to deal with the "up to" unless you
22 are willing to put some limit on it.

23 MR. THOMPSON: I don't know what to say.
24 Your Honor. I don't want to step over the line.

25 ADMINISTRATIVE JUDGE FARRAR: Okay. Then

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1 you are right. I may have stepped over there. So
2 hold that answer. We are about to find out from Mr.
3 Sugarman's office what the distance the petitioners
4 say they are is.

5 MR. SUGARMAN: May I interrupt?

6 ADMINISTRATIVE JUDGE FARRAR: Yes, go
7 ahead.

8 MR. SUGARMAN: Ms. Bryan has given me some
9 Yahoo data, and it is indicating that Milford Square
10 Pike where we have a client or clients is 0.7 miles
11 from the facility, and the address on Weiss Road where
12 we also have a client is 0.8 miles, and Red Bud Road
13 where we have a client is 1.0 miles. Those are three
14 examples that are, I won't say within a half a mile,
15 but within that general area.

16 ADMINISTRATIVE JUDGE FARRAR: All right.

17 MR. SUGARMAN: Now to answer your direct
18 question, whether the three in question -- What road
19 are they on?

20 MS. BRYAN: Red Bud Road is one of them.

21 MR. SUGARMAN: Red Brook?

22 MS. BRYAN: Red Bud, Red Bud Road.

23 MR. SUGARMAN: Red Bud Road? Okay.

24 ADMINISTRATIVE JUDGE FARRAR: The reason
25 I asked about them, Mr. Sugarman, was I thought that

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1 in one of your first pleadings they were ones who
2 provided so called affidavits.

3 MR. SUGARMAN: Yes. I think the
4 difference here is that Yahoo is giving us the -- Yes,
5 Yahoo is giving us the road mileage, and the curies
6 don't travel by road. So we would need -- To answer
7 your question, we would need a "crow flies" which, I
8 think, is what the clients gave us at the time rather
9 than the roads.

10 ADMINISTRATIVE JUDGE FARRAR: Why don't we
11 do this. Can you file with us within a week a
12 statement of "crow flies" distance for the three or
13 five or however many people who live the closest, so
14 we know precisely what we are dealing with?

15 MR. SUGARMAN: We will do that.

16 ADMINISTRATIVE JUDGE FARRAR: Okay. And
17 I notice that some of your documents are called
18 affidavits, but are not sworn. Mr. Lewis, in your
19 experience in this, do those type of documents have to
20 be sworn?

21 MR. LEWIS: Well, I think it is preferable
22 to have the documents in that manner. Some degree of
23 latitude, I think, is allowed, if this were a pro se
24 type -- would be allowed if this were a pro se type
25 proceeding.

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1 I think -- I guess my position would be
2 that, because these people are represented by counsel,
3 that there would be an expectation that all supporting
4 documents should be in appropriate legal format,
5 meaning affidavits should be sworn to.

6 ADMINISTRATIVE JUDGE FARRAR: Mr. Pugsley,
7 let me ask you. In your experience in those cases out
8 west with Judge Rosenthal, do the petitioners, which
9 I think have been members of the Sierra Club and other
10 groups and have made representations about the
11 distance, have they done that by affidavit?

12 MR. PUGSLEY: Traditionally, they have.

13 ADMINISTRATIVE JUDGE FARRAR: Okay. Mr.
14 Sugarman, if you need a little more time than the
15 seven days, that would be fine, but given the
16 significance of the distance to the -- or the possible
17 significance of the distance to the standing test we
18 just talked about, can you have those by affidavit?

19 MR. SUGARMAN: I will do my best and, if
20 not, I will explain why I can't. But let me say, if
21 I may, that the Federal Rules no longer -- In fact,
22 the statute at 28 U.S.C. § 1746 provides for unsworn
23 affidavits. I don't know if it applies to the NRC or
24 not, but Congress has adopted a statute and,
25 therefore, we never use affidavits -- We never use

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1 sworn affidavits. We use affidavits taken under the
2 penalties for perjury pursuant to Section 1746 in all
3 of our filings.

4 The statute says, whenever under any law
5 of the United States or under any rule, regulation,
6 any matter is required or permitted to be proved or
7 supported by sworn declaration, verification or
8 affidavit in writing of the person making, and so
9 forth, the person may support or establish, if it is
10 subscribed by him as true under penalty of perjury.

11 So the statute, I think, preempts any
12 practice or rule, and I would just ask that the Board
13 consider whether, because we are -- assuming we are
14 going to have an ongoing proceeding, it is a severe
15 prejudice for us in the city of Philadelphia to be
16 having people out in the country look around for a
17 notary. Notaries are not available, generally,
18 anymore except in real estate offices and the like,
19 because they are the only ones that still use sworn
20 affidavits regularly.

21 ADMINISTRATIVE JUDGE FARRAR: Mr.
22 Sugarman, when was that statute passed?

23 MR. SUGARMAN: Oh, it was adopted about
24 10-15 years ago.

25 ADMINISTRATIVE JUDGE FARRAR: Okay. Well,

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1 it was many more years than that that I was a Federal
2 District Court law clerk. I might have known it if it
3 was in those days, but thank you for bringing it to
4 our attention.

5 Let me ask other counsel, given the
6 existence and terms of that statute, can we dispense
7 with formal notarized affidavits?

8 MR. LEWIS: Steve Lewis for the staff.
9 Yes. I would be satisfied equally by a recitation of
10 the penalties of perjury as by a notarized. So that
11 is perfectly acceptable to the staff.

12 ADMINISTRATIVE JUDGE FARRAR: Mr. Pugsley.

13 MR. PUGSLEY: Just subject to taking a
14 look at the provisions of the statute. If that is
15 what the statute says, then that's okay with us.

16 ADMINISTRATIVE JUDGE FARRAR: Then why
17 don't we do that, because it is certainly inefficient.
18 Mr. Sugarman, you don't have an office in Bucks
19 County?

20 MR. SUGARMAN: I do. I have an office in
21 Doylestown, but it is not a staffed office.

22 ADMINISTRATIVE JUDGE FARRAR: Okay. Then
23 let's do this and, Mr. Sugarman, if you will be sure
24 to impress on your clients, you know, for these
25 purposes, we are looking for specifics and staying

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1 strictly to the facts, and that this is a serious
2 matter. We will count on you to do that.

3 MR. SUGARMAN: Yes, sir.

4 ADMINISTRATIVE JUDGE FARRAR: And we can
5 be sure the information we get is accurate as can be.

6 MR. LEWIS: Excuse me. This is Steve
7 Lewis. Mr. Sugarman, can you give me -- 28 U.S.C. --
8 I didn't get the rest of it.

9 MR. SUGARMAN: Section 1746.

10 MR. LEWIS: 1746. Thank you.

11 ADMINISTRATIVE JUDGE FARRAR: All right.
12 Then, Mr. Sugarman, let's stick with the seven days
13 for supplying that geographical distance information.

14 MR. SUGARMAN: Just so I am clear, I am
15 conceptualizing what you are directing me is that each
16 individual would state their distance from the
17 facility by as the crow flies.

18 ADMINISTRATIVE JUDGE FARRAR: Exactly.

19 MR. SUGARMAN: And if I have time, I will
20 have a cover sheet providing a map or a plan that
21 would identify those, you know, in reference like the
22 Yahoo map, but as the crow flies.

23 ADMINISTRATIVE JUDGE FARRAR: That would
24 be very helpful, as long as -- The Internet is good
25 for some things and not good for others. If you would

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1 get a map from anywhere and mark it yourself, I think
2 we would feel more comfortable with that.

3 MR. SUGARMAN: Oh, yes, that's the idea.
4 Okay.

5 MR. LEWIS: This is Steve Lewis. I would
6 just simply make the comment that, if any individual -
7 - If they do not know for certain what the distance
8 from their house to the facility is, they might -- I'm
9 not trying to counsel anybody, believe me, but in my
10 experience people don't always know exactly what the
11 distance between two places is.

12 MR. SUGARMAN: I'd be amazed if anybody
13 did. They will have to identify their address and
14 tell us that -- you know, what they believe the crow
15 fly distance to be. Then anybody can look at a map
16 and see it.

17 MR. LEWIS: That's exactly what I was
18 getting at, that I think that people would be making
19 this statement to the best of their knowledge.

20 MR. SUGARMAN: Right.

21 ADMINISTRATIVE JUDGE FARRAR: And, of
22 course, if anyone -- Once we have it and have the
23 address, anyone who disagrees with the facts can go
24 check it out.

25 Let's leave standing for a minute and talk

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1 about the areas of concern that the rules require a
2 petition deal with. Mr. Sugarman, you filed several
3 papers, and we can all go through them and parse them
4 and try to figure out what the different areas of
5 concern are or perhaps it would be -- You are not
6 prepared to state them in bullet fashion right now.
7 It might be helpful to have those restated.

8 I know you mentioned, you know, problems
9 affecting the neighborhood, problems affecting
10 workers, problems of irradiated food, and perhaps
11 others. As I understand the precedents, some of those
12 may be more germane than others, and some may be
13 clearly germane, and some may be clearly not germane.

14 So it would help us, when we go forward,
15 knowing precisely what those are, not with a whole lot
16 of argumentation but just so staff counsel and we know
17 exactly what you are dealing with.

18 MR. SUGARMAN: I can do that to the best
19 of the information that I have at this time. Sure.

20 ADMINISTRATIVE JUDGE FARRAR: Not anything
21 new that's not in your papers, but it would be nice to
22 have, you know, one, two, three, four, here are the
23 areas of concern; because then as we file future
24 briefs and argue about them, we know exactly what we
25 are talking about.

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1 MR. SUGARMAN: Okay. I'll be glad to do
2 that. Would seven days be agreeable for that?

3 ADMINISTRATIVE JUDGE FARRAR: Yes, why
4 don't you do that at the same time. Again, you don't
5 have to -- The more we talk here, the more here is
6 what I am thinking about, that in some reasonable
7 length of time we get a staff brief addressing the
8 issues of standing, which can include the issues of
9 service and timeliness if you want to, and addressing
10 the areas of concern, you know, which are german and
11 which the staff thinks are germane and which are not.

12 We would give the other two litigants the
13 opportunity to respond to that staff brief within a
14 shorter time since it would actually be -- you have
15 already done most of the research you would need. I
16 think that way we might have the arguments more
17 focused than they are now, and I am not blaming anyone
18 for them not being focused, but I know, Mr. Sugarman,
19 you pointed out that you were hired right before the
20 filing date. So you filed something that may or may
21 not have been what you would have filed if you had had
22 more time.

23 You know, the company responded. You
24 responded. They responded. I am not sure we have had
25 a meeting of the issues. So we are interested both in

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1 the -- We are interested in the staff brief, both in
2 helping us focus and in stating the staff position.

3 MR. LEWIS: Judge Farrar, this is Steve
4 Lewis. Okay, you spoke in terms of a staff brief.
5 Without being too difficult for the process, I would
6 ask for two weeks to do that.

7 ADMINISTRATIVE JUDGE FARRAR: That's --

8 MR. LEWIS: August 21st.

9 ADMINISTRATIVE JUDGE FARRAR: Okay. Now
10 that assumes you can begin work, in other words, using
11 --

12 MR. LEWIS: Yes.

13 ADMINISTRATIVE JUDGE FARRAR: -- using the
14 distance -- Someone said a half-mile. That may be
15 low, but I assume you can start work on the brief and
16 recap it after you get Mr. Sugarman's statement.

17 MR. LEWIS: Absolutely.

18 ADMINISTRATIVE JUDGE FARRAR: And the same
19 thing with the areas of concern. You can read his
20 papers and figure out pretty much what those areas are
21 and just get confirmation from him. I know the
22 company has argued that things affecting workers are
23 not germane in a -- Mr. Pugsley, correct me if I am
24 wrong, but I think your papers say things affecting
25 workers are not germane when a petition is filed by

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1 neighbors, and I think you have argued that general
2 question of the wisdom of irradiating food is not
3 germane in a petition filed by neighbors, or maybe
4 it's not ever germane.

5 MR. PUGSLEY: That's correct.

6 ADMINISTRATIVE JUDGE FARRAR: In an NRC
7 proceeding. Mr. Lewis, I take it, you can address
8 those areas now, even before you get Mr. Sugarman's
9 statement of precisely what the areas of concern are.

10 MR. LEWIS: Yes, Judge Farrar. Steve
11 Lewis speaking. That is precisely what I was
12 thinking, that we really do have enough to
13 significantly begin, and the other things that Mr.
14 Sugarman is going to provide will be corroborative.

15 ADMINISTRATIVE JUDGE FARRAR: All right,
16 fine. Thank you. Well, today is the 7th. Why don't
17 we give you until Friday, the 22nd.

18 MR. LEWIS: Thank you.

19 ADMINISTRATIVE JUDGE FARRAR: Although if
20 you want to work summer weekends and Monday the 25th
21 would help you, we'll be happy to give you that,
22 because that's not a whole lot of difference from our
23 point of view. But is Friday the 22nd all right?

24 MR. LEWIS: That's fine.

25 ADMINISTRATIVE JUDGE FARRAR: All right.

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1 MR. THOMPSON: Would we have an
2 opportunity to reply to that brief?

3 ADMINISTRATIVE JUDGE FARRAR: Oh, yes.
4 Let me ask Mr. Sugarman and Mr. Pugsley, assuming you
5 get that electronically -- and Mr. Lewis, I would
6 guess you would not have attachments?

7 MR. LEWIS: I don't know. We certainly
8 will -- Well, we certainly will use electronic filing
9 and, if there is any need to attach something that we
10 cannot reference to being in our publicly available
11 ADAMS record by the accession number and know that we
12 can make it very clear where they are, then we will
13 use an overnight mail service.

14 ADMINISTRATIVE JUDGE FARRAR: All right.
15 Mr. Sugarman, you are familiar with the ADAMS system?

16 MR. SUGARMAN: Yes.

17 ADMINISTRATIVE JUDGE FARRAR: Okay. Then
18 that is helpful, Mr. Lewis. Assuming then that that
19 comes in the evening of Friday the 22nd, how much time
20 do the other two parties need to file -- I'm thinking
21 of simultaneous replies to save time. How much time
22 do you need, and I know Labor Day weekend is in the
23 middle of any period there.

24 MR. LEWIS: I think most of the work you
25 will need to do, you know, a lot of it will be a

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1 reframing of work you have already submitted.

2 MR. SUGARMAN: I would be prepared to --
3 Let me put it this way. I am interested in expediting
4 a decision on this, and I am assuming that you are
5 leaning toward the possibility of oral argument. So
6 the sooner you can schedule oral argument, the better;
7 and I would suggest that our reply briefs be due,
8 let's say, seven days before the oral argument,
9 assuming that it is going to be very prompt.
10 Otherwise we can set up an independent date for the
11 reply brief.

12 What I am thinking is, if you could have -
13 - If you are going to have the oral argument or are
14 able to have the oral argument as early as the day
15 after Labor Day, then our briefs -- our reply briefs
16 should be due at least by the previous Wednesday.

17 If the oral argument, if there is going to
18 be one --

19 ADMINISTRATIVE JUDGE FARRAR: Wait a
20 minute. Friday the 22nd is only a week -- According
21 to my calendar, Labor Day is the 1st.

22 MR. SUGARMAN: Right. What I'm saying is
23 I am not trying to hold Mr. Lewis' feet to the fire,
24 because I know staff has obligations, and he is new to
25 the proceeding. But Mr. Thompson and I have had our

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1 briefing already, and as I said, I am interested in
2 expediting, because the staff can issue the license
3 and I can be, you know, put in a prejudiced position.
4 Therefore, I am interested in expediting everything,
5 to the extent possible.

6 So if you can have oral argument during
7 Labor Day week, then I think we should get our reply
8 briefs to you sometime late or mid-previous week. If
9 you can't have oral argument during Labor Day week, if
10 that is not available to you or you are not going to
11 have it, then I would propose that our reply briefs be
12 due on the 2nd of September, the day after Labor Day.

13 ADMINISTRATIVE JUDGE FARRAR: Mr. Pugsley,
14 can you meet that date?

15 MR. PUGSLEY: Well, I don't know what the
16 date is. I mean, we are talking about oral argument.
17 I mean, we haven't even been asked whether we think
18 oral argument is necessary.

19 MR. SUGARMAN: My question is if -- if.
20 That's all.

21 ADMINISTRATIVE JUDGE FARRAR: Well, let's
22 jump ahead. Just for purposes of discussion, suppose
23 -- Well --

24 MR. SUGARMAN: May I throw in another
25 question. Now that I've phrased it, I just realized

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1 something else. If there is an evidentiary dispute
2 over the proximity, I suppose that you would have to
3 potentially at least have a hearing either before or
4 after oral argument or at the same time, and I guess
5 I would say, if there is a dispute over proximity, I
6 would request a hearing the following week in the
7 Philadelphia area, if that's feasible.

8 ADMINISTRATIVE JUDGE FARRAR: Let's assume
9 for present purposes we won't have a dispute over
10 proximity that is consequential, and I suppose if it
11 is 0.48 miles or 0.52 miles, that is not going to be
12 hugely consequential. If it's a half a mile versus
13 five miles, it should be pretty easy to resolve.

14 Mr. Pugsley, you think one of the
15 opportunities are to voice a view against having oral
16 argument?

17 MR. THOMPSON: Yes, this is Tony Thompson,
18 Judge Farrar. We are talking about standing here,
19 first of all, whether there should be a proceeding, an
20 evidentiary proceeding, and traditionally in the
21 Subpart L proceedings, there are not oral arguments on
22 these issues.

23 There may be phone calls where the court -
24 - On some occasions we have had Judges set up a
25 telephone conference to ask questions to clarify

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1 things as far as they were concerned about things that
2 the various parties had put in their pleadings, but
3 this is just a standing -- at this stage, still a
4 standing set of issue. We are not talking about the
5 merits.

6 Traditionally, Subpart L proceedings don't
7 have oral arguments per se and oral hearings on
8 standing issues, or at least they haven't. If there
9 are some particularly thorny issue, I suppose it could
10 be and could be done by telephone, if necessary. But
11 I'm not so sure that -- I certainly don't assume that
12 we need an oral hearing.

13 MR LEWIS: This is Steve Lewis speaking.
14 I would say that to characterize what the Board is
15 considering at this point as standing and just with
16 that term is a little bit of an understatement of what
17 it is, because I think that the germaneness of the
18 areas of concern, which is sort of a preliminary
19 identification of the issues to be heard in a
20 proceeding -- It may be a thorny issue. I don't know.

21 So I'm just throwing out the possibility -
22 - I think there is no hard and fast practice in
23 Subpart L proceedings, to my -- Certainly, the Subpart
24 L does not prescribe one way or another or proscribe
25 the holding of an oral argument at the stage of

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1 determining whether or not to issue a hearing notice.

2 MR. SUGARMAN: May I request then that the
3 Board -- that the reply briefs be due during the week
4 of the 25th of August. The staff brief would be
5 received on the 22nd, and that the Board set aside a
6 date during Labor Day week on which all counsel would
7 be reserving the time, so that if the Board decides
8 that either or both an oral argument or evidentiary
9 hearing is necessary, it can be held during that --
10 some date during that week, at the convenience of the
11 Board.

12 MR. THOMPSON: We don't have -- This is
13 Tony Thompson, Judge Farrar. We don't have a problem
14 with filing by sometime the next week, the week of the
15 25th through the 29th. The first week in September is
16 not a good week for me for an oral hearing.

17 ADMINISTRATIVE JUDGE FARRAR: Okay.

18 MR. THOMPSON: If there is to be one.

19 ADMINISTRATIVE JUDGE FARRAR: First off,
20 are you sure, regardless of whether or not there is
21 oral argument and when it is, that you are not giving
22 yourselves too short a time period, having a brief
23 received Friday evening, the 22nd, and having it in
24 five business days later?

25 It seems like a short time for briefs

1 which, after all, whichever our decision goes, either
2 they are going to be outcome determinative in terms of
3 the case is over, there is no hearing, case closed, on
4 the one hand, or the other hand which companies
5 usually don't like to hear, we are going to go ahead
6 and we are going to have not a hearing but the written
7 presentations and so forth.

8 I mean, it seems to me that the briefs
9 that you are going to file in response to the staff
10 brief are highly significant to the outcome and/or
11 direction of the case.

12 MR. THOMPSON: Well, how about making it
13 Tuesday the 2nd or Wednesday the 3rd?

14 ADMINISTRATIVE JUDGE FARRAR: All right.

15 MR. THOMPSON: Probably Wednesday the 3rd
16 would be better, if you are going to do that, because
17 nobody really wants to work on a holiday.

18 ADMINISTRATIVE JUDGE FARRAR: Hold on one
19 second. Let me -- I'm going to hit the Mute button
20 and ask if anybody can hear me.

21 All right. You said Wednesday the 3rd.
22 Now I would rather give you more time now than have
23 you tell me later you need more time. You both --
24 Both Mr. Thompson and Mr. Pugsley and Mr. Sugarman,
25 you think you can get them in the evening of the 3rd?

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1 MR. THOMPSON: Yes.

2 MR. SUGARMAN: Yes.

3 ADMINISTRATIVE JUDGE FARRAR: All right.

4 Then let's set that. In terms of -- Mr. Lewis, what
5 was your view on argument?

6 MR. LEWIS: My view on argument was that
7 it is very Board -- it is very presiding officer-
8 specific, and I would not deign to try to give an
9 opinion as to whether or not, after seeing the
10 pleadings, you would or would not want oral argument.

11 ADMINISTRATIVE JUDGE FARRAR: And Mr.
12 Thompson, you were basically against argument -- or
13 formal argument for the reasons you stated?

14 MR. THOMPSON: Yes, Your Honor. We
15 generally haven't had oral arguments on standing
16 issues. I agree with NRC counsel that Your Honor has
17 the flexibility in your judgment to either have a
18 formal oral argument in front of you and live or do
19 something over the telephone or to convene to ask
20 questions. It's really within your purview.

21 ADMINISTRATIVE JUDGE FARRAR: Okay. Mr.
22 Sugarman, what is your thought or preference?

23 MR. SUGARMAN: My view would be that Your
24 Honor certainly can dispose of the matter without
25 argument. If there is material dispute fact, I think

1 a hearing is necessary.

2 ADMINISTRATIVE JUDGE FARRAR: No, no,
3 let's leave out material disputed fact. Let's talk
4 about intricacy of legal issues.

5 MR. SUGARMAN: Well, what I was going to
6 say was this. I would like to preserve the
7 opportunity for Your Honor to decide to have oral
8 argument. I think it would be a good idea. I'm not
9 asking Your Honor to decide now to have it.

10 My view would be -- and this is why I
11 brought up evidentiary hearing. My view would be to
12 set aside a day that Your Honor could cancel or firm
13 up or whatever, depending on your review of the
14 documents of the pleadings, so that if we set up a
15 date for the second week in September to accommodate
16 the unavailability of opposing counsel, then Your
17 Honor can cancel it when you see the papers during the
18 week of September 2nd.

19 Then that date could serve for whatever
20 purpose would be necessary, the point being that we
21 would not wait until September to decide whether to
22 have a date, and Your Honor would have the
23 flexibility.

24 ADMINISTRATIVE JUDGE FARRAR: I think I
25 understand your position. Mr. Lewis, you said it was

1 presiding officer-specific. I have to tell you that
2 my bias ever since my days as a Federal District Court
3 law clerk is that almost every issue, and particularly
4 the more complex ones, is the decision maker is aided
5 by the opportunity to ask questions, and that we never
6 had a motion day or any other time an instance where
7 the Judge didn't find it infinitely easier to resolve
8 the case. So that is my kind of longstanding bias.

9 I understand that Subpart L is intended to
10 be a less formal proceeding, more efficient, but my
11 view of oral argument is that it adds to the
12 efficiency, because it helps the decision maker.
13 Rather than wrestle with questions that you are not
14 quite sure of, you have an oral argument, and you
15 become much more sure of where you want to head.

16 Now the question, Mr. Thompson, I think
17 you raised is do we need to trot out to a courtroom
18 somewhere and do this or can it be done by telephone.
19 I know in the PFS case we have had some oral arguments
20 by phone. We have had some in person.

21 To what extent is the public interest
22 served by having not a phone argument, not an argument
23 in person in our headquarters hearing room, but an
24 oral argument in the vicinity of the site? Anybody
25 have any thoughts on the public interest involved

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1 there?

2 MR. LEWIS: This is Steve Lewis. I have
3 two things I wanted to say. With regard to the public
4 interest, the staff's clear indication in this
5 proceeding is that there is significant public
6 interest in the matter. So that, if there were to be
7 an oral argument, we think it should be face to face
8 and in as close proximity to Quakertown as possible.

9 Mr. Kinneman was advising me when I had
10 you briefly on Mute that, in terms of a city of some
11 size, the best location might be Allentown. But there
12 may be -- You know, that is just kind of off the top
13 of our head.

14 MR. SUGARMAN: Can I speak to that in
15 terms of a location?

16 ADMINISTRATIVE JUDGE FARRAR: Certainly.

17 MR. SUGARMAN: Thank you. Quakertown has
18 some facilities, depending on what you need. There is
19 a motel and I believe there are more than one, and
20 there are conference rooms.

21 I would agree that -- Another option would
22 be Doylestown, which is the County seat of Bucks
23 County and is closer to Quakertown than Allentown, and
24 Doylestown has the courthouse where there might be
25 rooms available and also a number of motel facilities,

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1 not a large number but a number.

2 ADMINISTRATIVE JUDGE FARRAR: Mr.
3 Sugarman, on my map of Pennsylvania it looks like
4 Quakertown is pretty much, if anything, is closer to
5 Allentown than Doylestown, but maybe I'm wrong.

6 MR. SUGARMAN: I wouldn't argue the point.
7 I know it's 20 minutes from Quakertown to Doylestown,
8 and I would have thought it would be about 30 minutes
9 from Quakertown -- I guess it's about the same, yes.

10 ADMINISTRATIVE JUDGE FARRAR: Does
11 Quakertown have any courtrooms?

12 MR. SUGARMAN: Not really. It has what we
13 call a district court, which is a non-record court of
14 first impression, and they would have a courtroom. It
15 would be very small. I would say, if you were going
16 to sit in Quakertown, you would probably want to use
17 an auditorium type of facility, not a courtroom, in
18 order to accommodate enough of the public. In
19 Allentown --

20 ADMINISTRATIVE JUDGE FARRAR: Let me ask
21 you a question about that. In the D.C. area people
22 tend to go to hearings even if they can't speak. They
23 go to Congressional hearings. They go to the Supreme
24 Court, and they watch the government at work.

25 My experience in Salt Lake City was that

1 in the -- I was told by people out there, while they
2 love to come to meetings where they can speak, if they
3 can't speak, they are not interested in watching their
4 government at work.

5 What is your sentiment about how many of
6 your clients and/or interested people would come to an
7 oral argument at all, and then you may have a
8 different view if we held -- if that were an oral
9 argument in the evening in Quakertown or in Allentown
10 or Doylestown. Can you address that?

11 MR. SUGARMAN: Let me answer that first
12 directly. In my view, there would be significantly
13 more than 100 people for an evening event in
14 Quakertown. I think that would trail off somewhat if
15 you went to either Allentown or Doylestown, but not
16 entirely.

17 When I say significantly more than 100, I
18 don't want to predict two or three hundred, but it
19 wouldn't surprise me, because there have been that
20 many people at the township meetings over the last few
21 weeks on this subject, and they have been there -- A
22 few have spoken, but most have been there in the
23 audience.

24 So it would be greatly surprising to me if
25 an evening event would not allow and attract hundreds

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1 of people. As far as a daytime event is concerned,
2 that's harder to predict. But I just don't have
3 enough of a feel for how flexible people's work hours
4 are. So I don't know how many people would be
5 deterred by having to lose work. There haven't been
6 any daytime events in this matter.

7 ADMINISTRATIVE JUDGE FARRAR: Mr.
8 Thompson, Mr. Pugsley, do you have any thoughts?

9 MR. THOMPSON: I'm a little confused. I
10 thought we were talking about oral argument from
11 counsel, and now it seems we are talking about
12 testimony from potential intervenors.

13 ADMINISTRATIVE JUDGE FARRAR: No, sir. We
14 are talking about oral argument and the public -- how,
15 if at all, the public interest would be served by an
16 oral argument. One of the factors that goes into
17 public interest, I take it, Mr. Lewis and Mr. Sugarman
18 have been saying, is the public's interest in
19 observing an oral argument, since under your view of
20 the case that may be the only thing they would ever
21 get to observe because under your view of the case
22 there would be no hearing.

23 MR. THOMPSON: Right. I don't --

24 ADMINISTRATIVE JUDGE FARRAR: No, no, I'm
25 not suggesting anything or no one has suggested, and

1 I certainly am not, anything about limited appearances
2 or opportunities for the public to speak.

3 MR. THOMPSON: Okay. I got a little
4 confused.

5 ADMINISTRATIVE JUDGE FARRAR: I was
6 contrasting in Salt City that people would show up
7 when they could speak, but they would not show up if
8 they couldn't speak. We had one -- You know, for the
9 PFS hearing, we had essentially one member of the
10 public who came, even though there were several
11 hundred who were prepared to lynch me at the limited
12 appearance.

13 MR. SUGARMAN: Well, we have a tradition
14 in Pennsylvania, Your Honor, but I personally will
15 guaranty your safety.

16 ADMINISTRATIVE JUDGE FARRAR: Thank you.

17 MR. LEWIS: Steve Lewis speaking.

18 ADMINISTRATIVE JUDGE FARRAR: Mr. Thompson
19 was trying to make a point.

20 MR. LEWIS: I'm sorry.

21 MR. THOMPSON: Your Honor, you have raised
22 an issue, and I really don't have any opinion on it.
23 As long as we are talking about an oral argument, you
24 know, whatever is most convenient from the perspective
25 of the court or of the Board in terms of where to have

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1 it and when to have it, if there is to be an oral
2 argument, then that's fine with me.

3 ADMINISTRATIVE JUDGE FARRAR: All right.
4 I think -- You know, it is possible that we will get
5 these pleadings that we have talked about and that the
6 case will be open and shut, one way or the other, that
7 there is no standing and nothing germane or that there
8 is clearly standing and at least one area that is
9 germane. But I tend to doubt it.

10 One of the reasons for mentioning it is
11 your briefs have taken strongly opposed positions on
12 this. We have not heard from the staff, but I have
13 found these issues sometimes more difficult to decide
14 than the substantive merits of the contentions or
15 areas of concern.

16 So I think we would do well to plan a
17 date. Let me go on Mute again for a minute or two and
18 talk to Judge Kelber.

19 MR. LEWIS; Judge Farrar, before you go on
20 Mute -- Steve Lewis -- the point I am going to raise,
21 and I may very well be stating something that the
22 Board is even more familiar with than I, but I know
23 that in today's environment, in particular, there is
24 some preference to have a courthouse facility used, as
25 secure a facility as is available. That's all I was

1 going to say.

2 ADMINISTRATIVE JUDGE FARRAR: Thank you
3 for mentioning that. On that count, we do take our
4 direction from the NRC security people. Again, we
5 don't work for them -- you know, for staff people, but
6 the security people have a special interest in all of
7 these proceedings. I know they do prefer courtrooms.

8 What have you used in Quakertown, the high
9 school auditorium for the public meetings?

10 MR. SUGARMAN: Yes. Well, I don't believe
11 that the high school has been used in this -- for the
12 township meetings in this case. I haven't been to any
13 of them, because I was away personally, but --

14 ADMINISTRATIVE JUDGE FARRAR: Let me have
15 Mr. Sugarman address that.

16 MR. SUGARMAN: This is Bob Sugarman. I
17 was not at the meetings. I believe they were held at
18 the township meeting -- township building, I mean.

19 MR. LEWIS: This is Steve Lewis. John
20 Kinneman, who was at the meeting, can answer the
21 question, Your Honor.

22 ADMINISTRATIVE JUDGE FARRAR: Go ahead,
23 John.

24 MR. KINNEMAN: This is John Kinneman.
25 Yes, the public meeting that we attended on the 16th

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1 of July was held in the auditorium of the high school,
2 and it is a pretty standard auditorium. It has a
3 stage with, I would guess, 400-500 seats. It is a
4 large facility, pretty standard school facility. It
5 is not at all like a courtroom except that it has
6 seats in the back of the stage at the front.

7 MR. SUGARMAN: Is that the Penn Ridge
8 courtroom, Mr. Kinneman? Penn Ridge High School, I
9 mean.

10 MR. KINNEMAN: I believe it was called the
11 Quakertown High School. It's on Park Avenue just off
12 of 113, as I recall.

13 MR. SUGARMAN: Okay.

14 MR. KINNEMAN: It's at 6th and Park
15 Avenue. Sapper Lodhi is just reminding me. I know
16 how to find it. I just --

17 MR. SUGARMAN: Yes, I know what you are
18 talking about. Yes, that's not Penn Ridge, but yes,
19 that's a fine facility. As far as security is
20 concerned, I certainly respect the need for security
21 and what you have to do to accommodate that.

22 I would assume that your staff would be
23 able to be in touch with the Quakertown authorities
24 and determine whether they are satisfied with the high
25 school and whatever arrangements the high school has.

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1 ADMINISTRATIVE JUDGE FARRAR: Right. Our
2 security staff doesn't do the job alone. They
3 contract with the local sheriff or in Salt Lake City
4 the city police force and so forth to work out the
5 arrangements.

6 MR. SUGARMAN: Quakertown has its own
7 police force. So they would certainly be available to
8 talk to, and I'm sure they would cooperate, and they
9 and you could determine if there is a sufficiently
10 secure facility in Quakertown, be it the high school
11 or something else.

12 ADMINISTRATIVE JUDGE FARRAR: Where is the
13 township building based? What town is that in?

14 MR. SUGARMAN: Well, the Milford Township
15 building is west of Quakertown, and it is on -- I
16 believe it's on Spinner's Town Road, and Spinner's
17 Town Road is -- it connects directly to the Turnpike,
18 but it is -- Spinner's Town Road is a two-lane road.
19 It's about a half-mile from the Turnpike on the west
20 side.

21 Quakertown is four miles from the Turnpike
22 on the east side.

23 ADMINISTRATIVE JUDGE FARRAR: Right, but
24 how big is the township building?

25 MR. SUGARMAN: That, I don't -- Do you

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1 know?

2 MS. BRYAN: No. They have had a meeting
3 at the township building before.

4 MR. SUGARMAN: Yes, they have had township
5 meetings at the township building, and people have
6 probably overflowed it. I don't know that for sure.

7 MR. KINNEMAN: Your Honor, if I could --
8 John Kinneman -- I have not been to the township
9 building either, but in setting up this meeting the
10 township manager mentioned exactly what Mr. Sugarman
11 is saying. One of the problems they have had is the
12 large number of people just overflow their facility
13 and make it difficult to have any sort of organized --
14 People are crowded, and can't move.

15 So I conclude from that it's a small
16 facility.

17 ADMINISTRATIVE JUDGE FARRAR: All right.
18 Then factor these. The Quakertown high school
19 auditorium is certain to hold everybody. If we go to
20 Allentown or Doylestown to a courtroom, which might
21 help security, then fewer people -- Even in the
22 evening, Mr. Sugarman, fewer people would make that
23 trip?

24 MR. SUGARMAN: There would be some
25 dropoff, but I'm guessing. I mean, you know, people

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1 with young children might not want to go 20 miles away
2 and, you know, not be able to get home. I don't know.
3 I don't know what people would do, but I know that in
4 general you get a dropoff when you go to out of town.

5 ADMINISTRATIVE JUDGE FARRAR: And
6 Doylestown is closer to your office, I take it?

7 MR. SUGARMAN: Yes, but that is of no
8 consequence. I'm not asking for any consideration at
9 all. It doesn't matter to me. As a matter of fact,
10 not that it matters, but driving from Philadelphia
11 where my office is, my real office is, it's about --
12 takes about the same amount of time to get to
13 Doylestown as it does to get to Quakertown, because we
14 have the Turnpike to Quakertown.

15 ADMINISTRATIVE JUDGE FARRAR: That
16 northeast extension or whatever it is called?

17 MR. SUGARMAN: Yes.

18 ADMINISTRATIVE JUDGE FARRAR: I think Mr.
19 Thompson or somebody had mentioned unavailability,
20 whether it's vacation or otherwise, that was when?

21 MR. THOMPSON: Well, we are talking about
22 -- We said Wednesday the 3rd for the briefs.

23 ADMINISTRATIVE JUDGE FARRAR: Okay. Now
24 does anyone have conflicts the week of the 8th?

25 MR. THOMPSON: This is Mr. Thompson. We

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1 are okay the week of the 8th.

2 MR. LEWIS: This is Mr. Lewis. It appears
3 -- Wait one moment. One calendar is never enough. I
4 think that the week of the 8th is fine.

5 MR. SUGARMAN; I am generally available
6 that week. Are we talking evening or daytime?

7 ADMINISTRATIVE JUDGE FARRAR: Evening.

8 MR. SUGARMAN: I'm available except for
9 Monday.

10 ADMINISTRATIVE JUDGE FARRAR: All right.

11 OPERATOR: Your conference is scheduled to
12 end in 15 minutes.

13 ADMINISTRATIVE JUDGE FARRAR: Okay. So
14 everyone is available that week?

15 All right, let me go on Mute here for a
16 minute.

17 This is Mike Farrar again. How about
18 Wednesday evening, the 10th?

19 ADMINISTRATIVE JUDGE KELBER: Sounds good.

20 ADMINISTRATIVE JUDGE FARRAR: And we will
21 have discussions. I'll ask the other parties. Mr.
22 Sugarman, we will call on your good offices, if we
23 need any help dealing with local court people.

24 MR. SUGARMAN: No problem.

25 ADMINISTRATIVE JUDGE FARRAR: And we will

1 do that without consulting other parties, and we will
2 guaranty them that all we are talking about is
3 location, not the case. So we will think about either
4 Quakertown or the Doylestown/Allentown alternative,
5 and we will do it Wednesday evening, the 11th -- I'm
6 sorry, Wednesday evening, the 10th, and maybe start at
7 5:30 and go as late as 8:00, if we have to. I don't
8 anticipate we would need that much time for it.

9 Let's start at 5:30 and go until 8:00, if
10 we have to. We will reserve that much time. Is that
11 suitable for everybody?

12 MR. LEWIS: Yes, to the staff.

13 MR. THOMPSON: Yes,

14 ADMINISTRATIVE JUDGE FARRAR: We had
15 reserved one question, the township's request that we
16 defer a decision. Mr. Thompson, having been around
17 here long enough on the previous go-round, I'm sure
18 you will tell me that an applicant needs to get many
19 licenses and approvals, and they all go forth in
20 parallel, not in sequence.

21 MR. THOMPSON: Yes, Your Honor.

22 ADMINISTRATIVE JUDGE FARRAR: All right,
23 but I don't need to listen to you, with all due
24 respect. Mr. Sugarman, I think that's been the
25 Commission's precedent and approach. Do you want to

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1 speak against that?

2 MR. SUGARMAN: Well, my prior question
3 would be whether that request of the township is
4 mistakenly directed to the Board rather than to the
5 staff at this point. As I understand it, the township
6 is asking that the license be deferred, and that is
7 within the purview of the staff at this point.

8 If what they are asking for is a stay, I
9 would just request that the township be given an
10 opportunity to clarify the request they are making as
11 between asking the staff not to issue the license or
12 asking the Board to stay a license.

13 As I understand what's been said here --
14 and my limited knowledge with this particular Subpart
15 L licensing -- does the Board have the authority to
16 require the staff in advance to not issue a license?

17 ADMINISTRATIVE JUDGE FARRAR: I don't
18 think we have that authority.

19 MR. SUGARMAN: So I would request that the
20 township be advised that they should either make their
21 request of the staff or they should apply to the Board
22 for stay at the proper time.

23 ADMINISTRATIVE JUDGE FARRAR: Yes, thank
24 you for that clarification. I don't have the township
25 letter in front of me, but I assume that people --

1 whoever it was addressed to, in the current
2 circumstances it would be the staff and/or the
3 Commissioners who would talk about it. We don't
4 review the --

5 OPERATOR: Your conference is scheduled to
6 end in ten minutes.

7 ADMINISTRATIVE JUDGE FARRAR: We don't
8 review the staff's work in that sense other than
9 through the merits of it at the hearing process.

10 MR LEWIS: This is Steve Lewis. For
11 purposes of as an informational point, the township's
12 letter was addressed to John Kinneman.

13 ADMINISTRATIVE JUDGE FARRAR: Let me
14 interrupt, Mr. Lewis. I forgot you all were going to
15 want to stay on the line afterwards. Karen, can you
16 go extend it for a half-hour, extend the call.

17 Go ahead, Mr. Lewis.

18 MR. LEWIS: Thank you very much. I
19 appreciate that. Where was I?

20 The township's request for a stay of the
21 licensing action was directed to John Kinneman as the
22 cognizant Branch Chief in Region I.

23 ADMINISTRATIVE JUDGE FARRAR: I see that.
24 Now that is the July 18th letter?

25 MR. KINNEMAN: Your Honor, there are two

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1 letters. I didn't bring them with me, but I believe
2 the July 18th and July 21st --

3 ADMINISTRATIVE JUDGE FARRAR: The July
4 18th one was very brief. The July 21st was much
5 longer.

6 MR. KINNEMAN: Yes. I believe that's my
7 memory, sir.

8 ADMINISTRATIVE JUDGE FARRAR: And you, Mr.
9 Lewis, for present purposes we will conduct ourselves
10 -- Those were directed to the staff, not to the Board,
11 and so I think the better course is to just let the
12 staff deal with those or not deal with them, as it
13 sees fit.

14 MR. LEWIS: That was precisely my point,
15 and I just wanted to reiterate what I think the Board
16 and parties know, but it is an important point. This
17 is within the staff's purview under the regulation,
18 and whatever is happening regarding the scheduling of
19 various events in this hearing is an independent
20 matter.

21 The staff will issue the license, if it
22 does, when it has made all of the findings that are
23 necessary to support that issuance, and that's the
24 standard procedure.

25 ADMINISTRATIVE JUDGE FARRAR: All right.

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1 Thank you, Mr. Lewis. Okay, we have extended the call
2 an hour, so you all will have your time afterwards.

3 Well, then let's go ahead. The staff has
4 to do its work, and the Board has to do its, and this
5 letter is addressed from the township to the staff.
6 So they will handle that.

7 Well, then here is what we have decided.
8 We have decided the staff will file a brief by Friday,
9 August 22nd, close of business, addressing the issues
10 of standing and whether the areas of concern are -- or
11 what their view is on those.

12 They will be aided in that by Mr. Sugarman
13 filing by a week from today, August 14th, more
14 specificity on geography and on his areas of concern.
15 I would ask the staff and the other parties, when they
16 --

17 OPERATOR: Your conference is scheduled to
18 end in five minutes.

19 ADMINISTRATIVE JUDGE FARRAR: -- when they
20 do standing, let's focus on those -- What is the
21 meaning -- In that test the Commission has laid down,
22 what is the meaning of "significant," and what is the
23 meaning of "obvious" and "potential" in the context of
24 this case?

25 I suppose one of the issues is, for

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1 purposes of applying that, do you consider this source
2 in the position it would be if installed in the
3 irradiator or do you consider just a source that
4 happens to be a half-mile from somebody and may or may
5 not be shielded in different fashions? So we would
6 like to have the parties' view on that.

7 Then the other parties will respond by
8 Wednesday, September 3rd, and let's do this. We had
9 a little confusion in the PFS case. We don't want
10 either one of you to have an opportunity to get a leg
11 up on the other. Let's pick a time of day at which
12 you will send those electronically to us. Can we say
13 5:00 p.m. and, if either of you cannot make it, call
14 the other one and say we are not going to do it until
15 7:00 p.m.

16 There was a concern at one point in
17 another case that somebody had deliberated waited two
18 hours to get a chance to read the other side's brief
19 and then amend theirs. That turned out not to be the
20 case. I'm not surprised it was not the case. We want
21 to avoid that. So let's do 5:00 p.m. If someone
22 can't make it, talk to opposing counsel and do it at
23 some time.

24 MR. SUGARMAN: One point occurs to me.
25 This is Bob Sugarman. If we are not going to be given

1 access to some of the specific documents that would
2 have a bearing on significant impact, then our brief
3 is not -- on standing -- or our position on standing
4 is not going to be able to be developed on the right
5 facts.

6 ADMINISTRATIVE JUDGE FARRAR: Are you
7 talking about that you would not know -- you would not
8 have the proprietary information about the specific
9 design?

10 MR. SUGARMAN: We don't have it, no. It's
11 been withheld as confidential.

12 ADMINISTRATIVE JUDGE FARRAR: Yes, but I
13 am assuming that in your discussion after the court
14 reporter and we hang up, that you are going to work
15 that out so you will have those documents.

16 MR. SUGARMAN: Very good. Very good.

17 MR. THOMPSON: This is Tony Thompson. I
18 have two questions maybe here. My understanding is
19 it -- I thought I heard you say that in providing the
20 work on the distances or the information on the
21 distances and to restate their contention with more
22 specificity, but they are not to raise new contentions
23 at this juncture.

24 ADMINISTRATIVE JUDGE FARRAR: Yes. Here,
25 rather than contentions, we are talking areas of

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1 concern, and no, we are not looking for new ones. We
2 are looking to have some bullets that say, out of all
3 the amalgam of papers that have already been filed,
4 here are three or five or eight areas of concern, just
5 so when we get to arguing about it, we know what we
6 are talking about. But, yes, that is not to be new
7 material.

8 MR. THOMPSON: And the second question I
9 had is -- and I'm not sure I understood something you
10 said just a second ago. You said something to the
11 effect you are interested in us arguing about whether
12 the source is to be considered sort of like in --

13 OPERATOR: Your conference is scheduled to
14 end in one minute.

15 MR. THOMPSON: Whether the source is sort
16 of to be considered in --

17 ADMINISTRATIVE JUDGE FARRAR: Let me
18 interrupt you. For some reason -- Mr. Lewis, give me
19 your phone number.

20 MR. LEWIS: Hold on a second here. Have
21 them call 610-337-5248. That is actually a
22 secretary's phone number, and we will have it
23 transferred in here.

24 ADMINISTRATIVE JUDGE FARRAR: Okay. Mr.
25 Sugarman?

1 MR. SUGARMAN: 215-864-2500.

2 ADMINISTRATIVE JUDGE FARRAR: If by
3 chance, this gets cut off --

4 OPERATOR: Your conference time has now
5 expired. Thank you.

6 ADMINISTRATIVE JUDGE FARRAR: You still
7 there? Must be, once you push the button, there is no
8 fail safe mechanism.

9 MR. LEWIS: I'm sorry, your Honor. My
10 experience has been otherwise.

11 (Whereupon, the foregoing matter went off
12 the record at 11:29 a.m. and went back on the record
13 at 11:46 a.m.)

14 ADMINISTRATIVE JUDGE FARRAR: Let's go
15 back on he record. We have had an interruption due to
16 the conference service not honoring their commitment
17 to extend the call. I apologize to everyone. It's
18 not our fault, and we will find out what happened so
19 it doesn't happen in a future case.

20 Mr. Thompson, Mr. Pugsley, you are on?

21 MR. THOMPSON: Yes, we are on.

22 ADMINISTRATIVE JUDGE FARRAR: Mr.
23 Sugarman, you are on?

24 MR. SUGARMAN: Yes, Your Honor.

25 ADMINISTRATIVE JUDGE FARRAR: Mr. Lewis?

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1 MR. LEWIS: Yes.

2 ADMINISTRATIVE JUDGE FARRAR: And you are
3 up with your people?

4 MR. LEWIS: Well, the Region I people are
5 here. Maria, are you on? You are contacting her?
6 Thank you.

7 ADMINISTRATIVE JUDGE FARRAR: We left her
8 messages, but if we --

9 MR. LEWIS: We can proceed even if they --
10 We can proceed.

11 ADMINISTRATIVE JUDGE FARRAR: All right..
12 We have been going over -- Mr. Thompson, you were --
13 I thought you were -- Well, tell me what you were
14 saying, Mr. Thompson.

15 MR. THOMPSON: I had a question. I
16 thought I heard you say you wanted something, some
17 presentation or something to address the question of
18 whether or not we are -- that this is addressing the
19 source sort of in splendid isolation or as part of an
20 irradiator. Is that correct?

21 ADMINISTRATIVE JUDGE FARRAR: Well, yes.
22 In other words, that test that the Commission laid
23 down and various licensing boards have applied -- a
24 legal issue there, I think -- maybe the answer is
25 clear one way or the other -- is as you describe it:

1 Is that the source in splendid isolation or is it as
2 part of the irradiator? You know, how is that test
3 meant to be applied?

4 We will have the staff address that first,
5 and then you each can have your crack at it.

6 Now the next question I thought you were
7 going to ask is: As part of an irradiator, you have
8 some proprietary information about how that -- and
9 some of it is not proprietary, but some is -- about
10 the way that works.

11 I take it, you can work out with Mr.
12 Sugarman in this time after this call how you would
13 deal with the documents, but I would like to briefs
14 not to utilize the proprietary information -- not to
15 refer specifically to it, but just to say -- You know,
16 if you want to depend on how the irradiator is set up,
17 if you want to rely on how the irradiator is set up,
18 including the proprietary information, make general
19 reference to it. You don't have to have the
20 specifics. We will get those out of the application.

21 I don't want to get in the position of
22 having to lock up or not release these briefs. Feel
23 free to amend my suggestion.

24 MR. THOMPSON; That makes sense to me.

25 ADMINISTRATIVE JUDGE FARRAR: In other

1 words, we don't want you having to lay out in these
2 arguments, you know, exactly the proprietary niceties
3 of this. You know, we can get those from the
4 application, but we do think there is a legal issue.
5 When it says "obvious potential," does "potential
6 mean," as you say, in splendid isolation or as part of
7 the irradiator?

8 Initially, that is a legal question: What
9 does the standard mean?

10 MR. THOMPSON: Yes.

11 ADMINISTRATIVE JUDGE FARRAR: Then you can
12 argue it both ways.

13 Speaking of that, do I understand
14 correctly, the facility and the irradiator is built.
15 All you are missing is the source?

16 MR. LEWIS: This is Steve Lewis. We were
17 just discussing that. John, why don't you go ahead
18 and state it, which you can better than I can.

19 MR. KINNEMAN: Well, just from the -- This
20 is John Kinneman. From the point of view of the
21 staff, the components of the irradiator as we have
22 observed them exist at the facility. I guess we would
23 not call it an irradiator until the Cobalt 60 is
24 installed, but in our inspection process we have had
25 staff visit it, and all of the components are present.

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1 and the applicant has put them together and
2 demonstrated how it will operate, once the Cobalt 60
3 is present.

4 ADMINISTRATIVE JUDGE FARRAR: All right.
5 Then we have all our dates set. We will decide where
6 that evening hearing will take place. So I think, if
7 everyone adheres to these schedules, we can -- I guess
8 it's possible we could cancel the oral argument, if
9 the case is clearcut, one way or the other, but I am
10 assuming it will not be. So I think we should plan to
11 go ahead.

12 We will put out an order, but it won't be
13 immediate. Given our time schedule here, it will
14 probably be next week that an order setting this out,
15 including the potential -- you know, the dates, the
16 times, including the potential for oral argument.

17 Are there any other items any of you think
18 we need to cover here in order to plan how we are
19 going to go forward?

20 MR. LEWIS: Yes. This is Steve Lewis.
21 Judge Farrar, you had earlier offered me the
22 opportunity, given the summer vacations and things
23 like that, to make my filing, which you now have down
24 for August 22nd -- You know, I don't want to create a
25 big ripple effect here, but I am looking at various

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1 pieces of paper that I need to take into
2 consideration, one of which I didn't look at before I
3 agreed to August 22nd.

4 It turns out that, for me, August 25th --
5 doing it on Monday, August 25th is going to be
6 immeasurably preferable.

7 ADMINISTRATIVE JUDGE FARRAR: All right.
8 Let's do that, close of business, August 25th. Does
9 that affect the other parties' ability to meet the
10 Wednesday, the 3rd 5:00 p.m. deadline?

11 MR. THOMPSON: No.

12 ADMINISTRATIVE JUDGE FARRAR: Mr.
13 Sugarman?

14 MR. SUGARMAN: Fine.

15 ADMINISTRATIVE JUDGE FARRAR: So it's fine
16 with both of you. All right, that's fine.

17 MR. LEWIS: Thank you, everyone.

18 ADMINISTRATIVE JUDGE FARRAR: Any other
19 questions about how we are going to move forward? I
20 want to thank you all. We did have a concern at the
21 beginning, that how do you talk about these issues
22 without talking about their merits, and I think we
23 have -- you have all done very well with that. I
24 appreciate your cooperation on this and your expected
25 cooperation as you talk after this call about -- as

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1 you stay on the line and talk about the protective
2 orders and so forth.

3 MR. LEWIS: Your Honor, let me just ask
4 one more question. Since we have set specific dates,
5 what is the date that we are going to expect to get --
6 we and the staff will get Mr. Sugarman's list of areas
7 of concern and the information on the distances?

8 ADMINISTRATIVE JUDGE FARRAR: That's close
9 of business, a week from today, Thursday, August 14th.

10 MR. LEWIS: Okay. Thank you.

11 ADMINISTRATIVE JUDGE FARRAR: Okay. One
12 of the things in the rules in all cases is we are
13 supposed -- this case and others, is we are supposed
14 to talk about settlement. I think the precise
15 provision is 2.1241.

16 Let's go off the record. We are back at
17 this point. Stay with us, but let's go off the record
18 and talk about settlement.

19 (Whereupon, the foregoing matter went off
20 the record at 11:55 a.m. and went back on the record
21 at 12:12 p.m.)

22 ADMINISTRATIVE JUDGE FARRAR: We are back
23 on the record. We had a discussion of the possibility
24 of settlement with the parties. We have learned about
25 some of the facts about the meetings.

1 We have decided that we should move full
2 speed ahead with the schedule that we set out. The
3 parties are welcome, as they always are, to discuss
4 further among themselves some of the things we
5 mentioned today, but we have offered the good offices
6 of either this presiding officer or a specially
7 appointed settlement judge, if that would help, but at
8 this point the idea is out there, and it is in the
9 parties' hands whether to pursue that.

10 At this point, if there is no further
11 business, the best thing we can do is get off the call
12 and let the parties discuss the protective order. So
13 is there any further business?

14 All right. Thank you. We will be talking
15 to each other some more, formally or informally.
16 Thank you all, and look forward to working with you,
17 and we will thank the court reporter, and the court
18 reporter and the Board will sign off. Thank you.

19 (Whereupon, the foregoing matter went off
20 the record at 12:13 p.m.)
21
22
23
24
25

CERTIFICATE

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

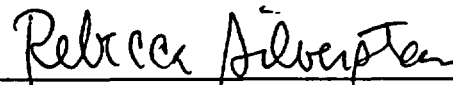
Name of Proceeding: CFC Logistics, Inc.

Pre-Hearing Conference

Docket Number: 03036239

Location: telephone conference

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



Rebecca Silberstein
Official Reporter
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