

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

Title: Private Fuel Storage  
Pre-Hearing Conference

Docket Number: 72-22-ISFSI

DOCKETED  
USNRC

August 22, 2003 (9:28AM)

Location: (telephone conference)

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL  
PRE-HEARING CONFERENCE

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In the Matter of: :

PRIVATE FUEL STORAGE, LLC, : Docket No.

: 72-22-ISFSI

(Independent Spent Fuel : :

Storage Installation) : :

-----X

Wednesday,

August 20, 2003

The above-entitled matter came on for hearing,  
pursuant to notice, at 1:00 p.m.

BEFORE:

MICHAEL C. FARRAR, CHAIRMAN

DR. PETER S. LAM

DR. JERRY R. KLINE

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

(1:18 p.m.)

CHAIRMAN FARRAR: Okay. Let's go on the record. We're starting what I believe is the third hearing scheduling conference in the last just a little more than three weeks. We had one July 28th, August 12th, and now on August 20th. We're getting started 15, 20 minutes late because of some technical glitches which we will find out the reason for and make sure they don't happen again.

Why don't we introduce ourselves. This is Mike Farrar. I've got with me Judge Lam and Susan Lynn, our law clerk, and Judge Kline is on from somewhere else.

Mr. Gaukler, you want to introduce yourself.

MR. GAUKLER: Paul Gaukler, and I have with me Sean Barnett.

CHAIRMAN FARRAR: All right. And Ms. Chancellor.

MS. CHANCELLOR: For PFS, Denise Chancellor, Jim Soper, Connie Nakahara and Jean Braxton.

CHAIRMAN FARRAR: Okay. Welcome all. And Ms. Marco.

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1 MS. MARCO: This is Catherine Marco. With  
2 me is Bernard Stapleton from the Office of Nuclear  
3 Security and Incident Response. And I also have  
4 Project Manager, Mark Delligatti.

5 CHAIRMAN FARRAR: All right. Welcome. Is  
6 there anyone else who hasn't been introduced? All  
7 right.

8 Another technical glitch. Apparently,  
9 this e-mail in and out is not working too well, so the  
10 company has sent us last night an e-mail with the  
11 proposed consensus, or not consensus, schedule which  
12 they're sending us by fax. Now maybe from now on on  
13 things that go out before a conference call, maybe  
14 each of us should that's sending them should ask the  
15 other parties to acknowledge receipt. We certainly  
16 wouldn't mind doing that, so that the company lawyers  
17 would have known that we did not get this, so maybe  
18 these last minute things -- we can all start doing  
19 that, asking each other to respond.

20 Mr. Gaukler, I just heard our fax ring, so  
21 I think your two page document is on the way, so why  
22 don't we wait. Well, why don't we start with this  
23 question. We received a courtesy copy the other day  
24 of the final version of the staff request for  
25 additional information, the RAIs in a sense that were

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1 sent to the company. Mr. Gaukler, do you have an  
2 estimate for us of how long that will take to respond?

3 MR. GAUKLER: We believe that we can  
4 respond to them by August 29th.

5 CHAIRMAN FARRAR That was the original  
6 date you had hoped, but didn't want to commit to until  
7 you had seen them?

8 MR. GAUKLER: Yes.

9 CHAIRMAN FARRAR: Okay. Ms. Marco, is  
10 that -- Mr. Delligatti, at this point, that's the  
11 complete set. You don't have some others in mind that  
12 you're formulating now?

13 MS. MARCO: Your Honor, the RAIs that we  
14 sent out on August 16th, they were comprehensive and  
15 do consist of our complete set at this time.

16 CHAIRMAN FARRAR: Okay. There's still the  
17 possibility though that the answers you get could, for  
18 whatever reason, trigger some follow-up?

19 MS. MARCO: Your Honor, that's a very real  
20 possibility. Those reports -- those RAIs covered  
21 almost all of the accident report, including Dr.  
22 Cornell's Probability Assessment. And they are quite  
23 comprehensive, quite detailed. We have 31 RAIs, and  
24 we anticipate that roughly a dozen of those will  
25 require some additional analysis on the part of the

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1 Applicant, and so we do say that there's a substantial  
2 amount of work to be done. And we hope to receive a  
3 high quality -- a complete response from PFS so that  
4 we don't have to issue RAIs. But even if we do  
5 receive that kind of response, there's still a  
6 possibility that we would have to do that anyway.

7 MR. GAUKLER: Our intent, obviously, is to  
8 provide a high quality response. I will say in this  
9 respect, the August 7th meeting was very useful  
10 because it did give us a chance to get a week's  
11 head-start on most of the questions, or all the  
12 questions that -- most of the RAIs in the final copy  
13 sent out by the NRC were RAIs that we had gleaned from  
14 our meeting with the NRC.

15 CHAIRMAN FARRAR: All right. Let me --

16 MS. MARCO: If I could comment, Your  
17 Honor. Just looking at PFS' track record on getting  
18 reports in on this proceeding, we think that they are  
19 being a little optimistic given the scope of the RAIs,  
20 and given the history of the reports that they  
21 submitted initially.

22 CHAIRMAN FARRAR: Okay. I would -- I  
23 suppose that's a real possibility. Again, any time we  
24 talk about delay in this case, we're not meaning to  
25 assess any blame, but just to point out that it's a

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1 complicated case, and certainly it's in the company's  
2 interest to do things as quickly as possible, so we  
3 with equal certainty have assumed they've been making  
4 their absolute best efforts, and things are just  
5 complicated and detailed, and it's comprehensive  
6 enough that it takes more time than expected. I would  
7 think though we should go ahead and do today's  
8 schedule based on the August 29th date. And, Mr.  
9 Gaukler, I don't know if we have the -- oh, the fax  
10 has been received. We're just making several copies  
11 for us. Jerry, you'll have to function a little bit  
12 in the dark there. In fact, because of the -- do all  
13 the rest of you have it? Ms. Marco, do you have it?

14 MS. MARCO: Yes, Your Honor.

15 CHAIRMAN FARRAR: And Ms. Chancellor?

16 MS. CHANCELLOR: Yes, we do, Your Honor.

17 CHAIRMAN FARRAR: Good. And as you  
18 discuss it, even though most of us have it in front of  
19 us, or will have it in front of us shortly, make sure  
20 for Judge Kline's benefit that you say specifically  
21 what you're addressing.

22 MR. GAUKLER: Judge Kline, I did send it  
23 to your Verizon.net, as well.

24 JUDGE KLINE: I have the schedule.

25 CHAIRMAN FARRAR: Oh, you do have it.

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1 Okay.

2 JUDGE KLINE: I do.

3 CHAIRMAN FARRAR: Then it's --

4 JUDGE KLINE: Yeah, we're okay on that.

5 CHAIRMAN FARRAR: Mr. Gaukler, do you have  
6 any other preliminary matters we could deal with  
7 before we talk about the schedule problems?

8 MR. GAUKLER: No. I think I can just  
9 briefly summarize what you're going to get.

10 CHAIRMAN FARRAR: Okay. Here we go.  
11 We've just been handed it. Go ahead.

12 MR. GAUKLER: You're going to get two  
13 schedules, one based on the assumption that we meet  
14 the August 29 date, and the other one based on a  
15 September 4th filing date for the RAIs, so you're  
16 going to have two schedules in front of you.

17 CHAIRMAN FARRAR: All right.

18 MR. GAUKLER: The August 29 one is the one  
19 proposed by PFS. It would allow two weeks of hearings  
20 before Judge Kline's absence.

21 CHAIRMAN FARRAR: Hold on. Let's follow  
22 this down. Okay. So as we go -- so the State and the  
23 Staff have a schedule based on their thinking you  
24 won't make August 29th.

25 MR. GAUKLER: That's correct.

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1 CHAIRMAN FARRAR: So they start with  
2 September --

3 MR. GAUKLER: 4.

4 CHAIRMAN FARRAR: 4.

5 MS. CHANCELLOR: But one thing, Your  
6 Honor. Even if PFS makes the August 29 date, because  
7 of the Labor Day weekend, we won't receive that  
8 response until September 2, so there's not a whole lot  
9 of difference in the two schedules.

10 CHAIRMAN FARRAR: Okay. Good point. Now  
11 okay, if we go through identification of witnesses,  
12 then you're each allowing a week essentially after the  
13 RAI responses to identify witnesses.

14 MR. GAUKLER: That's correct.

15 CHAIRMAN FARRAR: The State expert reports  
16 would come in a week after that. The Staff gets more  
17 time, they get -- no.

18 MS. MARCO: Your Honor, if I can --

19 CHAIRMAN FARRAR: Yeah, go ahead, Ms.  
20 Marco.

21 MS. MARCO: -- speak to that. I know that  
22 PFS' proposed schedule, like Denise Chancellor just  
23 said, we would not receive their responses to the RAIs  
24 until Tuesday, September 2nd. And so we had said  
25 before, we have said along that we would need at least

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1 three and a half to four weeks from that date to  
2 formulate and provide our written evaluation. That  
3 time frame ends up to be that Friday, the 26th, being  
4 three and a half weeks on the PFS calendar, and  
5 roughly the same for either one.

6 CHAIRMAN FARRAR: Okay. All right. So  
7 it's no longer seven days difference, but four days  
8 difference reflects the Labor Day weekend.

9 MS. MARCO: That's correct, Your Honor.  
10 So that is a three and a half week -- we could say  
11 three and a half to four though.

12 CHAIRMAN FARRAR: Okay. And we've got --  
13 now we start -- now at this point we start to diverge.  
14 Go ahead, Mr. Gaukler. Tell us about the depositions.

15 MR. GAUKLER: We have depositions that  
16 would allow hearings to begin and retract basically  
17 the September -- retract basically the amount of time  
18 that was allowed in the schedule for the initial  
19 deposition, June 30th, and we basically followed the  
20 same format where we start the PFS and State  
21 depositions shortly after the State files its expert  
22 reports. And we have some time after that's filed for  
23 evaluation, and from that time reserved for Staff  
24 depositions.

25 MS. CHANCELLOR: If I might add on that

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1 point, Your Honor, the dates just aren't working out  
2 well. Friday the 26th of September is the date of the  
3 stop evaluation and all these dates are filing dates.  
4 We wouldn't receive that until Monday, the 29th. If  
5 we wanted to send it to our experts, it would be the  
6 30th, the 1st would be a travel day and we'd be  
7 deposing the Staff the next day, so we wouldn't have  
8 any time to prepare for Staff depositions under PFS'  
9 schedule.

10 MR. GAUKLER: I would say, Your Honor,  
11 we'll probably try to make arrangements with the Staff  
12 to pick it up. We were trying to make arrangements  
13 with the Staff to pick up the RAIs assuming that there  
14 had been safeguards but there were not, that we could  
15 send those by e-mail.

16 CHAIRMAN FARRAR: I'm confused here a  
17 minute. Let's stick for a moment with the PFS  
18 proposal. If the State expert reports come in on  
19 September 11th why, Ms. Chancellor, couldn't you start  
20 depositions on the 16th?

21 MR. GAUKLER: She was talking --

22 MS. CHANCELLOR: Your Honor, I was talking  
23 to the deposition of the Staff witnesses, not the  
24 deposition of PFS' witnesses. And if you look on the  
25 depositions, October 2 and 3 is reserved for Staff

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1 depositions, and so the Staff written evaluation would  
2 be filed Friday, October the 26th, and the State would  
3 receive that Monday, September the 29th.

4 CHAIRMAN FARRAR: You say you have no  
5 problem with the PFS depositions.

6 MS. CHANCELLOR: Oh, we have a lot of  
7 problems with PFS' deposition, but -- because I don't  
8 think it's a realistic schedule, and --

9 CHAIRMAN FARRAR: Before we get into --  
10 let's just make sure we understand it, before we get  
11 into arguments about why it's too abbreviated, or  
12 whatever any of you want to say. The filing -- well,  
13 you have this pre-filed direct coming in within two  
14 weeks after the last deposition.

15 MR. GAUKLER: Approximately, yes. In  
16 terms of the time from the last deposition to the  
17 start of hearings is approximately the same amount of  
18 time that was -- June 30th, well, approximately three  
19 weeks, might be one day difference.

20 MS. CHANCELLOR: I believe it's eight  
21 working days from all the depositions to when we  
22 pre-file testimony.

23 CHAIRMAN FARRAR: All right. Then we've  
24 got motions in limine and then, Mr. Gaukler, it  
25 appears you would have no written response.

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1 MR. GAUKLER: Correct. It would be in  
2 line with what Your Honors have spoken before about,  
3 if somebody wanted to file something, they could file  
4 it even before, a day before, if they wanted to file  
5 a reply.

6 CHAIRMAN FARRAR: And if you were  
7 challenging the State and they're traveling, we would  
8 defer their opposition because their witnesses would  
9 not be first in line.

10 MR. GAUKLER: That's correct, Your Honor.

11 CHAIRMAN FARRAR: Okay. Then you're  
12 starting the hearing. That gets us to October 27th  
13 hearing date which we said was good because we could  
14 get two weeks in before Judge Kline leaves. Mr.  
15 Gaukler, when you were a young man you were very  
16 optimistic when you're working with the Appeal Panel.  
17 I see you still are. You think we can do this hearing  
18 in two weeks.

19 MR. GAUKLER: I realize that it would be  
20 a challenge to do it in two weeks, but I know PFS is  
21 going to try to expedite it as much as possible, like  
22 we talked. Basically, two weeks or two weeks plus a  
23 day or two, such that the Board would -- probably  
24 might convene without Judge Kline. If we go much more  
25 on that, then we would go into December.

1 CHAIRMAN FARRAR: Jerry, we said in the  
2 last pre-hearing conference, re-emphasizing what had  
3 been said in the one before that, that while we're  
4 willing to go a day here and there without a board  
5 member, we're not willing to go any substantial  
6 period, and that's not so much because you couldn't  
7 pick up something that had been done, but because we  
8 feel we need all three of us asking questions to make  
9 sure that the record has all the answers we're going  
10 to need for a decision. So we had emphasized it's not  
11 that you couldn't pick up and understand what  
12 happened, but that what had happened might not be what  
13 would have happened had you been here. So we talked  
14 about the possibility of a day or two with one of us  
15 missing and still going ahead.

16 All right. Mr. Gaukler, under your plan  
17 we would be starting October 27th, which I think was  
18 six weeks later than our original hope to start on  
19 September 15th.

20 MR. GAUKLER: I think that's correct, Your  
21 Honor.

22 CHAIRMAN FARRAR: All right. I'm sorry.  
23 You do have that in the -- I was looking at my old  
24 calendar. You have that in the first column.

25 MR. GAUKLER: I have the old schedule in

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1 the first column.

2 CHAIRMAN FARRAR: Right. Okay. So we'd  
3 be six weeks, and that schedule, that original  
4 schedule has doing the Board decision by year-end. So  
5 now, in effect, what we're doing is recognizing that  
6 in essence, six weeks had been lost by the extra time  
7 you all needed to file the larger number of reports  
8 than you had planned, and essentially three weeks lost  
9 to the RAI process.

10 MR. GAUKLER: That's correct. We  
11 recognize that we won't make the end of the year, Your  
12 Honor, even under our schedule. We're talking at  
13 least a six weeks difference.

14 CHAIRMAN FARRAR: Okay. All right. Then  
15 we understand what you've laid out here. Ms.  
16 Chancellor, which of you wants to address the  
17 differences you have with column -- just lay out why  
18 there are differences, and then we'll talk about what  
19 makes sense.

20 MS. CHANCELLOR: First of all, I would  
21 like to comment on PFS' proposed schedule. We will  
22 receive PFS' responses to RAIs on Tuesday, September  
23 the 2nd. Two weeks later, on Tuesday, September the  
24 16th, we start depositions, and by my count there - -

25 CHAIRMAN FARRAR: All right, Ms.

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1 Chancellor. Slow down here. You would receive them  
2 on September 2nd.

3 MS. CHANCELLOR: Because of Labor Day.

4 CHAIRMAN FARRAR: Right. And then you  
5 would start depositions --

6 MS. CHANCELLOR: On Tuesday, the 16th,  
7 which is two weeks later.

8 CHAIRMAN FARRAR: And you're going to  
9 suggest that that's the time in a case of this  
10 magnitude to get ready for depositions?

11 MS. CHANCELLOR: Well, I think a case of  
12 this magnitude, and also, safeguards because then when  
13 you have to Fed Ex those documents to our experts, and  
14 then they've got to Fed Ex responses, or we're going  
15 to talk in general terms about responses, so we only  
16 have two weeks to get ready for depositions. Then  
17 after depositions, it's even worse.

18 CHAIRMAN FARRAR: Ms. Chancellor, let me  
19 interrupt you at that point. Before we went on the  
20 record here we talked about -- today we talked about  
21 the safeguards briefing we had received this morning  
22 from Mr. Stapleton, and one of the things that I think  
23 impressed all of the Board Members and Staff, and  
24 which many of our questions dealt with were just the  
25 raw logistics. There's, you know, policy issues of

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1 what to do with -- we came away from that impressed or  
2 concerned about the raw logistics, so Mr. Gaukler and  
3 Ms. Chancellor, as finishing argument, we'll want you  
4 to respond specifically to the logistical problem,  
5 because I have to say, we are -- we start out a bit  
6 sympathetic to it, but you're certainly welcome to  
7 convince us that we're wrong. Go ahead, Ms.  
8 Chancellor.

9 MS. CHANCELLOR: So we have two weeks to  
10 prepare for depositions. And during the entire  
11 deposition period of deposing PFS' witnesses, we won't  
12 have the benefit of the Staff evaluation because we  
13 won't receive that until the end of September, the  
14 date on which we are expected to be through with  
15 deposing PFS' witnesses.

16 As for the number of witnesses to depose,  
17 two, three, four, five, six, there are at least six  
18 panels, or if they go panels or PFS' witnesses, and  
19 probably the same for the State, so we're talking  
20 about 12 sets of depositions in that two week period.

21 CHAIRMAN FARRAR: Let me interrupt that.  
22 Where do you all contemplate those would take place?

23 MR. GAUKLER: We would probably agree upon  
24 a common location. It was done in the past. We have  
25 flown our people up to Salt Lake City and just had

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1 everything there. Also, they fly their people up to  
2 D.C. and have everything here.

3 CHAIRMAN FARRAR: Okay. You don't travel  
4 around to where each of the different witnesses are.

5 MR. GAUKLER: No. Either we'll do what  
6 we've done in the past, I think consistently in the  
7 past, visit to Salt Lake City or D.C.

8 CHAIRMAN FARRAR: All right.

9 MS. CHANCELLOR: Or both.

10 CHAIRMAN FARRAR: Or both.

11 MR. GAUKLER: One or the other.

12 MS. CHANCELLOR: Some in Salt Lake and  
13 then a few on the east coast.

14 MR. GAUKLER: We would work that out with  
15 the State. We already talked about that last time.  
16 With the old schedule we were going to have one week  
17 in Salt Lake City and then one week here in D.C.  
18 That's the logistics we would work out with the State  
19 as we normally have in the past.

20 MS. CHANCELLOR: And then this affirms the  
21 availability of witnesses for that, about 15 to 20  
22 people in that two week period. And the State knows  
23 already that we've got a couple of problems with --  
24 we've got problems with a couple of our witnesses on  
25 availability on those dates.

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1           Then after we finish depositions on  
2           Friday, the 2nd of October, we won't have the  
3           deposition transcript given the safeguards, it will  
4           probably take more time to transmit because they can't  
5           transmit them electronically. We have five working  
6           days to pre- file testimony. And this schedule here  
7           --

8           CHAIRMAN FARRAR: But, Ms. Chancellor, let  
9           me follow that through. So you -- if all goes well  
10          and you finish the depositions on the 3rd, then -- but  
11          you need those to prepare your testimony.

12          MS. CHANCELLOR: Oh, absolutely.

13          CHAIRMAN FARRAR: And so you have between  
14          the time you finish the depositions, you have eight  
15          working days to prepare your testimony, but some of  
16          those days would be consumed with waiting for the  
17          transcript.

18          MR. GAUKLER: All of them.

19          JUDGE LAM: Not all of them because, first  
20          of all, you would have our depositions from before.  
21          You would have the transcripts well before you start  
22          preparing testimony so you encompass some of those at  
23          the end.

24          MS. CHANCELLOR: Well, if we're going to  
25          be in depositions, we can't leave while we're in

1 there.

2 JUDGE LAM: But you have the transcript  
3 though.

4 MS. CHANCELLOR: All right. It's seven  
5 working days because Columbus Day falls in the middle  
6 of that, so --

7 MR. GAUKLER: How about expand the number  
8 of working days to include weekends and holidays if  
9 we're going to --

10 MS. CHANCELLOR: Oh, Paul. We'll take Yom  
11 Kippur too.

12 CHAIRMAN FARRAR: Let me ask you this. I  
13 guess a lot of this depends on how many lawyers each  
14 side is willing to throw into this. And I was  
15 wondering, is it possible that one person is -- one or  
16 two people are taking depositions, and some other  
17 people are back home working with the expert reports,  
18 getting those deposition transcripts in and doing up  
19 drafts of the testimony while the others are out in  
20 the field?

21 MS. MARCO: Your Honor, may I speak to  
22 that? This is Catherine Marco.

23 CHAIRMAN FARRAR: Yes, go ahead.

24 MS. MARCO: While it may not be a problem  
25 with the attorneys, the problem that the Staff has is

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1 during that time, the Staff witnesses are likely going  
2 to be trying to finish up the report, and at the same  
3 time trying to attend and receive transcripts from  
4 depositions to see what other information we might  
5 need in our testimony. And then we have to be deposed  
6 the following week, so we have a very little bit of  
7 time in there to actually pre-file. And Denise is  
8 correct again about a Federal holiday in there.

9 CHAIRMAN FARRAR: Okay. Ms. Marco, yeah.  
10 I'm taking myself back to the table here.

11 MS. MARCO: Okay.

12 CHAIRMAN FARRAR: So while those  
13 depositions are going on, you're still doing that  
14 written report or evaluation that's due on the 26th.

15 MS. MARCO: That's correct. We will try  
16 and have a Staff member available to attend  
17 depositions, as well. It's still going to be quite  
18 difficult with the amount of people that we have to  
19 review our report during that same time.

20 JUDGE LAM: This is Judge Lam. Ms. Marco,  
21 also this schedule has absolutely no margin for  
22 anything unexpected. Is that true?

23 MS. MARCO: You are absolutely correct.  
24 This schedule has no margin if the reports come in  
25 late. It has no margin if there's a need for any

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1 additional information, or any additional depositions.  
2 In fact, no margin if we contemplate that there is  
3 more witnesses that we need, so you're right. There's  
4 no margin at all.

5 JUDGE LAM: Or if any one of your  
6 technical people God forbid get sick or whatever  
7 unexpectedly.

8 MS. MARCO: Yes.

9 MR. GAUKLER: I would say, Your Honors,  
10 that the schedule of durations that we have laid out  
11 here basically track those that were in the June 30th  
12 schedule that was approved by the parties and the  
13 Board generally. And that it's a tight schedule.  
14 Obviously, if something happens there would be some  
15 slippage back to a December hearing date. But in  
16 keeping with the Commission's directive to proceed  
17 expeditiously, we believe it's best to do this. We  
18 believe it's a schedule that can be accomplished, that  
19 we should pursue this schedule, as opposed to delaying  
20 it five weeks into December.

21 CHAIRMAN FARRAR: Those are good points,  
22 Mr. Gaukler. Let me ask, on that original schedule  
23 that was "approved", I do seem to remember that the  
24 State had some misgivings about that. Is that  
25 correct, Ms. Chancellor?

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1 MS. CHANCELLOR: You've got it right, Your  
2 Honor. We certainly did. This was assuming that the  
3 information was not going to be safeguarded, that  
4 schedule.

5 MR. GAUKLER: We had not necessarily  
6 assumed that.

7 MS. CHANCELLOR: When we submitted the  
8 joint report, the State made a significant point of if  
9 the information is not safeguard, and if there aren't  
10 any RAIs, then we could possibly meet this expedited,  
11 no room for slippage schedule. But we made a point in  
12 that joint report of stressing that if there were  
13 safeguards, and if there were RAIs, then it was a  
14 different proposition.

15 MR. GAUKLER: That's what I said, that you  
16 had assumed no safeguards, yet that --

17 CHAIRMAN FARRAR: All right. I think we  
18 understand the different positions. All right. Then,  
19 Mr. Gaukler, you would have us start the hearing  
20 October 27th, go two week which would get us finished  
21 before Judge Kline has to depart, and then we would  
22 have seven or eight weeks until the end of the year.  
23 Your schedules don't deal with that, but we would have  
24 seven or eight weeks until the end of the year, which  
25 I guess would be consumed. We can work out some

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1 schedule of simultaneous openings, filings and  
2 simultaneous reply filings, which would more or less  
3 put the Board on January 1st or thereabouts with  
4 whatever time we allot ourselves to write our  
5 decision. Is that correct?

6 MR. GAUKLER: That's the goal PFS has been  
7 working towards. Yes, Your Honor.

8 CHAIRMAN FARRAR: So if we did -- again,  
9 without setting those dates in stone --

10 MS. MARCO: Whoa, hold it.

11 CHAIRMAN FARRAR: I know.

12 MS. CHANCELLOR: If we could change after  
13 December 2 and get our findings in by the end of the  
14 year?

15 CHAIRMAN FARRAR: No, no, no. This is Mr.  
16 Gaukler's proposal to end the hearing November 7th.

17 MS. CHANCELLOR: Oh, okay.

18 CHAIRMAN FARRAR: I'm just thinking ahead  
19 on that, that that would put us January 1st. If we  
20 gave ourselves 45 days, it would be mid-February. If  
21 we gave ourselves 60 days, it would be the end of  
22 February. Now I just want to make sure, no one is  
23 saying it's possible to go any faster than that. Is  
24 that correct?

25 MR. GAUKLER: I think that's correct, Your

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1 Honor. We're not suggesting that. Our goal is to  
2 have everything in to the Board by the end of the  
3 year, such that the only thing left is for the Board  
4 to write its decision.

5 MS. CHANCELLOR: So over Thanksgiving and  
6 Christmas we're writing findings and reply findings in  
7 about six weeks. Is that what you're proposing under  
8 your schedule, Paul?

9 CHAIRMAN FARRAR: No, he hasn't proposed  
10 anything, Ms. Chancellor. I just want to put -- I  
11 want to know standing back from it, of a hearing that  
12 ended November 7th, there's no possibility of the  
13 Board starting its time. Now grant it we're going to  
14 be working before that time, but our period after the  
15 findings come in, at the very best couldn't be until  
16 the beginning of January. So under the 60-day Rule,  
17 no one is suggesting we're finishing before the end of  
18 February, and I think I heard Mr. Gaukler agree. Now  
19 what you're saying is you can't do -- that we can't do  
20 the two rounds of filings starting November 7th. We  
21 can't do those by year end, particularly in view of  
22 the Thanksgiving and Christmas period. Anything is  
23 possible to do. The question is, how much is everyone  
24 willing to be driven.

25 I know you've all worked very hard for a

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1 great many years. The question is how is -- what's  
2 reasonable or even moderately unreasonable to ask  
3 people to do, versus what is, you know, just not  
4 possible or not fair to ask people to do. And that's  
5 the balance we're trying to strike between making sure  
6 each side gets a fair opportunity to prepare and  
7 present its case on the one hand, versus bearing in  
8 mind the Commission's mandate that even though it's  
9 now been agreed by everyone their year-end desire  
10 can't be met, that doesn't mean that their desires are  
11 not to be factored into this under the new situation.

12 Well, having that in mind, let's back up.  
13 We've got a problem with the overlap, Ms. Marco said,  
14 about the Staff doing its report or evaluation and  
15 doing the depositions, and getting the pre-filed  
16 testimony in. That's asking a lot. I think she  
17 focused on the experts, but I assume that's asking --  
18 how many lawyers do you have on this case, Ms. Marco?

19 MS. MARCO: Currently two.

20 CHAIRMAN FARRAR: You and Mr. Turk.

21 MS. MARCO: That is correct.

22 CHAIRMAN FARRAR: Mr. Gaukler, who will  
23 you have on it?

24 MR. GAUKLER: I have Mr. Barnett, myself,  
25 and we engage Mr. --

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1 CHAIRMAN FARRAR: And what happened to Mr.  
2 Silberg?

3 MR. GAUKLER: He'll be involved, but he  
4 won't be doing the depositions, preparation. He'll be  
5 in a review function.

6 CHAIRMAN FARRAR: All right. And, Ms.  
7 Chancellor?

8 MS. CHANCELLOR: We have three, Mr. Soper,  
9 Mr. Nakahara and myself. I'll be out for part of the  
10 time because of other commitments.

11 CHAIRMAN FARRAR: What happened to Mr.  
12 Egan and Mr. Malsch?

13 MS. CHANCELLOR: We only have a certain  
14 amount of money to pay them, and they're doing a very  
15 limited scope, and at this time we don't anticipate  
16 that they will be involved in depositions or in  
17 hearings.

18 CHAIRMAN FARRAR: All right. Hold on.  
19 I'll hit the mute button here, and I want to consult  
20 with Dr. Lam. Jerry, there's no way I can get you in  
21 on it.

22 MR. GAUKLER: Your Honor, I'd like to make  
23 several points before you consult, if I could.

24 CHAIRMAN FARRAR: Certainly, go ahead.

25 MR. GAUKLER: First of all, Your Honor,

1 I'd like to make one major point.

2 CHAIRMAN FARRAR: Mr. Gaukler, I was not  
3 intending to come up with any ruling.

4 MR. GAUKLER: Oh, okay.

5 CHAIRMAN FARRAR: No. I just wanted to  
6 consult with Dr. Lam.

7 MR. GAUKLER: Okay. I have some points I  
8 want to make. Okay.

9 CHAIRMAN FARRAR: Yeah. No. We're just,  
10 you know, kind of see where -- you know, how we view  
11 this on an overview basis, and then we'll get back to  
12 the particulars.

13 (Whereupon, the proceedings in the  
14 above-entitled matter went off the record at 1:51:08  
15 p.m. and went back on the record at 1:53:32 p.m.)

16 CHAIRMAN FARRAR: All right. We're back  
17 on the record. Judge Lam and I have talked about this  
18 generally. Go ahead, Mr. Gaukler. You wanted to make  
19 some points.

20 MR. GAUKLER: Yes. First of all, I want  
21 to make several points. This issue is unlike some of  
22 the other issues that we've been involved in, because  
23 here we have expert reports by PFS, which the Board  
24 and the parties have had to look at since July. The  
25 State is going to be preparing its expert reports and

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1 file them under our proposed schedules, September  
2 11th, which is the date they had proposed in the July  
3 28th conference call. And I know Your Honors were  
4 concerned about fairness before, and if you look at  
5 the amount of time PFS had from the May 29th  
6 conference to its filing date, which was approximately  
7 seven weeks, the State now with the schedule will be  
8 given approximately the same amount of time. And in  
9 fact, on some of the various reports, some of the  
10 reports they will actually have more than seven weeks,  
11 like the structural integrity and the --

12 CHAIRMAN FARRAR: Mr. Gaukler, if I can  
13 paraphrase what you're saying then, you're saying the  
14 State's time shouldn't be viewed as beginning to run  
15 now.

16 MR. GAUKLER: Right.

17 CHAIRMAN FARRAR: That it began to run  
18 some time ago in terms of doing preliminary work.

19 MR. GAUKLER: And also another point that  
20 I think is very important to make here, because we  
21 have expert reports out there by PFS and by the State,  
22 it's my understanding they're going to file reports,  
23 and the Staff's written evaluation, you're going to  
24 have written documents that basically set forth the  
25 position of the various parties. And we would receive

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1 those reports being the mainstay of the testimony and,  
2 for example, Mr. Turk had said previously that he  
3 would proceed just putting several cover pages on the  
4 Staff's evaluation, stating that they adopt the  
5 evaluation and then go on to address specific points  
6 that may have been raised in discovery, et cetera.  
7 We, likewise, intend to basically rely upon our  
8 experts reports, and would have our testimony focus on  
9 responding to points made in the State's expert  
10 reports or points that were raised in discovery, so  
11 you would see our testimony summarizing what we have  
12 in the actual reports, maybe clarifying a few points,  
13 but then going on and focusing on the specific points  
14 that have been raised by the State in their reports  
15 and discovery. So it's unlike other cases where we've  
16 had to prepare pre-filed testimony from scratch.  
17 We're going to have a substantial portion of our  
18 direct case prepared in the form of expert reports.  
19 I think that's a very important fact to keep in mind  
20 when the Board is reviewing the proposed schedules.

21 In terms of the issue of depositions,  
22 we've had a practice in this case of having the State  
23 and PFS' depositions and discovery prior to the  
24 Staff's deposition and discovery, and also while the  
25 Staff's review was ongoing. And I direct Your Honors

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1 to a schedule that was issued on December 23, 1999.  
2 And if you look at that schedule, for example, that  
3 was issued by the Board December 23, 1999, on that  
4 schedule, one of the contentions that PFS and State  
5 discovery ran from April 1 to the end of May, 1999.  
6 The Staff meanwhile during that period of time was  
7 preparing its evaluation, written evaluation, which  
8 was issued separate from the State's evaluation  
9 report, which they issued two weeks after our  
10 discovery had been completed, June 15, 1999. And then  
11 there was some separate discovery against the Staff,  
12 so we've had this process of having the State and PFS  
13 go forward with its discovery, while the Staff was  
14 doing its review, with some discovery after that to  
15 allow the State a proper chance to question the NRC on  
16 its work.

17 CHAIRMAN FARRAR: Mr. Gaukler, let me  
18 interrupt, since I wasn't around at that time. I'll  
19 refrain from saying anything, know when I was  
20 well-off. I think you said there was a two month  
21 discovery schedule. Why was that two months versus  
22 the one month we're talking about now? Was that more  
23 issues?

24 MR. GAUKLER: Well, it's a variety. I  
25 forget how many contentions were in the Group I

1 Contentions, about eight or nine contentions.

2 CHAIRMAN FARRAR: Okay. It was not just  
3 a single issue deal like we have here.

4 MR. GAUKLER: No. It involved both  
5 document production and interrogatories, which we're  
6 trying to avoid here.

7 CHAIRMAN FARRAR: Okay. I shouldn't --  
8 you were saying that I shouldn't look at the length of  
9 that time period as what would govern the  
10 corresponding length of the discovery period here.

11 MR. GAUKLER: That's correct, Your Honor.

12 CHAIRMAN FARRAR: Okay. And you're just  
13 raising it for the point that the Staff was able to  
14 file their evaluations with --

15 MR. GAUKLER: Well, I was raising it for  
16 the point that this was a process that's been adopted  
17 in this case previously, with the idea of trying to  
18 expedite the discovery and get a resolution of the  
19 case, and we believe it's appropriate to follow that  
20 same process here, particularly given the fact that  
21 the Commission has recognized, I think as it stated,  
22 that everybody has been working assiduously in this  
23 case. There's no question about that, but at the same  
24 point in time, we've reached the point where this is  
25 in the seventh year of licensing, and it's time to

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1 proceed expeditiously to complete the licensing  
2 process. Time is money, and we want to proceed as  
3 quickly as possible, expeditiously with the licensing  
4 process.

5 CHAIRMAN FARRAR: Ms. Marco, I think you  
6 said you had two lawyers working on the case.

7 MS. MARCO: That's correct, Your Honor.

8 CHAIRMAN FARRAR: Why can't your superiors  
9 throw more resources into this?

10 MS. MARCO: That may be, Your Honor.

11 CHAIRMAN FARRAR: Have you --

12 MS. MARCO: I'm not aware of those  
13 discussions, but it wouldn't be unheard of. We had  
14 another attorney previously assisting us. In fact,  
15 two others at separate times, so that may be something  
16 that we do to address this issue.

17 CHAIRMAN FARRAR: You had Mr. Weisman at  
18 one point.

19 MS. MARCO: That is correct. And we had  
20 Mr. O'Neill at another point.

21 CHAIRMAN FARRAR: The young fellow who  
22 bailed out.

23 MR. GAUKLER: Smart guy.

24 MS. CHANCELLOR: When you have a chance,  
25 Your Honor, the State would like to state its

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1 position.

2 MS. MARCO: And the Staff would like to,  
3 as well.

4 MS. CHANCELLOR: Go ahead, Catherine. I  
5 didn't mean to interrupt.

6 CHAIRMAN FARRAR: Mr. Gaukler, those were  
7 some well put thoughts you had. Had you finished  
8 them, or did you have some more?

9 MR. GAUKLER: I think I basically finished  
10 them. I think the other main point was that we're  
11 basically following the same time framework we had  
12 proposed, and that was at least tentatively adopted in  
13 certain respects by the Board and the parties back on  
14 June 30th, that in terms of the specific time for  
15 filing direct testimony, you know, we could delay that  
16 a couple of days, and have less time between the  
17 direct testimony of the hearings than we had before.  
18 In terms of some difficulties in terms of getting the  
19 State's -- the Staff's written evaluation of the  
20 State's, I would be glad to pick it up and make sure  
21 it's Federal Expressed to the State's experts so they  
22 receive it Monday, right after September 26th. I want  
23 to pick it up anyway for ourselves, and we'd be able  
24 to do that.

25 CHAIRMAN FARRAR: Ms. Marco -- thank you,

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1 Mr. Gaukler. Ms. Marco, you wanted to speak.

2 MS. MARCO: Yes, I did.

3 CHAIRMAN FARRAR: Just for our benefit,  
4 where is the dividing line in the Office of General  
5 Counsel between those who work on the presentation of  
6 your case, and those who advise the Commissioners? In  
7 other words, Mr. Chandler is your superior.

8 MS. MARCO: Yes, that's right. Mr.  
9 Chandler is the Associate General Counsel dealing with  
10 Enforcement and Administration. And he is the  
11 dividing line.

12 CHAIRMAN FARRAR: And above him is Ms.  
13 Cyr?

14 MS. MARCO: That is correct.

15 CHAIRMAN FARRAR: And she has nothing to  
16 do with your part of the case.

17 MS. MARCO: That is absolutely correct.  
18 She's the General Counsel.

19 CHAIRMAN FARRAR: So she advises the  
20 Commissioners. All right. So if more resources were  
21 going to be put in, that would be Mr. Chandler's  
22 decision.

23 MS. MARCO: It would be Mr. Chandler and  
24 the other managers in- between.

25 CHAIRMAN FARRAR: Okay. Go ahead with

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1 your response to Mr. Gaukler.

2 MS. MARCO: Okay. First of all, with  
3 respect to the fact that PFS' report has been out  
4 there, I think we've all recognized that it really is  
5 the culmination of the last report, the last element  
6 to that that drew it all together, that makes it  
7 meaningful to start from that time frame, rather than  
8 any previous piecemeal report.

9 And regarding the seven weeks from that  
10 time, we have not -- we will not have had the RAI  
11 responses inside that. And as I mentioned, those RAIs  
12 are quite detailed, quite comprehensive, and we are  
13 looking for analyses of at least a dozen areas. And  
14 so based on that alone, what we're going to have to do  
15 a lot of work to review that. Plus, when we do get  
16 those RAI responses, it's just not a simple matter of  
17 just fast hitting the ground running. We have to get  
18 copies made. We have to have them out to the Staff.  
19 We have to coordinate this, which a lot of the  
20 coordination is being done up front, but to put that  
21 into place and get it moving takes some doing.

22 CHAIRMAN FARRAR: Let me interrupt there.  
23 Your people are not all here in headquarters. Some of  
24 them are out at the lab.

25 MS. MARCO: Your Honor, yes. We are

1 anticipating that we do have help from one of the  
2 National Laboratories, and the Center for Nuclear  
3 Waste Regulatory --

4 CHAIRMAN FARRAR: Okay. Go ahead.

5 MS. MARCO: Okay. And then also, when we  
6 file our testimony, we are going to want to reflect  
7 the State's report in it. And we are going to want to  
8 address more than just merely our report, so although  
9 Mr. Turk did say that we would include a cover letter  
10 on our report, he also said that we would be  
11 addressing the new material that comes in, and try and  
12 prepare some sort of advanced rebuttal to what the  
13 State puts out. So that would also be -- the Staff  
14 would be working on that during that time.

15 And with respect to the previous schedule  
16 that we had, with the Group I issues way back when, I  
17 think it's fair to say that yes, the Staff -- yes,  
18 some discovery may have gone before the Staff stated  
19 its position, but those were position statements, and  
20 that was not what we consider to be as extensive as  
21 what this would be, if I recall. And the other thing,  
22 the more germane point is that there is far less time  
23 here to be doing all this. And as you mentioned, two  
24 months of discovery, and my guess is there was a whole  
25 lot more time between the close of discovery and the

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1 filing of the pre-filed testimony.

2 And then finally with respect to the point  
3 that we had a schedule adopted June 30th, and the  
4 Commission had an order on May 28th, I believe it was.  
5 I don't think that that necessarily took into account  
6 the extent of the reports that were received, and the  
7 nature of the safeguard treatment.

8 CHAIRMAN FARRAR: Those also, Ms. Marco,  
9 are good points. Does your schedule here in the third  
10 column that Mr. Gaukler sent us, does the schedule  
11 here accommodate all those concerns, you know, the  
12 last column, the one that is labeled State and Staff?

13 MS. MARCO: It accommodates -- it does.  
14 The only place where I would even hedge a little more  
15 on would be when we could get our report out. And it  
16 does say September 30th, and that is three and a half  
17 weeks, but based on all what I said that goes into  
18 that, it may creep into the next week. But we did  
19 block out the entire month of October for expert  
20 depositions, and I think maybe there would be a little  
21 wiggle room in there. But other than that, yes.

22 CHAIRMAN FARRAR: So under that -- so if  
23 I can again paraphrase you as I did Mr. Gaukler, the  
24 concerns that you have raised could be accommodated  
25 with this schedule, which would have us starting the

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1 hearing right after Thanksgiving week essentially, you  
2 know, that would add five weeks to the Company's  
3 schedule. They would start October 27th. You would  
4 start the hearing December 2nd, essentially five weeks  
5 the Company would have.

6 MS. MARCO: That's our schedule, right.  
7 And I just want to note something that I don't think  
8 has been mentioned yet; that I think it's entirely  
9 optimistic to suggest that we could have no hearings  
10 in December. I just don't see that as something that  
11 can be done, even under the two weeks in October and  
12 November. I think they're going to run into December.  
13 And if you're running into December, then I don't know  
14 about the overall time frame from the grander scheme.

15 CHAIRMAN FARRAR: All right. So then  
16 you're saying a three week hearing beginning December  
17 2nd.

18 MS. MARCO: Right.

19 CHAIRMAN FARRAR: Ends on the 19th. Mr.  
20 Gaukler has a two week hearing that ends on November  
21 7th, but we've already determined that if that became  
22 a three week hearing, it wouldn't end until December  
23 5th, because we have Judge Kline's absence. And just  
24 to repeat in case someone is reading only this  
25 transcript and not the others, we talked about

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1 reconstituting the Board, and no one thought that was  
2 a good idea. We've talked about conducting a  
3 substantial part of the hearing with Judge Kline  
4 absent, and Judge Lam and I feel very strongly that we  
5 don't want to do that. And again, the reason is an  
6 important one. The reason is not that we don't think  
7 Judge Kline could come back and read the transcript  
8 and become familiar with the case. The reason is we  
9 want him here with us as the record is being  
10 developed, so neither of those solutions, doing a  
11 substantial part of the hearing without him - that  
12 makes no sense to the other Board Members. And  
13 reconstituting the Board to bring in a new person was  
14 something I believe none of the parties want. In  
15 fact, well, let's ask that question again, because  
16 we're now at a decision point.

17 Mr. Gaukler, do you all want us to  
18 reconstitute the Board?

19 MR. GAUKLER: No, Your Honor.

20 CHAIRMAN FARRAR: Ms. Chancellor?

21 MS. CHANCELLOR: No, Your Honor.

22 CHAIRMAN FARRAR: Ms. Marco?

23 MS. MARCO: No, Your Honor.

24 CHAIRMAN FARRAR: Then part of the issue  
25 becomes whether we're facing a two week hearing or a

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1 three week hearing. Because given Judge Kline's  
2 situation, a three week hearing ends only two weeks  
3 later than a two week hearing would. I'm sorry. I  
4 got that wrong. If it's a three week hearing, the  
5 schedule the Staff has proposed builds in an  
6 additional five weeks for party preparation, ends only  
7 two weeks later than if we didn't allow that five  
8 weeks.

9 Before you all -- Ms. Chancellor, are yo  
10 in agreement with Ms. Marco, or do you have another  
11 view?

12 MS. CHANCELLOR: You almost forgot me,  
13 didn't you, Judge? I think that was the first point  
14 I wanted to make, is that there's really only two  
15 weeks difference between the two schedules, if we have  
16 a three week hearing, and PFS' schedule is at the  
17 expense of compressing preparation time. And as you  
18 said, the more time we spend in the beginning, the  
19 cleaner and more efficient the hearing will be.

20 Also, if we have a break in the schedule,  
21 if you'll remember from Seismic, a whole bunch of  
22 things happened during the break. People come up wit  
23 new ideas, put on new testimony, so that has the  
24 potential to drag things out even more.

25 With respect to the expert reports, the

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1 expert reports will put on an affirmative case. They  
2 won't necessarily challenge what the other side has  
3 done, so there's a lot of preparation for direct  
4 testimony, thinking about how to not have to deal with  
5 rebuttal on the stand. There's a lot of preparation  
6 into developing testimony.

7 If you allowed us the schedule that the  
8 Staff has -- the State and the Staff has submitted  
9 this time, it's essentially the same as the State  
10 suggested back in July. And I think the only  
11 difference is there's a one week delay in when we  
12 would -- when the State would submit its expert  
13 reports. And that's because we want the benefit of  
14 reviewing PFS' analysis and response to the RAIs.

15 I don't think it's fair to compare  
16 discovery, what we had done in the past, when we're in  
17 the very early stages of this case, where we maybe had  
18 one or two witnesses for very general contentions.  
19 Here by my count, PFS will have about say 10  
20 witnesses, the State will have about 7, Staff probably  
21 6 or 7, I think from my conversation with Mr. Turk, so  
22 we're dealing with about 25 witnesses. And while some  
23 of those may be able to be deposed as panels, and may  
24 also be able to testify as panels, that's still a  
25 sizeable amount of experts that we need to prepare,

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1 that the lawyers need to prepare for, that they need  
2 experts with them when they are both deposing  
3 witnesses and during the hearing. And PFS' schedule  
4 has, as Judge Lam noted, absolutely -- I mean, I think  
5 it is an unworkable schedule, not that it doesn't have  
6 a margin, I just think it is an absolutely unworkable  
7 schedule. It is taking the most optimistic and rosy  
8 view of the world.

9 Under the schedule that the State and the  
10 Staff propose, it has some room for slippage. It  
11 allows us to move forward and concentrate on what we  
12 should be doing, getting expert reports together,  
13 preparing for depositions. Every time we change the  
14 schedule, we have to get in touch with a whole bunch  
15 of experts, see what their availability are, so I  
16 think that all this talk about an unrealistic schedule  
17 is cutting into the time in which - - the short time  
18 in which we have to prepare our case.

19 Oh, that's right. The other thing, Mr.  
20 Gaukler mentioned that it's different this time  
21 because there's all these expert reports. Well, it  
22 really isn't any different than the first time around  
23 because we had the crash report, which in some  
24 respects may be more comprehensive, the crash report  
25 on the license application SAR, may be more

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1 comprehensive than the reports that we have now, so I  
2 don't think that's a legitimate analogy.

3 MR. GAUKLER: Your Honor, I'd like to  
4 respond to that last point. When we're doing the --

5 MS. CHANCELLOR: I haven't finished yet.

6 MR. GAUKLER: I thought you were done.  
7 Sorry.

8 CHAIRMAN FARRAR: Go ahead, Ms.  
9 Chancellor.

10 MS. CHANCELLOR: And the final point is  
11 that we know right now that at least two of our  
12 witnesses won't be available for depositions during  
13 September. And I'm finished. Thank you.

14 CHAIRMAN FARRAR: Okay.

15 MR. GAUKLER: I just wanted to respond --

16 CHAIRMAN FARRAR: Ms. Chancellor, any  
17 particular reason they won't be available?

18 MS. CHANCELLOR: As you may be aware, Your  
19 Honor, the people that we engaged have other  
20 professions, other lives, and they just can't change  
21 the commitments they have during September.

22 CHAIRMAN FARRAR: And are these witnesses  
23 -- while no one is irreplaceable, are these --

24 MS. CHANCELLOR: Oh, Your Honor, you have  
25 no idea the length and breadth we had to go through to

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1 find some of these witnesses. In fact, that's the  
2 reason why some of them are unavailable. It took --  
3 it literally took us three months to find these two  
4 witnesses that we're having scheduling problems with.  
5 They have come on board very recently. I mean, it's  
6 such a specialized and limited field, it has been  
7 extremely difficult to find experts.

8 CHAIRMAN FARRAR: So if we said to you  
9 well, just get somebody else, these are not people who  
10 are fungible.

11 MS. CHANCELLOR: I think you would see a  
12 motion with us complaining about procedural due  
13 process, but we wouldn't defy the Board's order.

14 CHAIRMAN FARRAR: All right. Mr. Gaukler,  
15 go ahead with your response.

16 MR. GAUKLER: Several things, Your Honor.  
17 First of all, with respect to the Group I contentions,  
18 I'm looking at the schedule that was put in place on  
19 December 23, I think we had seven or eight different  
20 contentions, that we had seven or eight -- some of the  
21 witnesses overlap but we still need more than one or  
22 two witnesses. There was a fair number of depositions  
23 that were involved with that, the scheduling of that.

24 And also, in terms of reports, here we  
25 have -- in most cases we have not had expert reports.

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1 We've been going without those. The aircraft crash  
2 report actually came up after the discovery had been  
3 completed, and the aircraft crash issue, the discovery  
4 on that has been basically completed back in April or  
5 May of '99, and we had some supplemental depositions  
6 with respect to new witnesses, but we didn't go back  
7 and have another discovery period, so I don't think  
8 that analogy is correct.

9 CHAIRMAN FARRAR: All right. Let me --  
10 Jerry, do you have a cell phone?

11 JUDGE KLINE: I do not. No.

12 CHAIRMAN FARRAR: All right. For the  
13 parties, let's do this. Judge Lam and I will talk  
14 together a minute and then we'll come back on the  
15 line. I think, Jerry, what we'll ask you to do is  
16 hang up from this call, call me on the office phone.  
17 Peter and I will talk to you there, and then we'll  
18 come back on the call. Give us -- first, Judge Lam  
19 and I will talk here a minute, and then we may have  
20 something to say, and then we'll go off and talk to  
21 Judge Kline off-line. Hang on. We'll just be right  
22 in here.

23 (Whereupon, the proceedings in the  
24 above-entitled matter went off the record at 2:18:29  
25 p.m. and went back on the record at 2:21:41 p.m.)

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1 CHAIRMAN FARRAR: All right, Jerry. Peter  
2 and I have been talking here.

3 JUDGE KLINE: Okay.

4 CHAIRMAN FARRAR: I'm sorry. Maybe I  
5 didn't make myself clear. What I want to do is wait  
6 until Peter and I had a conversation --

7 JUDGE KLINE: Oh, I see. Okay.

8 CHAIRMAN FARRAR: If you would -- we have  
9 had that conversation. If you will sign-off on this  
10 call temporarily and call me at my office, the 7467  
11 number.

12 JUDGE KLINE: Yes.

13 CHAIRMAN FARRAR: Wait one minute while  
14 Peter and I walk down the hall.

15 JUDGE KLINE: Okay, fine.

16 CHAIRMAN FARRAR: And then after we finish  
17 our conversation, we will come on and have further  
18 discussion with the parties, and then we'll decide  
19 where we go.

20 JUDGE KLINE: Okay.

21 CHAIRMAN FARRAR: Before you go, is there  
22 anything the parties want us to have in mind before we  
23 -- Judge Lam, Judge Kline and I have this  
24 get-together?

25 MS. CHANCELLOR: We suggest NRC

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1 (laughing).

2 MR. GAUKLER: Your Honor, we suggest that  
3 the Commission's directive in terms of proceeding as  
4 expeditiously as possible, recognizing that everybody  
5 has proceeded to do so in the past, that we want to  
6 proceed just as soon as we can. In terms of  
7 unavailability of experts set up for a particular  
8 time, we are going to work stuff out with the State  
9 that makes sense to accommodate such unavailability.

10 CHAIRMAN FARRAR: All right.

11 MR. GAUKLER: And I'm sure that the Board  
12 and the parties will think of some special procedure  
13 by which that could be accommodated, keeping in mind  
14 the Commission's directive, or authority to the Board  
15 to provide such procedures as may be necessary.

16 CHAIRMAN FARRAR: All right. Ms. Marco,  
17 did you want to add anything?

18 MS. MARCO: Just that we don't believe  
19 that the time savings gained by the PFS schedule  
20 really warrant the time that we would be required to  
21 proceed under.

22 CHAIRMAN FARRAR: All right. Then let me  
23 thank all of you for once again arguing each of your  
24 separate client's cases very forcefully, very  
25 eloquently, and always with a due regard for the

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1 rights of the other side. One of the joys of this  
2 case has been the level of lawyering which has been  
3 adamantly to insist on your client's interest, but to  
4 be -- to do it eloquently and forcefully, and with due  
5 regard for the other side.

6 Jerry, if you would hang up, wait a minute  
7 and call me in the office, 7467.

8 JUDGE KLINE: Sure.

9 CHAIRMAN FARRAR: And the rest of you can  
10 talk amongst yourselves until we get back. Thanks.

11 JUDGE KLINE: Okay.

12 (Whereupon, the proceedings in the  
13 above-entitled matter went off the record at 2:24:03  
14 p.m. and went back on the record at 2:33:54 p.m.)

15 CHAIRMAN FARRAR: Judge Lam and I had a  
16 long discussion, and then we talked on another line  
17 with Judge Kline, and we are ready to discuss how we  
18 think this should go, unless -- I think there's  
19 nothing else we need to hear from the parties.

20 The bottom line, for a number of reasons  
21 I will set out, is that we're going to go with the  
22 schedule that the Staff and the State proposed. Let  
23 me tell you briefly what our reasons are, and if I  
24 forget any, we'll add them in the order we'll put out.

25 Mr. Gaukler, you made some excellent

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1 points in support of your view. They were very  
2 persuasive, and I might say from a personal note, I  
3 think I mentioned this before, I was in the pulp and  
4 paper industry for 15 years, and I fully appreciate  
5 your client's view that time is money. And I think  
6 the Commission fully had that in mind when they urged  
7 that this case be done by year end, and we have borne  
8 that admonition strongly in mind.

9 We're also motivated, however, by the fact  
10 that while we've said in many decisions that the  
11 Staff's view on the merits is not binding on us, the  
12 system is built on a thorough Staff review of the  
13 Applicant's case. At the end of that review, they may  
14 side with the Applicant, they may not. After the case  
15 is presented, we may accept their view or we may not,  
16 but the system, I think, has always had as a paramount  
17 feature that the Staff does its work in the public  
18 interest, and takes a position and makes its  
19 presentation. And we think what we heard Ms. Marco  
20 say today is that in order for the Staff to do that,  
21 both from expert and lawyer point of view, is that  
22 they need the time that they have set out.

23 Mr. Gaukler, your points about the State  
24 could have started, you know, they don't start when  
25 the RAIs are done. They don't start necessarily just

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1 on June 30th, but we're influenced by the fact that in  
2 this instance the availability of witnesses to the  
3 State is an important factor, and we have to accept in  
4 good faith their word that they have been looking  
5 diligently. It took them a long time, and it's not a  
6 matter of just saying well, you know, there's a whole  
7 lot of witnesses. You could have come up with them  
8 sooner. This is an important case, and with some key  
9 ranges of expertise involved, and so we're unwilling  
10 to start the clock on their time a long time ago.

11 The schedule that the Company presents,  
12 while it might think it's feasible, we think is just  
13 too demanding on the experts, and on the lawyers. We  
14 think we've heard the State and the Staff say that.  
15 And while we could force the issue and say we don't  
16 care about that, we run into two risks doing that,  
17 three risks. One, that we wear everybody out and they  
18 come to the hearing, and we saw what happened a couple  
19 of evenings in Salt Lake when we tried to go late,  
20 where people are worn out, presentations aren't good,  
21 efficiency is lost.

22 On that same -- hold on a second. The  
23 second point on that is when you push people that  
24 hard, you raise due process objections, fairness  
25 problems. And I think we've said in a recent order,

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1 or maybe in the last pre-hearing conference, we liked  
2 to know that when this hearing is over and we write a  
3 decision, one group of you will like that decision,  
4 another group will not like the decision. The  
5 Commission may like it or not, the Court of Appeals  
6 may like it or not, but we don't want -- no one is  
7 served by having a hearing where someone is able to  
8 say that their procedural rights were trampled on, and  
9 somebody up above us says do it over.

10 If we -- in terms of the efficiency in the  
11 hearing, and if that's a decision we think giving you  
12 adequate rather than inadequate time to prepare means  
13 better presentations, not just for the benefit of your  
14 clients, but in the public interest - there's an  
15 enormous public interest in this case. Everyone is  
16 entitled to know whether there would or would not be  
17 consequences from the hypothetical aircraft crash, and  
18 so it's not just doing the best for your client, but  
19 making sure that the public interest in a good  
20 decision is carried out.

21 And finally, given the scheduling, Judge  
22 Kline's scheduling conflicts, which none of the  
23 solutions for working around manage to work around, by  
24 delaying the start of the hearing five weeks we, in  
25 essence, lose only two weeks, unless, Mr. Gaukler, you

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1 are correct that this could be a two week hearing,  
2 rather than a three week hearing. If you're wrong  
3 about that, if it's two weeks and then a break, and  
4 then a week later, we only lose a total of two weeks.  
5 And Judge Kline, Judge Lam and I talked about that.  
6 Our experience in Salt Lake, as we referred to many  
7 times, was one day per one witness. I'm sure we'll  
8 all do better than that, but we cannot see how we can  
9 do 25 witnesses in 10 days. You know, we can increase  
10 our efficiency a good bit. I think some of the things  
11 each of the parties have volunteered will increase  
12 that efficiency, but this is not a two week hearing,  
13 and I think the Board has said that from the very  
14 beginning. If anything, it appears to be more  
15 complicated, more thorough, more comprehensive than we  
16 thought at the beginning, and if we do it in two  
17 weeks, then everybody can point to us and say we  
18 didn't know what we were talking about, but with the  
19 greatest efficiencies, we think this is a three week  
20 hearing.

21 So for all of those reasons, we want the  
22 -- we'll adopt the State and the Staff's proposal, but  
23 I cannot imagine a more forceful and eloquent case  
24 being made for the PFS schedule than you made, Mr.  
25 Gaukler.

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1 Does anyone have any questions about that?  
2 And let me go off the record here a minute.

3 (Whereupon, the proceedings in the  
4 above-entitled matter went off the record at 2:42:54  
5 p.m. and went back on the record at 2:43:49 p.m.)

6 CHAIRMAN FARRAR: I've just spoken to the  
7 Court Reporter about delivery times. The reason I  
8 asked that is next week, the week before Labor Day is  
9 the one week a year my four daughters reassemble here,  
10 so I will not be in next week. Let me suggest this,  
11 that the parties over the next few days decide on a  
12 precise schedule. I know there were some issues about  
13 exactly when, given mailing dates and so forth,  
14 different things would happen, you know, within a day  
15 or two of -- and there were different views on that.  
16 If you all would get together, and let me ask the  
17 Staff to do that. Why don't you draft up a precise  
18 schedule that takes into account some of the little  
19 nits that we worried about today, involving weekends  
20 and so forth, and put that together. And then as soon  
21 as I return, we'll put out a formal order with  
22 transcript references and so forth, adopting that  
23 schedule. But that schedule will be in effect as of  
24 now for those dates that happen, and those things that  
25 have to be done before Labor Day.

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1 MS. MARCO: Yes, Your Honor.

2 CHAIRMAN FARRAR: Okay. Thank you, Ms.  
3 Marco. While we're all on here, let's --

4 MS. CHANCELLOR: Judge Farrar, did you  
5 mean for us to fill in the findings and the reply  
6 findings date, and the Board's decision date because  
7 they are basically the dates that are put on the  
8 schedule.

9 CHAIRMAN FARRAR: No, I meant up until  
10 then. In other words, given the tenor of our ruling  
11 that we're adopting your schedule in general, make  
12 sure that all these things work.

13 MS. CHANCELLOR: Oh, okay. I understand.  
14 Thank you.

15 CHAIRMAN FARRAR: I mean, exactly the  
16 things that are in the third column and, of course, I  
17 don't have a transcript in front of me now, but just  
18 make sure that all those dates are workable, and take  
19 into account holidays and weekends and so forth.

20 MS. MARCO: Okay. Now our depositions  
21 chunk is -- do you want that more particularized?

22 CHAIRMAN FARRAR: Yes. Fill that in where  
23 you just have the October, fill that in and then send  
24 it to the State and to the Company, and we will go  
25 with that. The main thing being we're headed for a

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1 hearing December 2nd to December 19th, so therefore  
2 finishing now.

3 Let's talk now about the -- so we have the  
4 thing all in one place, let's talk now about the  
5 filings, post-hearing filings. At one point, there  
6 was a proposal that if the hearing ended on the 19th,  
7 which I think this was in an earlier State schedule.  
8 If the hearing ended on the 19th, you would get five  
9 weeks to January 22nd for simultaneous opening  
10 filings, and three weeks for simultaneous reply  
11 filings. That took you to February 12th, which led to  
12 an April 12th time for the Board's decision. Does  
13 that still make sense, five weeks or three weeks? Ms.  
14 Chancellor, that was --

15 MS. CHANCELLOR: The problem with that,  
16 Your Honor, was that we're finishing up on Friday, the  
17 19th. The next week is Christmas week, and so you  
18 almost lose a week, and so we're looking at about four  
19 weeks for writing findings, so that was the reason  
20 that we --

21 CHAIRMAN FARRAR: It was clear the  
22 year-end holidays, five weeks is really effectively  
23 four.

24 MS. CHANCELLOR: Right.

25 CHAIRMAN FARRAR: And then three weeks for

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1 reply. Staff have any problem with that schedule?

2 MS. MARCO: No.

3 CHAIRMAN FARRAR: Mr. Gaukler.

4 MR. GAUKLER: I had proposed initially  
5 three weeks for findings and two weeks for reply  
6 findings, and I will propose in view of Christmas,  
7 make it four weeks for findings and two weeks for  
8 reply findings.

9 CHAIRMAN FARRAR: Four weeks and two  
10 weeks?

11 MR. GAUKLER: Yes, Your Honor.

12 CHAIRMAN FARRAR: All right. If those  
13 then are your positions, Ms. Marco, when you send in  
14 the schedule, don't -- well, put in what your proposal  
15 is, but we will leave open for that time the Company's  
16 suggestion that we do three weeks and two weeks,  
17 instead of -- I'm sorry.

18 MS. MARCO: Four weeks.

19 MR. GAUKLER: Four weeks.

20 CHAIRMAN FARRAR: Yes. Mr. Gaukler is now  
21 raising four weeks and two weeks instead of the five  
22 weeks and the three weeks, and the Board will decide  
23 on that at the end. Ms. Marco, I was building that on  
24 the State proposal of the five weeks and the three.  
25 Is that consistent with what the Staff's views are?

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1 MS. MARCO: That's fine.

2 CHAIRMAN FARRAR: So I have the State and  
3 the Staff wanting five weeks and three weeks,  
4 recognizing that the five is effectively four.

5 MS. MARCO: Four.

6 CHAIRMAN FARRAR: Mr. Gaukler, you want  
7 four weeks and two weeks.

8 MR. GAUKLER: Correct.

9 CHAIRMAN FARRAR: Recognizing that the  
10 four weeks is effectively three.

11 MR. GAUKLER: That's correct, Your Honor.

12 CHAIRMAN FARRAR: So we would save two  
13 weeks there. All right. We'll decide that when the  
14 document comes in.

15 Let's talk about -- we don't have to  
16 decide it today, but you'll recall --

17 MS. CHANCELLOR: Your Honor, could I just  
18 make one point about the schedule. It looks a little  
19 weird. We've got testimony due to be filed on a  
20 Saturday, and the reason for that is because we will  
21 be -- the State will be Fed Ex'ing its documents to  
22 Washington, D.C. And we didn't want to give PFS and  
23 the Staff an extra day, so that's why we set the date  
24 as a Saturday.

25 CHAIRMAN FARRAR: Well, let me suggest

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1 this. Ms. Marco, in your schedule, you build in all  
2 those little things that each party has requested and  
3 draw up a couple -- if they're not -- if we don't --  
4 if it's not obvious why they're being done a certain  
5 way, draft a little footnote that says what that  
6 represents.

7 MS. CHANCELLOR: Thank you, Your Honor.

8 CHAIRMAN FARRAR: All right, Ms. Marco?

9 MS. MARCO: Yes, we'll do that.

10 CHAIRMAN FARRAR: Okay. At the Salt Lake  
11 hearing we asked that when you pre-file your  
12 testimony, you put on it a cover sheet. I forgot what  
13 we called it, but in essence --

14 MS. CHANCELLOR: Key determinations.

15 CHAIRMAN FARRAR: There were two things,  
16 one with each witness was what were the things you  
17 wanted to prove by that witness, and the second thing,  
18 Ms. Chancellor, was the key determinations that you  
19 wanted us to make in the whole case. We want at least  
20 that from you. We found those enormously helpful, and  
21 I think all of you, while you might not have agreed it  
22 was a bright idea at the time, because obviously it's  
23 extra work at a time that's crucial to you. I think  
24 at least some of you told us afterwards that, in fact,  
25 it helped you organize and think through your case, so

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1 we would like at least that.

2 We will be talking among ourselves about  
3 whether we need more, all in an effort that with  
4 those, we get better prepared for the hearing. The  
5 hearing runs more efficiently, and our decision comes  
6 out faster. So be thinking about that, because in our  
7 next conference call, whenever that is, we will talk  
8 about the details of that.

9 MS. MARCO: Your Honor.

10 CHAIRMAN FARRAR: Yes, ma'am.

11 MS. MARCO: When would you expect to have  
12 the draft done?

13 CHAIRMAN FARRAR: Any time next week.

14 MS. MARCO: Okay.

15 CHAIRMAN FARRAR: Yeah, just -- are you  
16 here next week?

17 MS. MARCO: Yes, I am.

18 CHAIRMAN FARRAR: Okay. Just, you know,  
19 get it in some time, and I'll turn to it as soon as I  
20 get back. And by then we'll have the transcript, and  
21 so a day or two after Labor Day, we can push out a  
22 formal order. But for now, we are proceeding with the  
23 PFS shooting to have its RAI responses in by the 29th,  
24 and then we'll -- but if they need more time -- right.  
25 The new schedule would allow them up to September 4th

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1 for the RAI response, so if they can beat the 4th,  
2 that's fine because after everybody has those, the  
3 less opportunity anybody has to claim that we had to  
4 defer the schedule. Then we'll do the identification  
5 of witnesses September 11th, and the State expert  
6 reports on September 18th. And by then, we'll have  
7 the rest of the schedule in place.

8 MR. GAUKLER: I would have one suggestion,  
9 Your Honor. I would suggest there be witness  
10 identification September 5th, since the State seems to  
11 know its witnesses, and we know our witnesses, and the  
12 Staff knows its witnesses. I don't think there's any  
13 reason to delay that extra week.

14 CHAIRMAN FARRAR: Then let's do that,  
15 because again, the more things that are done faster  
16 than the more you build in a little time for delays  
17 that might take place. Then let's do that. Any  
18 objection to doing the identification of witnesses on  
19 September 5th? All right. Hearing none --

20 MS. CHANCELLOR: We may not be able to get  
21 all the information that Mr. Gaukler, that we talked  
22 about, but we could at least identify them and get  
23 CVs.

24 CHAIRMAN FARRAR: Right. Then let's do  
25 that on September 5th. And then we'll be, in essence,

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1 after that adopting the third column for the rest of  
2 the items. And we will give ourselves a little bit of  
3 a head start.

4 Ms. Chancellor, we talked last time about  
5 whether you were going to have affirmative reports or  
6 mostly reports that were each of the companies. Do  
7 you know that yet, or perhaps --

8 MR. SOPER: Affirmative reports, and what  
9 was the second part, Your Honor, that you said?

10 CHAIRMAN FARRAR: Mostly whether you were  
11 going to have your own case in an affirmative fashion,  
12 or mostly critique of the Company's case?

13 MR. SOPER: Well, we intend to file some  
14 reports, obviously, on the 18th, and they will be  
15 affirmative reports, as well as critiques in some  
16 cases.

17 CHAIRMAN FARRAR: All right. Thank you,  
18 Mr. Soper. All right. Then is there anything else we  
19 need to discuss?

20 MS. CHANCELLOR: Your Honor, unfortunately  
21 Mr. Turk is out on a call. I would have preferred to  
22 ask this when he was there, but we still don't have  
23 the NEI report, and I don't know if Ms. Marco knows  
24 the status of that. The Commission directed the Staff  
25 to work up something so the State could get a copy, I

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1 believe.

2 CHAIRMAN FARRAR: Ms. Marco, do you know  
3 the answer to that?

4 MS. MARCO: Your Honor, I don't know the  
5 answer off-hand. I will have to get back to Ms.  
6 Chancellor.

7 MR. DELLIGATTI: Ms. Chancellor, this is  
8 Mark Delligatti. I'm not remembering exactly, but I  
9 thought that it turned out there was a couple of  
10 available documents. You don't have that either?

11 MS. CHANCELLOR: I think there's an  
12 Executive Summary, but we don't have the detailed  
13 report.

14 MR. DELLIGATTI: I'm not aware of that.  
15 The last thing I seem to remember was that -- I  
16 thought the resolution had something to do with the  
17 fact that the report that -- there was an available  
18 report which would have satisfied the interest.

19 MS. CHANCELLOR: My understanding was that  
20 the Commission set it with safeguards, that we're  
21 dealing with safeguards in this Utah K proceeding, and  
22 that the Staff under the rubric of the Utah K  
23 proceeding should be able to work out a way in which  
24 the State could get a copy of the safeguards report.  
25 I'll get you a copy of the order if you want.

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1 CHAIRMAN FARRAR: Mr. Delligatti, let me  
2 ask you, does the NEI report have a security  
3 classification above safeguards?

4 MR. DELLIGATTI: Frankly, Your Honor, I've  
5 never seen it. I understood it to be safeguard.

6 CHAIRMAN FARRAR: Because I would think  
7 what Ms. Chancellor says, if it's only safeguards,  
8 then it's the same as all the other information we're  
9 dealing with here, unless NEI has some proprietary  
10 claims.

11 MS. MARCO: Your Honor, I think Mr.  
12 Stapleton has something to say.

13 CHAIRMAN FARRAR: Okay. Go ahead, Mr.  
14 Stapleton.

15 MR. STAPLETON: NEI has a public version  
16 of the report on its website. They did submit to the  
17 NRC a safeguards information analysis. Part of the  
18 concern from the Commission's standpoint would be it's  
19 not our document.

20 CHAIRMAN FARRAR: Well, but if it -- I  
21 guess, I -- if it's not -- if it's an NEI document,  
22 they may have proprietary claims, which you have to  
23 consider. But if they don't have proprietary claims,  
24 I assume that once you all classify it as safeguards  
25 or higher, that's what it is, and NEI would not be --

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1 you know, NEI isn't in the classification business, so  
2 if you say it's safeguards, then I would think it's  
3 the same kind of document as the rest of the things  
4 we're dealing with, and the State could have it under  
5 the same protections. If it's some higher ranking  
6 document, secret, top secret, then we're in a  
7 different ball game.

8 MR. STAPLETON: The document was submitted  
9 to the NRC as a safeguards information document, and  
10 is not a classified document.

11 CHAIRMAN FARRAR: All right. Then I would  
12 think this is something -- Ms. Marco, can you see that  
13 this moves quickly. And, you know, if there's some  
14 objection, get us back on the phone.

15 MS. MARCO: Right. I'll have to look into  
16 it, Your Honor.

17 CHAIRMAN FARRAR: Yeah. But see if we  
18 can't move that along, because we don't want to have  
19 a glitch here that leaves someone to say well, the  
20 schedule is not possible to meet because some document  
21 was not available. That would be the last thing we'd  
22 want to have happen, and we've never seen this  
23 document. I have no idea what it says, but it seems  
24 to me the State should have it at the earliest  
25 possible opportunity, unless there's a problem, which

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1 Mr. Stapleton has said there's not, with the  
2 classification.

3 All right. Anything else anybody has?

4 MR. GAUKLER: Not at this time, Your  
5 Honor.

6 CHAIRMAN FARRAR: All right. Thank you.  
7 I think because of the slow down with getting started,  
8 we got an extra half hour on this call, so in a moment  
9 or two, when we sign off, we will hang up. The Court  
10 Reporter will hang up, and the three parties can speak  
11 for a moment about whether they want to have anything  
12 to talk to each other about over the next half hour.  
13 Otherwise, they can hang up themselves.

14 Then on that note, we will sign off. And,  
15 Mr. Reporter, if you would sign off, we'll leave this  
16 for the parties. Thank you all.

17 (Whereupon, the proceedings in the  
18 above-entitled matter went off the record at 3:01:31  
19 p.m.)

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**CERTIFICATE**

This is to certify that the attached proceedings  
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Name of Proceeding: Private Fuel Storage

Pre-Hearing Conference

Docket Number: 72-22-ISFSI

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