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NUCLEAR REGULATORY COMMISSION

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Scheduling Conference

Docket Number: 30-36239-ML

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USNRC

Location: (telephone conference)

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

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4 ATOMIC SAFETY AND LICENSING BOARD PANEL

5 TELEPHONE CONFERENCE CALL

6 -----X

7 IN THE MATTER OF: :

8 CFC LOGISTICS, INC. : Docket No.

9 (MATERIALS LICENSE) : 30-36239-ML

10 :

11 -----X

12 Tuesday, September 2, 2003

13
14
15 The above-entitled matter came on for
16 hearing, pursuant to notice, at 11:30 a.m.

17
18 BEFORE:

19 MICHAEL C. FARRAR, CHAIRMAN

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

(11:30 a.m.)

CHAIRMAN FARRAR: This is a conference call in the CFC Logistics case. It's Tuesday, September 2nd, 11:30 a.m.

This is Mike Farrar, the presiding officer in the case. I have with me Susan Lynn, our law clerk, and Sharon Perini, our administrative person. Judge Kelber is not available today.

Mr. Lewis, would you identify yourself for the record, please?

MR. LEWIS: Stephen, with a P-H, H. Lewis, NRC Staff Counsel.

CHAIRMAN FARRAR: Mr. Sugarman?

MR. SUGARMAN: Robert Sugarman. And with me is Michael Galbraith, who is my associate who is working for me, for the Intervenors.

CHAIRMAN FARRAR: All right. And Mr. Thompson, or Mr. Pugsley?

MR. PUGSLEY: Chris Pugsley, CFC Logistics. Mr. Thompson should be joining us shortly.

CHAIRMAN FARRAR: Okay. Do you want us to wait for him or --

MR. PUGSLEY: Yes, please, Your Honor.

CHAIRMAN FARRAR: Okay. Tell me when

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1 he --

2 MR. PUGSLEY: I will call him right now
3 and make sure he gets on.

4 CHAIRMAN FARRAR: Okay.

5 (Pause.)

6 CHAIRMAN FARRAR: Mr. Thompson, is that
7 you?

8 MR. THOMPSON: Yes, sir.

9 CHAIRMAN FARRAR: We were at the point of
10 introducing ourselves for the record, if you would.

11 MR. THOMPSON: Anthony Thompson, counsel
12 for CFC Logistics.

13 CHAIRMAN FARRAR: All right. I think that
14 is everybody. I want to thank you all for gathering
15 on short notice. We had a flurry of phone calls and
16 filings and activities last week while I was on
17 vacation.

18 We've got an argument date of
19 September 10th, just eight days away, and so I thought
20 we'd do a quick status check here and make sure we're
21 on target. And I hope we can wrap this up in a half
22 hour. I know you all are busy on this and other
23 matters.

24 Are we on track on the documents? We've
25 got the staff's standing and germaneness, and the

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1 replies to that are due at 5:00 this Friday. How are
2 we doing on that? Mr. Sugarman, are you going to be
3 able to meet that date?

4 MR. SUGARMAN: Yes.

5 CHAIRMAN FARRAR: Mr. Pugsley? Mr.
6 Thompson?

7 MR. SUGARMAN: Yes, Your Honor.

8 CHAIRMAN FARRAR: Okay. In terms of the
9 staff brief, I had thought we had mentioned page 33 of
10 the August 7th transcript, the Commission standard
11 which governs these cases -- that is, whether for
12 proximity presumptions whether we have -- are dealing
13 with "a significant source of radioactivity producing
14 obvious potential for offsite consequences."

15 Mr. Lewis, I didn't see that phrase or
16 that test appear anywhere in your brief.

17 MR. LEWIS: Your Honor, I had -- I somehow
18 have lost track of that direction about the -- looking
19 at 33. We did address the point about the source and
20 its -- you know, whether or not it had to be assumed
21 to be in a protected position or in splendid
22 isolation. But I --

23 CHAIRMAN FARRAR: Well, let me cut you off
24 there in the interest of time. I think I also came
25 back to it at transcript page 74, and what I'd like to

1 do is have you -- what's today? Tuesday. Have you
2 file by noon tomorrow, and you can do it in letter
3 form, do it any way you want to, a brief answer,
4 doesn't have to be more than a page or two, about
5 whether you think that -- in terms of this source how
6 that standard applies.

7 MR. LEWIS: All right. So if folks have
8 a question of whether or not there's an obvious
9 potential --

10 CHAIRMAN FARRAR: Is this a significant
11 source of radioactivity, and is it an obvious
12 potential, and get that in by noon tomorrow. And the
13 parties can, as they are wrapping up their briefs,
14 their agreement or disagreement with whatever you say,
15 in their briefs by this Friday.

16 MR. LEWIS: All right.

17 CHAIRMAN FARRAR: Second, Mr. Sugarman,
18 when did you get the proprietary documents actually in
19 your hands?

20 MR. SUGARMAN: 4:30 on Friday afternoon.

21 CHAIRMAN FARRAR: Okay.

22 MR. SUGARMAN: I did not get all of the
23 proprietary documents.

24 CHAIRMAN FARRAR: The five -- was it five
25 pages of the --

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1 MR. SUGARMAN: It was two pages of
2 application-specific text, about eight pages of
3 Commission standard regulations, and about six pages
4 of drawings. The drawings, however, refer to a soils
5 report, and the soils report was not included. I
6 e-mailed both staff and the applicant on Friday
7 afternoon to request the soils test.

8 CHAIRMAN FARRAR: All right. Given -- are
9 you going to be able to file your stay motion by noon
10 tomorrow?

11 MR. SUGARMAN: We're working on it, but I
12 think it's going to be very difficult. Over the
13 holiday weekend, because it came in so late on Friday,
14 I was unable to dispatch those documents to my expert,
15 because he was out of pocket. I'm planning to
16 overnight them to him today. Because they're drawings
17 I can't transmit them other than by physically.

18 So I'm planning to overnight them to him
19 today after he signs the agreement. So he should have
20 them in the morning tomorrow, but I would like to have
21 until the end of the day on Thursday to -- that's the
22 day after tomorrow -- in order for him to evaluate
23 them. And that's assuming that I get the soils test
24 right away, which is critical to the question of risk
25 from -- of failure and risk from failure.

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1 CHAIRMAN FARRAR: Mr. Pugsley, Mr.
2 Thompson, and Mr. Lewis, how much time do I need to
3 give Mr. Sugarman in addition beyond noon tomorrow in
4 order to be fair to him and let him incorporate this
5 material, also to be fair to you getting your replies
6 in by 6:00 p.m. on Monday, the 8th?

7 And I suppose we could push that 6:00 p.m.
8 on Monday, the 8th, to noon on Tuesday if -- yes, in
9 fact, let's move you to noon on Tuesday, the 9th. And
10 how much time, then, can I give Mr. -- can I give Mr.
11 Sugarman until close of business Thursday, the 4th?

12 MR. LEWIS: Close of business -- Mr.
13 Sugarman, would you be electronically --

14 CHAIRMAN FARRAR: Don't worry about that.
15 Just tell me when you need the documents.

16 MR. SUGARMAN: Yes. I'll get them to you
17 by electronic 5:00 on Thursday.

18 CHAIRMAN FARRAR: That's all right with
19 you, Mr. Lewis?

20 MR. LEWIS: Yes.

21 CHAIRMAN FARRAR: Mr. Thompson?

22 MR. THOMPSON: Yes.

23 CHAIRMAN FARRAR: You said yes?

24 MR. THOMPSON: Yes.

25 CHAIRMAN FARRAR: Good. Thank you very

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1 much. All right, then.

2 MR. SUGARMAN: Would I be able to get the
3 soils test today, so I can include that in my
4 transmission to the experts?

5 MR. LEWIS: Well, for the staff, Your
6 Honor, the staff does not have the soils tests in
7 its --

8 CHAIRMAN FARRAR: That's all I need to
9 know. You don't have them.

10 Mr. Thompson? Mr. Pugsley?

11 MR. THOMPSON: Chris?

12 MR. PUGSLEY: Yes. Your Honor, I have a
13 copy of the soil test right here. It was not part of
14 the application. I can get it to Mr. Sugarman as soon
15 as I draft a letter to him for him to sign which --
16 saying that it will be subject to the protective order
17 we agreed to. That shouldn't take very long.

18 CHAIRMAN FARRAR: All right. Then, let's
19 do that by -- you can do that by fax?

20 MR. PUGSLEY: I will do that by fax if
21 that's the easiest for Mr. Sugarman, or if he --

22 MR. SUGARMAN: That's fine by me.

23 MR. PUGSLEY: That's fine? Okay. Then,
24 that's how we'll do it.

25 CHAIRMAN FARRAR: Thank you.

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1 In terms of these documents, I don't know
2 that the copy of the application we have has them.
3 Who is in the best position to get a copy of what Mr.
4 Sugarman received last week and what he's going to
5 receive today? Who is in the best position to get
6 that to us?

7 MR. LEWIS: Your Honor, perhaps I need to
8 engage in a discussion about this with the company
9 counsel. I don't know -- do -- I mean, we did
10 undertake, at the request of CFC Logistics, to provide
11 -- we had someone from Region I deliver them to him
12 personally.

13 CHAIRMAN FARRAR: You did that just
14 because of the geographic --

15 MR. LEWIS: Yes.

16 CHAIRMAN FARRAR: All right. Then, why
17 don't you and the company talk, and whoever wants to
18 get -- and I don't need them before, you know, the end
19 of this week. But just whoever has them, get them to
20 us, so that we have in front of us whatever Mr.
21 Sugarman has --

22 MR. LEWIS: Right.

23 CHAIRMAN FARRAR: -- in addition to the
24 public record. So I'll count on one of you getting
25 those to us.

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1 MR. LEWIS: Right.

2 CHAIRMAN FARRAR: All right. So we're on
3 target for our filings, with a little bit of
4 extension.

5 Oh. Mr. Thompson, would you be sure in
6 your response to the stay to give us the schedule for
7 moving sources in. You said nothing would be moved in
8 before the week of September 22nd, but I know you have
9 a license for up to a million curies. Could you just
10 put in a factual note about how much you'd be moving
11 in how fast?

12 MR. THOMPSON: Yes, Your Honor.

13 CHAIRMAN FARRAR: Okay. Thank you. Just
14 include that in your response to the stay motion.

15 Oral argument. Okay. Mr. Thompson, Mr.
16 Pugsley, you filed a motion last week about the
17 proprietary data, both in terms of future filings and
18 the oral argument.

19 In terms of the future filings, it's my
20 impression that it's standard around here that whoever
21 files anything just marks it up as proprietary, sends
22 copies only to the presiding officer, to opposing
23 counsel, and to the Commission secretary, and they --
24 as long as it's properly marked as proprietary, they
25 do not disseminate it, do not put it up on the Adams

1 electronic system, and do not make it available to
2 anybody.

3 So I think as long as we observe that,
4 there's no need for redacted filings. We may, at a
5 later time, decide that we want the public record to
6 reflect much of what went on, and I think then we
7 would have a negotiation among the three of you where
8 perhaps the company's counsel would take, for example,
9 Mr. Sugarman's document and mark it up and send it
10 back to him and say, "Can you electronically blank out
11 these portions?"

12 And then you'd have a little negotiation
13 back and forth. We'd get involved in that. But I
14 don't think there's any need to do that before
15 September 10th. You all have enough of a burden to --
16 to get your papers in, and then I think we leave the
17 redacted copies for later. Does that solve your
18 problem on the filings?

19 MR. THOMPSON: Your Honor, this is Tony
20 Thompson. I'm not sure I understand exactly what you
21 said. I'm not sure I understand who is doing what.

22 CHAIRMAN FARRAR: Nobody is doing
23 anything. People are filing their papers --

24 MR. THOMPSON: Okay.

25 CHAIRMAN FARRAR: -- and they have all

1 over it in the appropriate portions -- and perhaps Mr.
2 Lewis can advise you, since he has probably seen a lot
3 more of these than I have -- you know, I guess you
4 just put, you know, "proprietary data" on each page as
5 a header or a footer on each page.

6 MR. THOMPSON: Oh, I see. So you just put
7 something like, "These pleadings contain proprietary
8 data" on every page or something like that, and that's
9 that.

10 CHAIRMAN FARRAR: Right. And what happens
11 is when the docket -- the Commission's docketing
12 office, you know, the official, you know, court clerk
13 as it were gets them, then they put them in a separate
14 place and they don't go anywhere. And so the only
15 people seeing them would see the parts so --

16 Whatever your service list is you cut it
17 down to make sure it's only opposing counsel and the
18 Board and the SECY, the Commission docketing place,
19 and then they don't go anywhere.

20 Then, what I was saying is if we later
21 want to have a publicly-available redacted copy, we'll
22 worry about that after September 10th.

23 CHAIRMAN FARRAR: Okay. Now, Steve, is
24 there some standard format for this?

25 MR. LEWIS: I think I -- I think that

1 there's just the proprietary stamp that we use.
2 That's all.

3 CHAIRMAN FARRAR: Then, I think you send
4 your -- your cover letter to SECY says, you know,
5 "This contains proprietary data. Please do not
6 release" -- you know, "Please do not release it to the
7 public."

8 MR. LEWIS: That sounds like the way it's
9 handled, yes.

10 CHAIRMAN FARRAR: Okay. That was Mr.
11 Thompson?

12 MR. THOMPSON: Mr. Lewis.

13 CHAIRMAN FARRAR: Mr. Lewis. All right.

14 Mr. Sugarman, are you clear on this, since
15 you'll be the one filing the first document that has
16 this -- that might refer to proprietary data?

17 MR. SUGARMAN: Right. It goes to you and
18 to the counsel, and then they tell us what they want
19 us to --

20 CHAIRMAN FARRAR: We're not even there
21 yet. Just make sure the copy you file has marked all
22 over it "proprietary," and that your cover note to the
23 docketing clerk at the Commission --

24 MR. SUGARMAN: Gotcha.

25 CHAIRMAN FARRAR: -- says that this is not

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1 to be released to the public.

2 MR. LEWIS: This is Steve Lewis. I think
3 it would also be advantageous to not only say
4 proprietary but to just reference 10 CFR 2.790.

5 CHAIRMAN FARRAR: All right. So that
6 takes care of that. Now, the company's motion also
7 went to the oral argument and closing the oral
8 argument. And if you close it, then obviously you --
9 you don't have to trot up to Pennsylvania and tell the
10 citizens we're having an argument but they can't come
11 in. We would do it here, or we might even do it by
12 telephone.

13 Mr. Sugarman, what are your thoughts?

14 MR. SUGARMAN: Well, I think it's
15 unnecessary and counterproductive, and I think it
16 would be terrible precedent having -- having told the
17 citizens several times that they should expect this
18 event, my clients. And to exclude my clients, who are
19 parties to the case, I think is essentially a denial
20 of due process.

21 My clients, several dozens, the applicants
22 standing alone are more than 20. But even beyond
23 that, I feel that the company is estopped and has
24 waived its right to seek that by not raising it prior
25 to the delivery of the documents.

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1 It's clear that they prepared this motion
2 before they delivered the documents to us. The
3 certification is dated the 28th. It came to us within
4 an hour of the time that we received the documents,
5 and within about two hours of the time that we signed
6 off.

7 We would have had an opportunity to debate
8 this issue before deciding to receive the documents.
9 And I certainly would have wanted to receive the
10 documents, and it would have put us in a terrible
11 dilemma if we had been given that choice ahead of
12 time.

13 But by the company's withholding of this
14 request, we were not even given the choice, and that's
15 a classic case for estoppel or waiver or both, that
16 they pollute us, given us this poison pill that we
17 can't possibly now back off from, and then they try to
18 take advantage of it. Clearly, they had this in mind,
19 and they withheld that information.

20 CHAIRMAN FARRAR: Well, let's not get into
21 what different people's motives are. We are where we
22 are.

23 MR. SUGARMAN: I'm just getting into the
24 fact that -- nothing to do with motive. It has to do
25 with the fact that they withheld the information that

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1 they were going to seek this, obviously intending to
2 seek it. That's not a question, as I understand it,
3 of motive. That's a question strictly of objective
4 facts.

5 CHAIRMAN FARRAR: You did mention there
6 you think this would be a denial of due process.

7 MR. SUGARMAN: I did.

8 CHAIRMAN FARRAR: Okay. The argument is
9 going to proceed the same. Whether it's closed or
10 open, it's going to proceed the same way. I can
11 understand that they might -- citizens might perceive
12 it as a denial of something or other, but I can assure
13 you whether this is open or closed your clients will
14 get due process.

15 MR. SUGARMAN: Well, I'm saying that due
16 process includes the right to be present. There's no
17 precedent for denying a party the ability to be
18 present at his own hearing.

19 MR. LEWIS: This is Steve Lewis. In NRC
20 practice, there is, and -- but it --

21 MR. SUGARMAN: Has it ever been challenged
22 as a denial of due process?

23 MR. LEWIS: Well, let me finish what I was
24 going to say, which is that the way I see the issue,
25 having read the motion, is that there quite likely is

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1 a good part of the oral argument that can be conducted
2 without making any reference to protected material.

3 And then, I think there is some part of
4 the oral argument that would need to make reference to
5 protected material. The way that has been usually
6 handled in my experience is to so state at the
7 beginning of the oral argument, and when we get to the
8 part that needs to be closed to clear the courtroom.

9 CHAIRMAN FARRAR: Mr. Thompson, how would
10 that fit your client's needs?

11 MR. THOMPSON: Judge Farrar, it seems
12 fairly obvious that if you're going to have a
13 protective order covering information that is
14 "privileged" for whatever reason -- trade secrets or
15 security -- that if you can't talk about it in briefs
16 that are publicly available, you can't talk about it
17 in an oral argument where the public is involved.

18 And there is no way that all of his
19 clients who are -- who wouldn't be experts anyway are
20 going to sign this agreement. He, in fact, has said
21 there's no way he's going to do that. So if they're
22 not going to discuss it at oral argument, they're not
23 going to discuss protected materials at oral argument,
24 obviously he's going to need to close it.

25 CHAIRMAN FARRAR: Who is --

1 MR. THOMPSON: I don't know how you can --
2 I don't know quite how you can divide it up into that
3 discussion which will not address it and that which
4 will. But, I mean, if that can be done, obviously
5 that answers the question.

6 CHAIRMAN FARRAR: Let me draw again on my
7 experience in this PFS case where we had some
8 safeguards material, and we had -- the session here
9 was -- if I recall correctly, it was an oral argument
10 on one question, and then a prehearing conference on
11 something else.

12 And instead of closing the courtroom, we
13 asked the parties to -- we set it up that we would
14 close it at the -- at an appropriate point in the
15 argument if we had to. But we asked them when they
16 were arguing points rather than mention -- rather than
17 to describe the proprietary or safeguards information
18 they were talking about, to refer us to their brief.

19 I'd say, "Okay. On page 10, there is some
20 safeguards information or some -- in this case some
21 trade secret information, and I want to base my next
22 argument on the facts cited in my brief," which no one
23 but us has. And you run the argument that way, so
24 you're not revealing the material; you're talking
25 about it or around it.

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1 And we said, "But, if necessary, we'll
2 close the -- we'll throw everybody out and close the
3 courtroom." As it turned out, we didn't need to. The
4 counsel were adept enough to discuss -- to point us to
5 the relevant material in writing, and then make
6 arguments based on us having that in front of us.

7 Mr. Sugarman, can you conduct an argument
8 that way?

9 MR. SUGARMAN: Yes, I can do that.

10 CHAIRMAN FARRAR: Mr. Lewis?

11 MR. LEWIS: Yes, I think that's a better
12 phrasing of what my point was. Yes, I think that
13 would go well.

14 CHAIRMAN FARRAR: All right. And Mr.
15 Thompson, is that something -- now, I will be the
16 first to say that has perhaps some potential risk in
17 that one of the counsel acting in good faith might
18 blurt out something that they shouldn't. But if
19 everyone goes into this aware of that and is cautious
20 about it, and if you have the right if you hear them
21 start to say something, even though you don't have the
22 floor, just shout out, "Wait a minute."

23 And, you know, if we have all of those
24 safeguards, and then if we run into a problem that's
25 insurmountable, we then do close the courtroom, which

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1 I think people would understand at that point. Why is
2 that not a good solution?

3 MR. THOMPSON: You answered the question
4 I was going to have, which is, you know, I don't even
5 know what sort of the form this oral argument is going
6 to take at this point. But -- and I guess also going
7 -- I would assume also Your Honor on his own, on his
8 toes, to make sure that if he sees something coming,
9 that he doesn't wait for us to say something.

10 CHAIRMAN FARRAR: Right. I would want to
11 -- since you're more intimately familiar with this
12 material than I will be, what I'm saying is you would
13 have the additional right just, you know, to shout
14 out, "Hold it," which you ordinarily wouldn't do in a
15 courtroom, but that would give us further protection.
16 And I have to be on my toes, and you have -- you know,
17 you're allowed to jump up and shout at any point you
18 need to.

19 MR. THOMPSON: Okay, Your Honor.

20 CHAIRMAN FARRAR: Okay. That was Mr.
21 Thompson?

22 MR. THOMPSON: Yes.

23 CHAIRMAN FARRAR: Okay, fine. Then, I --
24 and you did mention the form of the argument. What
25 we're planning to do is we would argue the questions

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1 of standing and germaneness first, and then go into
2 the stay from that, since one of the issues -- stay is
3 probability of success on the merits.

4 And if you're not going to -- you have no
5 probability of even getting into the case, then I
6 suppose that answers the question on the stay. If you
7 establish you do have a -- you're likely to get into
8 the case, then the probability of success on the
9 merits would go to some of the technical issues.

10 So I think that argues for taking up
11 standing and germaneness first, and the stay motion
12 later. And I think rather than have one party do all
13 three of those we would do -- we would have, in
14 effect, three arguments.

15 Mr. Sugarman would argue standing,
16 followed by the staff, and then the company. And Mr.
17 Sugarman would argue areas of concern and their
18 germaneness, again followed by the staff and the
19 company, and then return to the stay and go in the
20 same order, since Mr. Sugarman is the moving party.
21 And we would conduct it in that fashion.

22 And after we get all of the briefs we will
23 put out -- well, we may not get to put it out. We
24 will try -- after getting the last brief on Tuesday
25 noon, we will send out an -- it may just be an e-mail,

1 bang, here's how much time will be allotted to each of
2 those three issues.

3 We've got two and a half -- 5:30 to 8:00.
4 We've got two and a half hours -- how much of that two
5 and a half hours we'll have for each issue, and the
6 order of proceeding will be the same in each -- the
7 petitioners, the staff, the company. Does that make
8 sense?

9 MR. THOMPSON: Sounds good.

10 MR. LEWIS: That's fine.

11 CHAIRMAN FARRAR: Okay. Mr. Thompson, you
12 had offered the parties and the Board a tour of the
13 facility.

14 MR. THOMPSON: Yes.

15 CHAIRMAN FARRAR: Mr. Sugarman, is that
16 still agreeable to you? Mr. Sugarman?

17 MR. SUGARMAN: Yes, I'm sorry if I wasn't
18 heard. Yes. Yes, that's --

19 CHAIRMAN FARRAR: That's agreeable to you,
20 to have a tour?

21 MR. SUGARMAN: Yes.

22 CHAIRMAN FARRAR: That would be at -- can
23 we do that at 1:00 on Wednesday, Mr. Thompson?

24 MR. THOMPSON: I'm sure we can, Your
25 Honor. If there's any change in that, we'll get back

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1 to you.

2 CHAIRMAN FARRAR: Okay. Then, we should
3 just show up at the site?

4 MR. THOMPSON: Yes. I think it would be
5 helpful if we just knew how many are coming from your
6 -- you know, with Your Honor and how many Mr. Sugarman
7 would like to bring.

8 CHAIRMAN FARRAR: All right. Why don't we
9 each get together -- since that doesn't deal with the
10 merits of the case, we will inform you privately about
11 that when we're sure.

12 Mr. Sugarman, if you would do that also.

13 MR. SUGARMAN: Yes.

14 CHAIRMAN FARRAR: Mr. Lewis, I take it you
15 don't need a whole lot of people there, since I assume
16 they're all familiar with it?

17 MR. LEWIS: No, they've seen the site.
18 Right.

19 CHAIRMAN FARRAR: Okay. Then, it would be
20 good for you or if you have co-counsel to be there,
21 just to -- since there will be no discussion of the
22 merits there, but it's always good to have each party
23 represented.

24 MR. LEWIS: Okay. Fine.

25 CHAIRMAN FARRAR: And we'll do that at

1 1:00 on Wednesday. And we'll just show up at the
2 parking lot, Mr. Thompson?

3 MR. THOMPSON: Yes.

4 CHAIRMAN FARRAR: Okay. Fine.

5 MR. SUGARMAN: Judge, do we have a
6 location for the argument?

7 CHAIRMAN FARRAR: We --

8 MR. SURGARMAN: The public is clamoring to
9 know.

10 CHAIRMAN FARRAR: I do, but the letters --
11 the letters to people who control the space have not
12 been exchanged, and I don't want to jump the gun
13 diplomatically and tell you beforehand.

14 MR. SUGARMAN: All right.

15 CHAIRMAN FARRAR: But we may have an
16 answer for you this afternoon, and we'll just send you
17 an e-mail.

18 MR. LEWIS: Okay. So exact location will
19 be provided to us sometime quite soon, perhaps --

20 CHAIRMAN FARRAR: In the next 24 hours, or
21 certainly by the close of business Wednesday, probably
22 earlier. The problem is the people we were
23 communicating with were on vacation. It's essentially
24 a done deal, but I don't want to -- diplomatically, I
25 don't want to release the information until we've had

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1. the proper --

2 MR. SUGARMAN: When do you think we might
3 have that?

4 CHAIRMAN FARRAR: Perhaps as early as
5 close of business today, no later than close of
6 business tomorrow.

7 MR. SUGARMAN: Oh, that's fine. Thank
8 you.

9 CHAIRMAN FARRAR: And we had said, of
10 course, it would be in Quakertown, Doylestown, or
11 Allentown.

12 MR. SUGARMAN: Right.

13 CHAIRMAN FARRAR: It seems as far as the
14 parties were concerned that that was not a huge
15 difference, but I do understand the public wanting to
16 know. But we will get to you as quickly as possible
17 on that.

18 All right. I think that takes care of all
19 of the pending business, and I appreciate you all
20 making yourselves available on such short notice to do
21 this call. But I thought it was important rather than
22 spend any time writing things and -- that we just get
23 this all solved quickly with the extensions, and so
24 forth.

25 Anything that I have neglected or that any

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1 of you wants to bring up?

2 (No response.)

3 CHAIRMAN FARRAR: All right. Then, thank
4 you very much. We'll look forward to receiving your
5 briefs. We will -- even though some of them come in
6 right before we're leaving, or -- I will personally be
7 leaving the evening of Tuesday, the 9th. We will be
8 as prepared as we always liked to have judges be when
9 we were arguing cases.

10 And let's do this. If anybody has any
11 emergency matters, let's try to set up phone calls to
12 deal with them rather than any lengthy filings.
13 You've got a lot on your plates to get done in a very
14 short time, and I don't want to distract from that.

15 MR. LEWIS: All right. Your Honor, this
16 is Steve Lewis. When I said -- when I agreed to 12:00
17 noon tomorrow, I had lost sight of the fact that I am
18 scheduled on tomorrow to show up for jury duty in
19 Montgomery County, Maryland.

20 And I don't -- however, I don't -- I'm not
21 going to ask for anything extensive because of this,
22 but I think it would be in the interest of all of us
23 for me to be a little more candid. The noon time is
24 probably going to be pressing it. I'm hoping that I
25 -- attorneys very often are not seated at -- on these

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1 occasions, and so I don't know whether or not I'm
2 going to -- I'm assuming I may not have to be around
3 all day there.

4 But I'm simply going to ask, in the event
5 that I am kept around all day, can we make it noon on
6 the 4th?

7 CHAIRMAN FARRAR: No. This should have
8 been in in your original brief, and it's unfair to ask
9 the parties to respond to that which we had said was
10 a key point in the discussion. I'm not going to make
11 them file a response --

12 MR. LEWIS: Okay.

13 CHAIRMAN FARRAR: -- on such short notice.
14 Don't you have co-counsel over there?

15 MR. LEWIS: No, I don't.

16 CHAIRMAN FARRAR: There's no other person
17 on the staff who can deal with this issue?

18 MR. LEWIS: Well, there may or may not be.
19 I don't know. But I do not have co-counsel.

20 CHAIRMAN FARRAR: Give me a moment here.

21 (Pause.)

22 CHAIRMAN FARRAR: We're back on. Mr.
23 Lewis, I try not to put difficult deadlines on people.
24 The problem here is I think parties mentioned this in
25 their earlier filings. We picked up on it and

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1 mentioned it in the transcript.

2 There's a Commission standard that governs
3 all Subpart L proceedings, and it seems to me there
4 ought to be somebody on the staff somewhere that you
5 can turn this over to and say, you know, here's the
6 simple issue. Here's the Commission test. Here's the
7 cases in which it's cited. Write three pages -- two
8 pages and say how that affects -- you know, the
9 question is simple. Is this a significant source
10 of --

11 MR. LEWIS: No, I understand the question.

12 CHAIRMAN FARRAR: Let me finish. Is this
13 a significant source of radioactivity? I don't know
14 what that means in the context of a materials license.
15 This is the first one I've had. Does it produce
16 obvious potential -- and I underline those two words
17 -- for offsite consequences? There ought to be
18 somebody on the staff -- in the staff over in OGC who
19 can address that issue in 24 hours in a two-pager.

20 MR. LEWIS: I'm -- you know, I'm not going
21 to -- certainly would not disagree with Your Honor.
22 I'm sure there is.

23 CHAIRMAN FARRAR: Well, then instead of
24 you worrying about how you get it done, hoping that
25 you don't get selected on the jury, or they don't keep

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1 you cooling your heels like often happens in any
2 jurisdiction on jury duty, that you spend the next
3 hour getting somebody to assign somebody else to do
4 this, and let's get it in by noon tomorrow. If it's
5 not in by noon tomorrow, then the staff will be silent
6 on the matter.

7 MR. LEWIS: Fine, Your Honor. I am not
8 trying to test your patience with me. As an
9 alternative suggestion, would you consider allowing
10 the staff until somewhat later on that day?

11 CHAIRMAN FARRAR: Every hour I give you
12 later is an hour the other parties don't have.

13 MR. LEWIS: I say this with full
14 understanding, and certainly I take responsibility for
15 having excluded it. So I don't -- I mean, I'm not
16 asking it lightly. I just think that I likely will
17 have to call upon someone not yet assigned to the
18 matter, and that just creates a little bit of a time
19 problem for me.

20 I mean, I'll do it. I will start doing it
21 right away, obviously.

22 CHAIRMAN FARRAR: Why don't you get it
23 done. This is -- this shouldn't be rocket science.
24 It's a fairly simple question that I would think
25 there's a number of people over there who are familiar

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1 with. And if I give you past noon, the other parties
2 are due in by 5:00 p.m. on Friday, and I would assume
3 what the staff thinks about this test is something
4 fairly significant.

5 MR. LEWIS: Yes. I would assume it is an
6 important matter, yes.

7 CHAIRMAN FARRAR: And one party, if not
8 both, at least one of them is not going to like what
9 you say, and they need to have a chance to respond to
10 what you say. So let's stick with --

11 MR. LEWIS: All right.

12 CHAIRMAN FARRAR: -- the noon --

13 MR. LEWIS: All right. Fine.

14 CHAIRMAN FARRAR: -- deadline. And
15 whoever else gets assigned it, I'm looking for --
16 given the timeframe --

17 MR. LEWIS: Focused.

18 CHAIRMAN FARRAR: -- a focused -- you
19 know, don't give me any background about the Atomic
20 Energy Act. Answer the question in two pages. What
21 does this test mean? All right?

22 MR. LEWIS: All right, Your Honor.

23 CHAIRMAN FARRAR: Good. Thank you.

24 Any other questions?

25 (No response.)

1 CHAIRMAN FARRAR: All right. Then, we'll
2 sign off, and I think this -- the company and the
3 staff were going to talk about who gets the documents,
4 the proprietary documents to the Board, but that's not
5 an urgent matter. If we get them by Thursday or
6 Friday, that's plenty of time.

7 MR. LEWIS: Well, then, perhaps I guess we
8 can stay on the line? Is that --

9 CHAIRMAN FARRAR: If you want, yes. The
10 Court Reporter and -- Court Reporter, after I say
11 that's it, if you would also get off the line. We'll
12 leave it to the parties. They can stay on as they see
13 fit.

14 All right. Then, hearing nothing else, we
15 will go off the record and terminate the call at this
16 point.

17 Thank you.

18 (Whereupon, at 12:10 p.m., the
19 proceedings in the foregoing matter were
20 adjourned.)
21
22
23
24
25

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This is to certify that the attached proceedings
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in the matter of:


Name of Proceeding: CFC Logistics

Materials License Scheduling
Conference

Docket Number: 30-36239-ML

Location: Telephone Conference

were held as herein appears, and that this is the
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Erin Lyddane
Official Reporter
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