

RAS 7587

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

Title: Private Fuels Storage

Docket Number: 72-22-ISFSI

Location: (telephone conference)

Date: Thursday, April 8, 2004

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

\* \* \* \* \*

ATOMIC SAFETY AND LICENSING BOARD

(ASLB)

\* \* \* \* \*

PRE-HEARING TELECONFERENCE

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In the matter of: ||  
PRIVATE FUELS STORAGE, L.L.C. ||  
(Independent Spent Fuel || Docket No.  
Storage Installation) || 72-22-ISFSI

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Thursday, April 8, 2004

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

BEFORE:

MICHAEL C. FARRAR      Chairman  
PAUL B. ABRAMSON      Administrative Judge  
PETER S. LAM      Administrative Judge

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

11:35 a.m.

JUDGE FARRAR: We're on the record now.

We're here at 11:33 on Thursday, April 8th, for another scheduling conference call in the PFS matter at headquarters here. This is Mike Farrar. I have with me Judge Lam and Judge Abramson and our law clerk Susan Lin. The reporter is here with us. Who do we have for the company?

MR. GAUKLER: Paul Gaukler and Sean Barnett.

JUDGE FARRAR: And for the State?

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

JUDGE FARRAR: All right. And for the Staff?

MR. TURK: Sherwin Turk and Laura Zaccari. With us are Mr. Jack Guttman, Michael Waters, Robert Shewmaker.

JUDGE FARRAR: Okay. Before we get into the major business of the day, Mr. Turk, has that letter gone out from your clients to Ms. Chancellor?

MR. TURK: Yes, it did.

JUDGE FARRAR: All right. Ms. Chancellor

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1 MR. TURK: I just saw a redraft of that  
2 letter this morning and it's my expectation it will be  
3 going out I would hope within the day. I don't see  
4 why it would not go out by the end of the week.

5 JUDGE FARRAR: Okay. I must have mumbled  
6 again because I thought I said had it gone out and you  
7 are telling me it will go out when?

8 MR. TURK: Your Honor, my comment to you  
9 is that I expect it to go out within the next day. I  
10 see no reason for it not to go out by the end of the  
11 week which is tomorrow.

12 JUDGE FARRAR: All right. Let's do this.  
13 If by Monday night that letter isn't out and in the  
14 State's hands, we will reconvene this conference call  
15 next Tuesday and we will consider the suspension of  
16 the proceeding. Now, maybe that will make sure that  
17 your clients get this out.

18 I don't want to hear about this anymore.  
19 I appreciate your representation and your good work on  
20 this but let's have you and Ms. Chancellor e-mail us  
21 on Monday that this, in fact, is a done deal. If not,  
22 we'll have an emergency phone call on Tuesday morning.

23 MR. TURK: I don't think you will need to  
24 see that, Your Honor. I don't think that will happen  
25 but I will be glad to pass that word on to my client.

1 JUDGE FARRAR: All right. Thank you.  
2 We're meeting on, of all days, April 8. Judge  
3 Abramson will not remember this but this is the day we  
4 convened our hearings in 2002 in Salt Lake and out  
5 first item of business is a motion in limine on  
6 whether we would consider what was then a very sparse  
7 amount of evidence tagging along on the issue of  
8 consequences. Here we are again. Let's see if we  
9 can't get this resolved today.

10 For the benefit of those reading this  
11 transcript, we will be talking colloquially about  
12 three issues. The issue in front of us has often been  
13 described as two-fold, probability and consequences,  
14 but it's really emerged as our footnote 110 predicted  
15 in three parts.

16 When we talk about issue No. 1, that will  
17 mean the probability of a crash into the site, the  
18 matter that we decided last March. Issue No. 2 is the  
19 probability that a crash into the site would breach of  
20 cask. Issue No. 3 is whether there would be any  
21 radiological consequences of that cask breach.

22 After the very good arguments of counsel  
23 last Tuesday, we have decided that there will be no  
24 hearing on issue No. 3 at this time. I'll give you  
25 the reasons for that and they are pragmatic rather

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1 than philosophical. At the end of that I will  
2 indicate the conditions that we intend to set on that.

3 In terms of pragmatism and efficiency of  
4 the hearing, there are really three results that can  
5 follow from trying issue No. 2 alone. No. 1 is the  
6 company wins and the case is over except for any  
7 appeals.

8 JUDGE ABRAMSON: This is Judge Abramson.  
9 By you saying the company wins, what you mean is that  
10 the product of the probability of a crash into the  
11 site times the probability of a crash into the site  
12 rupturing a cask turns out to be sufficiently low that  
13 none of the rupture events are credible.

14 JUDGE FARRAR: Exactly. No. 2 result  
15 would be that the company loses. Then we would go to  
16 issue No. 3. Just as the first result would prove  
17 very efficient, the second result would prove  
18 inefficient because then we would have to start a  
19 whole other hearing but the company understands that  
20 delay would be at their doorstep.

21 There's also a third possibility for an  
22 outcome and that's the one that's decisive in our  
23 decision today not to hear issue No. 3. That would be  
24 that the company loses on issue No. 2 and decides not  
25 to try issue No. 3 but instead either or both appeals



1 issues No. 1 and 2 or redesigns the cask. Because  
2 there's no certainty that we would then get to issue  
3 No. 3, we have decided to leave that out now and move  
4 forward as quickly as we can on the smaller issue No.  
5 2.

6 There are two other less significant  
7 reasons that support our decision. One of them is  
8 that the Applicant and Staff have said they are not  
9 ready to go to hearing on this and if we went to  
10 hearing on issue No. 3, it would have to be delayed.  
11 We will talk in a moment about the consequences of  
12 that.

13 The third, as we mentioned, the hearing  
14 date problem we have. You all recall last November we  
15 almost persuaded Judge Kline not to go on his long-  
16 planned African trip because the hearing was coming  
17 up. This hearing was supposed to be earlier this  
18 spring.

19 The Applicant and Staff have with some  
20 justification taken a long time to do their respective  
21 work and the two weeks before Labor Day present a  
22 conflict for the board members. In order to avoid  
23 that conflict, we are going to go ahead with just  
24 issue No. 2.

25 We understand in making this ruling the

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1 frustration the State expressed because they are ready  
2 to go to hearing on issue No. 3. They would say if  
3 they were allowed to speak now how come if the  
4 Applicant and Staff are not ready for hearing, that's  
5 a reason that we would consider when, in fact, they  
6 would say they were always held to the letter of the  
7 time requirements.

8 To deal with that -- well, let me say we  
9 recognize that the Applicant always has a right to  
10 change its application and come back. That's the way  
11 things have been for years and that's the way things  
12 ought to be. We're not trying here responsibility for  
13 a past action. The company is trying to get a  
14 license. If the license doesn't pass mustard, they  
15 can always change it, change the application.

16 What we are dealing with here is something  
17 different. Trying the issue of consequences is not a  
18 change in the application. The State has made a  
19 cogent argument that if they are not ready, too bad  
20 for them. What we're doing is we're not going to  
21 decide that issue today.

22 As we said, we're going to go ahead with  
23 issue No. 2 and if it later comes to the company  
24 losing and wanting to try issue No. 3, we will take  
25 briefs from you at that time on whether by not being

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1 ready at this time they have, in effect, waived their  
2 right to try issue No. 3. That will depend on  
3 language the Commission used, language we used.

4 I know we said that the company could  
5 either prove there's no likelihood of a cask breach,  
6 or they could prove no consequences. We did not say  
7 that they could do those seriatim so that remains an  
8 open issue so we are not saying at this time that  
9 there will necessarily ever be a hearing on issue No.  
10 3. If we get to that point, we will entertain  
11 arguments whether we can go ahead.

12 JUDGE LAM: This is Judge Lam. Let me add  
13 to Judge Farrar's comment before he goes further. I  
14 am fully aware of the State's argument and assertion  
15 that the consequence analysis the State has performed  
16 related with a probable event and they are not related  
17 with beyond design accidents.

18 With this awareness, I do fully agree with  
19 Judge Farrar that for the matter of efficiency we  
20 should now only hear issue No. 2.

21 JUDGE ABRAMSON: And this is Judge  
22 Abramson. Let me just say one thing about that  
23 comment that Judge Lam made. It was clear in the  
24 transcript from the last conference call, that  
25 unfortunately I could not participate in, that the

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1 State's view is that there are events which they  
2 believe are probable enough that the consequences  
3 would need to be addressed.

4 By addressing the probability of the  
5 series of events that will be discussed in this  
6 hearing, the State will have an opportunity to  
7 demonstrate that the events that it wants to consider  
8 are probable enough that they would reach the  
9 threshold of probability. This is the perfectly  
10 appropriately approach to addressing the issues that  
11 need to be addressed.

12 JUDGE FARRAR: All right. I'll entertain  
13 any not argument about the wisdom of what we've just  
14 said but any questions that are clarifying in nature  
15 if there is anyone who doesn't understand what we've  
16 said. All right. Hearing none, we'll move along.

17 I take it now with the elimination for  
18 now, or for all time, of the issue No. 3, consequences  
19 issues, we now have an agreed-upon hearing schedule  
20 that would be the first column of that document that  
21 we got a week or so ago -- couple of weeks ago, Ms.  
22 Chancellor?

23 MS. CHANCELLOR: I would like to hear from  
24 Mr. Turk, Your Honor. I believe he may have something  
25 to say about the Staff report.

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1 JUDGE FARRAR: Wait a minute, Ms.  
2 Chancellor. Before we get to that, I did forget to  
3 mention one thing. In addition to what we said about  
4 not deciding now whether there ever will be an issue  
5 No. 3, we will permit you to make at the trial an  
6 offer of proof as to what you would have shown on  
7 issue No. 3.

8 Offers of proof are covered in 10 C.F.R.  
9 Part II, Section 2.743(e). I think virtually the same  
10 provision appears in the new rules. We're governed by  
11 the old rules but it appears in the new rules at, I  
12 believe, 2.337(c) and 2.711(g). Between those two I  
13 think you have essentially the same provisions so we  
14 will allow you to make an offer of proof, a very brief  
15 one if you desire, when the trial starts.

16 You were saying, Ms. Chancellor, you want  
17 Mr. Turk to address the scheduling matter?

18 MS. CHANCELLOR: Yes, please, Your Honor.

19 MR. TURK: Thank you very much, Your  
20 Honor. I left word with Ms. Chancellor this morning  
21 and she was able to call me back. We had a brief  
22 conversation before this conference call. I also  
23 spoke briefly with Mr. Gaukler to alert them to the  
24 fact that the Staff will not be able to file this  
25 report on April 20th so I have given them a brief

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1 heads up on that but I did not have an opportunity to  
2 go into length any reasons for that or to give them a  
3 projected date that we believe we will be able to.

4 What I would like to propose is that the  
5 parties have an opportunity to discuss this latest  
6 development and that we be allowed to come back to you  
7 with a joint schedule proposal after we've had an  
8 chance to talk to talk among ourselves about the  
9 specifics.

10 JUDGE ABRAMSON: How late do you think  
11 it's going to be, Mr. Turk?

12 MR. TURK: We're looking at filing  
13 approximately three weeks later than we had committed  
14 to. That would be May 11th.

15 JUDGE ABRAMSON: And you think that is a  
16 commitment you can make at this point or do you think  
17 that date may again move?

18 MR. TURK: I've been through extensive  
19 discussions with the Staff about that very point this  
20 morning and we believe we can make it without any  
21 further extensions.

22 JUDGE ABRAMSON: What was it, May what?

23 MR. TURK: May 11th.

24 JUDGE FARRAR: Mr. Turk, you know the  
25 precedence and folklore here is that the Board does

1 not direct the Staff's work. The Commission has made  
2 that clear in no uncertain terms but I'll ask you the  
3 question we've asked you before.

4 Whether this is a resource matter, we  
5 would want, for example, Judge Bollwerk to write to  
6 the Chairman of the Commission and say this case is  
7 being delayed because the Staff doesn't have  
8 sufficient resources and that is something that the  
9 Commission could deal with. Do you want us to take  
10 any kind of action like that?

11 MR. TURK: I don't believe you need to.  
12 Of course, the Board is always free to express its  
13 views and its opinion when it establishes a schedule,  
14 but the resources are there. It's just a matter of  
15 getting all the pieces together, having the team able  
16 to review all the different pieces and come to a  
17 position where they are satisfied that the product is  
18 their best product. We think we can do that if we  
19 file three weeks behind the current projected date.

20 JUDGE ABRAMSON: Let me ask you all then,  
21 assuming that we started on May whatever it is after  
22 the 11th instead of April 20 for the date of our --  
23 the beginning of our schedule. Would you see the time  
24 periods that you've allocated remaining the same?  
25 Would it just slip the schedule by three weeks? Or is

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1 there something else that you think needs to be  
2 modified in the schedule you've generated?

3 MR. TURK: We don't see that anything new  
4 would be added into the schedule. In light of the  
5 Board's ruling this morning that we will not be  
6 litigating dose consequences and criticality, the need  
7 for four weeks of depositions may shrink down to  
8 three. But that would be subject to the parties  
9 discussion their scheduling needs after we break from  
10 this conference call.

11 MS. CHANCELLOR: Your Honor, this is  
12 Denise Chancellor. We had tentatively arranged to  
13 commence the depositions the first week of May and we  
14 had most of our experts available on the factual  
15 analysis and had them pencil in those dates. I can't  
16 commit to their availability for specific dates  
17 sometime after May 11 or whenever we commence  
18 depositions after the Staff files its report. I think  
19 the potential that the schedule could slip given the  
20 number of experts that need to coordinate their  
21 schedule.

22 JUDGE ABRAMSON: And you could not start  
23 those depositions prior to having the State's report?  
24 Is that your view? I'm sorry, the Staff's report?

25 MS. CHANCELLOR: I'm going to let Mr.



1 Soper address that, Your Honor.

2 MR. SOPER: Your Honor, in response to  
3 your question, I don't see how without taking  
4 depositions over again. It's probably going to be the  
5 central feature of the case. I would also like to say  
6 that like the Staff, the State's experts are  
7 continuing to run analyses on the latest PFS  
8 information.

9 The reason changes and so forth. Although  
10 we don't contemplate, and I don't know if we are even  
11 entitled to file a second report, we will have  
12 additional information that we will be furnishing to  
13 the parties before depositions and that work is  
14 ongoing.

15 JUDGE FARRAR: All right.

16 MR. GAUKLER: Your Honor, Mr. Gaukler  
17 here.

18 JUDGE FARRAR: Yes.

19 MR. GAUKLER: Mr. Turk had mentioned to me  
20 the possibility the report may slip but I didn't know  
21 it was going to slip, in fact. Obviously, we are very  
22 disappointed. I've not had a chance to talk to my  
23 client at all about this which I want to do. The  
24 client is very set in trying to move forward as  
25 quickly as possible with everything. We understand

1 where the Staff is also, though. I just need to talk  
2 to my client before really going any further.

3 JUDGE FARRAR: Further in talking about  
4 schedule?

5 MR. GAUKLER: Yes.

6 JUDGE FARRAR: All right.

7 JUDGE ABRAMSON: So it seems to us that  
8 the answer is -- that the right procedure here is for  
9 the three of you to discuss what the schedule would be  
10 assuming you started May 11th.

11 JUDGE FARRAR: I agree with Judge Abramson  
12 but I think there's some things we can use this  
13 conference call to get settled and move along. You  
14 can then work into your thinking. I take it, you  
15 know, Judge Abramson talked about starting depositions  
16 now. In addition to the reasons Mr. Soper gave, I  
17 take it because we have safeguards here, I think  
18 you're limited in doing repeat depositions.

19 As I understand it in the past, you have  
20 sometimes deposed somebody and if some other questions  
21 came up, you would get the person on the phone and  
22 have a mini phone deposition. Of course, you are  
23 precluded from doing this so I think scheduling of  
24 these witnesses so they can be deposed in a full and  
25 comprehensive manner.

1 MR. GAUKLER: Your Honor, Mr. Gaukler  
2 here. There will be one group of depositions we might  
3 be able to do beforehand which would be the speed and  
4 angle which we had talked about previously potentially  
5 doing earlier. I don't know where the Staff's report  
6 is on that. My understanding is where the report is  
7 on the structural issue so if that came out early, we  
8 could do depositions on that.

9 JUDGE FARRAR: Mr. Turk, is that still  
10 likely to come out ahead of time or is that also  
11 targeted now for May 11th?

12 MR. TURK: Oh, no. That will certainly  
13 come out before May 11th. I will have to get you a  
14 more precise date and give that to PFS and the Staff.  
15 I think that would be a good way to advance. Let's  
16 get those depositions over with while we are waiting  
17 for the structural work to be finished.

18 JUDGE FARRAR: Okay. Before we have any  
19 additional thoughts, let's go back to the question  
20 we've been asking you for six months and the question  
21 I vowed we would never do a schedule without getting  
22 an answer to after what you all did do us in Salt Lake  
23 telling us it was a two-week hearing and not saying  
24 how many witnesses there were.

25 Mr. Gaukler, how many witnesses are you

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1 going to have? And if there is a panel that really is  
2 one witness, tell us that.

3 MR. GAUKLER: I've talked some with Ms.  
4 Chancellor. I did not talk with Mr. Turk. Ms.  
5 Chancellor and I kind of divided up the issues by  
6 categories which I think Your Honors had asked for.

7 JUDGE FARRAR: Yeah. Do you have that for  
8 us?

9 MR. GAUKLER: I have mine which I think is  
10 pretty much identical to Ms. Chancellor's. I can put  
11 that on the table if that would be useful.

12 JUDGE FARRAR: Yes, it would.

13 MR. GAUKLER: Okay. I have speeds and  
14 angles. We have two witnesses but they will be  
15 testifying as a panel so we have one panel.

16 JUDGE FARRAR: Okay.

17 MR. GAUKLER: The State has one witness.  
18 I believe the Staff has two witnesses. Again, I  
19 believe they would testify as a panel. Mr. Turk can  
20 correct me if I'm wrong.

21 MR. TURK: Two witnesses, one panel.

22 JUDGE FARRAR: Okay.

23 MR. GAUKLER: That's speeds and angles we  
24 three witnesses total. I mean, two panels total.

25 JUDGE FARRAR: Right.

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1 MS. CHANCELLOR: I'd just like to mention  
2 that speed and angle wouldn't necessarily be on a  
3 panel with the ordnance witness.

4 MR. GAUKLER: Yes. That's one thing we  
5 will have to work out with Mr. Turk and Ms.  
6 Chancellor. There should be an angle person who is  
7 going to be on the same panel as Lt. Col. Horstman is.  
8 I think the Staff's person or Mr. Horstman is going to  
9 be part of the structure so there may be some -- we  
10 have to do something -- some work on that. I think  
11 the best thing in that respect would be to wait until  
12 we saw the report of the Staff.

13 Once we saw the report of the Staff, we  
14 might be able to divide the issues up such that it  
15 made sense to address some ordnance issues with speeds  
16 and angles and maybe other ordnance issues with  
17 structural but we just have to wait and see.

18 JUDGE FARRAR: All right. That's fine.  
19 This is good for present purposes.

20 Go ahead, Mr. Gaukler.

21 MR. GAUKLER: Then we had just fuel fire  
22 as the next category. We broke that out as a separate  
23 category just because if do that, we wouldn't have to  
24 have these witnesses sit around throughout all the  
25 remainder of the hearing or the structural part of the

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1 hearing. We would envision these being relatively  
2 short and on and off. PFS has one witness, the Staff  
3 has one witness, the State right now has no witnesses.

4 JUDGE FARRAR: All right.

5 MR. GAUKLER: Then on the next I have  
6 ordnance. The State has one witness who would be on  
7 the same panel as Lt. Col. Horstman and we have one  
8 witness. I don't know, like I say, how that would  
9 break out, how we would hear that. We'll wait until  
10 we get the Staff report. I think we can make a better  
11 informed judgment at that point in time.

12 MR. TURK: I'm sorry, Paul. You broke up.  
13 We couldn't hear which issue you were on there.

14 MR. GAUKLER: It was ordnance. On  
15 ordnance. Excuse me. I have a cold, too.

16 MR. TURK: No, that's all right. I  
17 thought you had gone to a new issue. That's all  
18 right.

19 MR. GAUKLER: Ordinance, the State has one  
20 witness, we have one witness. The State has indicated  
21 that its ordinance witness is going to be on the same  
22 panel as the aircraft speed and angle witness. Our  
23 ordinance witness would not be on the same panel as our  
24 speed and angle witnesses. That is the one category  
25 -- ordinance is the one category I think we'll have to

1 wait until we saw the Staff's report before making a  
2 final determination how that fit into the hearing.

3 The next category we have is structural  
4 which is the big category. We have two witnesses. We  
5 have Dr. Soler with respect to the casks. We have  
6 Bruce Ebberson with respect to the Canister Transfer  
7 Building.

8 We would present them separately. The  
9 Staff has four or five witnesses -- I think four  
10 witnesses. Two are from Sandia and two are from the  
11 Staff. I don't know how they plan to present them, if  
12 they plan to present all four as a panel or have the  
13 Sandia folks testify separated from the staff.

14 JUDGE FARRAR: Mr. Turk, can you speak to  
15 that?

16 MR. TURK: Yes. We are planning to have  
17 four witnesses, as Mr. Gaukler said, two from Sandia,  
18 two from the Staff. Our current thought is to have a  
19 single panel with all members on it. Sandia only  
20 addressed the casks. The Staff addressed both the  
21 casks and the CTB. It's possible they can divide into  
22 two panels if that makes it more efficient for the  
23 hearing.

24 JUDGE ABRAMSON: It might be nice to have  
25 these treated as isolated issues so the record can be

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1 separated and when you start thinking about doing your  
2 key determinations, you can have an easy access to the  
3 flow.

4 MR. GAUKLER: I, myself, would like to  
5 have the CTB separated from the casks because they  
6 perceive the casks being by far the larger issue. If  
7 we were to try the CTB separately as a subpart going  
8 to our witness, Bruce Ebberson on the CTB and the  
9 staff testimony on the CTB, then I could let Mr.  
10 Ebberson go home.

11 JUDGE ABRAMSON: How does that work for  
12 the State?

13 MS. CHANCELLOR: We have the same panel  
14 for casks who would possibly address the CTB issue.  
15 Judge Farrar, if you will recall, I sent you a list of  
16 witnesses on February the 24th for that conference  
17 call. If you still have that, I think it's easy to  
18 follow, what witnesses are and how they break down.  
19 Let me just put the State's spin on this.

20 JUDGE ABRAMSON: And, Ms. Chancellor, we  
21 do not have that in front of us at the moment so you  
22 will have to walk us through it.

23 MS. CHANCELLOR: Okay. The State's  
24 witnesses have decreased from seven to six. Panels  
25 have gone from four panels to three panels. The way



1 we see the hearing breaking down is the first days of  
2 the hearing would be speed and angle, ordnance, and  
3 jet fuel fires.

4 We would each put on our case on that and  
5 then dispose of that. Then we would go to the  
6 structural part. I had anticipated that we would do  
7 casks and CTB just as all part of the one issue  
8 because our panel and the Staff panel would both be  
9 addressing CTB but we could make arrangements with Mr.  
10 Ebberson. Then the final phase of the hearing would  
11 be on probability.

12 JUDGE ABRAMSON: Okay. Ms. Chancellor,  
13 Judge Abramson. Let me ask you just so I understand.  
14 You said you had six witnesses and three panels. Does  
15 that include your panels for speed and angles, jet  
16 fuel fire, and ordnance or is that separately six  
17 witnesses and three panels for structural?

18 MS. CHANCELLOR: No. There's a total for  
19 the entire hearing of six witnesses. The panels would  
20 be one panel of two witnesses, Horstman and McDonald  
21 on speed and angle and ordnance. We don't have a  
22 witness on jet fuel fire. We would make our case on  
23 cross examination there.

24 For structural we have the three Purdue  
25 witnesses, Hoffman, Sozen, and Kilic. They would

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1 address both casks and to the extent that there was  
2 anything on the CTB they would address that so that's  
3 five witnesses. The sixth witness would be Dr. Thorne  
4 on probability.

5 JUDGE ABRAMSON: Okay. So for structural  
6 you have three witnesses you are going to put on as  
7 one panel?

8 MS. CHANCELLOR: That's correct.

9 JUDGE ABRAMSON: And their focus is  
10 primarily casks but they will deal with CTB as you  
11 have input. Is that right?

12 MS. CHANCELLOR: To the extent that they  
13 is anything to address on the CTB they would address  
14 it. We would also make a case for cross examination.

15 JUDGE ABRAMSON: Okay.

16 JUDGE FARRAR: Mr. Gaukler, Ms. Chancellor  
17 had as her fifth issue probability. Is that how you  
18 and Staff also see it?

19 MR. GAUKLER: Yes, that's how I see it.

20 JUDGE FARRAR: And how many do you have?

21 MR. GAUKLER: We have one witness, Dr.  
22 Cornell.

23 JUDGE FARRAR: Okay. And Staff?

24 MR. TURK: We see it the same way, Your  
25 Honor. We have one witness, Dr. Dennis Damon.

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1 JUDGE ABRAMSON: And the State has one.

2 MS. CHANCELLOR: Yes, Dr. Thorne.

3 JUDGE ABRAMSON: All right then.

4 JUDGE FARRAR: Let me ask you when you  
5 depose witnesses when they are appearing as a panel,  
6 do you depose them as a panel?

7 MR. GAUKLER: That's the intent, Your  
8 Honor. Yes.

9 JUDGE FARRAR: All right.

10 MS. CHANCELLOR: Yes, that's our intent

11 MR. GAUKLER: Okay. So then we all have  
12 our notes here. Mr. Gaukler, you then have a panel  
13 for -- let's adopt the names you all used. For speeds  
14 and angles you have one panel. For jet fuel you have  
15 one, ordnance one, structural two.

16 JUDGE ABRAMSON: Two witnesses but you put  
17 them on as a panel?

18 MR. GAUKLER: Structural we'll put them on  
19 separately.

20 JUDGE FARRAR: Okay. And one on  
21 probability. By my count that's six.

22 MR. GAUKLER: I believe that's correct,  
23 Your Honor. Yes.

24 JUDGE FARRAR: Staff has one on speeds and  
25 angles, one on jet fuel, one on structural, and one on

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1 probability. That's four.

2 MR. TURK: That's four, although our  
3 ordnance is part of our structural so if we had to  
4 break that out that would make it five.

5 JUDGE FARRAR: Okay.

6 MR. TURK: And if we took Sandia out or if  
7 we took casks and CTB and split them, that could put  
8 it up to six. Depending on how the parties agree on  
9 the course of the presentation of panels, there are  
10 either four or as many as six.

11 JUDGE FARRAR: All right. And the State  
12 has one, two, three. All right. So then we have  
13 anywhere from 13 to 16 panels, some panels being just  
14 one witness and some panels maybe more. Then I ask  
15 you how under the schedule you sent us before you had  
16 18 days for depositions and I asked you how you are  
17 going to do 16 panels -- depose 16 panels in 18  
18 calendar days or 19 calendar days given both the  
19 length of the deposition and the logistics.

20 I assume you don't have these people  
21 waiting in the green room like they're going to appear  
22 on a TV show. There are logistical problems in  
23 getting them there so I ask you to think before you  
24 come back to us about whether 19 calendar days is  
25 really sufficient to do as many as 16 panels.

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1 Second observation we would make is let's  
2 make sure we're clear on these dates. We will not be  
3 in session the week of August 23rd and the week of  
4 August 30th. Of course, Labor Day is the 6th. It  
5 seems to me by the sub-issues you've come up with --

6 JUDGE ABRAMSON: And the three-week delay.

7 JUDGE FARRAR: And the delay, depending on  
8 what happens, we may not be able to start until after  
9 Labor Day but there do seem to be discreet things we  
10 could do before that two-week break where issues could  
11 be separated and we could use time.

12 JUDGE ABRAMSON: Right. We could do jet  
13 fuel fires.

14 JUDGE FARRAR: We could do the first three  
15 issues before that break. That would make sense. We  
16 wouldn't be quitting in the middle.

17 JUDGE ABRAMSON: Yes, one or any number of  
18 them depending on how the schedule comes back.

19 JUDGE FARRAR: One thing I'll tell you, if  
20 you've got 16 panels, this is not a three-week  
21 hearing.

22 MR. TURK: I think we have 15 panels, Your  
23 Honor.

24 JUDGE FARRAR: Pardon me? I've got six  
25 from the company, as many as six from the Staff, and

1 three from the State. I'm sorry, 15. Any place I  
2 said 16, I meant 15. So I don't know that 15 is a  
3 three-week hearing. Following our old rule that no  
4 matter -- well, let me not say how long it would be  
5 until we start talking cross examination.

6 MR. GAUKLER: Some of the issues will be  
7 big, Your Honor. I would say structural is going to  
8 be the biggest. Jet fuel fires, speeds and angles,  
9 and ordnance will be relatively shorter.

10 JUDGE FARRAR: Here's what we want to do  
11 the next time we talk to you. Let's allow for 15  
12 panels rather than let's plan that we may only have  
13 13. Let's go with 15 and plan your deposition time  
14 period that way and the hearing that way. Anyway you  
15 want to break it before and after that two-week hiatus  
16 at the end of August that might make sense.

17 You separate the issues and you don't have  
18 to log your documents back and forth across the  
19 country if you're the State. Oh, by the way, it does  
20 appear that the NRC property people will be able to  
21 furnish all the three parties a -- loan them a locked  
22 cabinet for their little rooms here off the hearing  
23 room so you will be able to store documents here.

24 I know that doesn't solve your off-site  
25 problem but at least while you're on-site you'll each

1 have a cabinet here. That gives us -- I appreciate  
2 all of you considering the issues this way because  
3 this certain helps us in terms of both planning and  
4 management of the hearing.

5 Let's talk about cross examination and  
6 let's go off the record while I ask you to get out a  
7 piece of paper and put down a matrix that we design  
8 here because I think that matrix will help us talk  
9 about cross examination planning. Let's go off the  
10 record. I'll tell you what I want.

11 (Whereupon, at 12:11 a.m. off the record  
12 until 12:13 a.m.)

13 JUDGE FARRAR: Let's go back on the  
14 record.

15 We've just asked the parties for purposes  
16 of discussion to do a matrix with three columns headed  
17 Company Witnesses, Staff Witnesses and State  
18 Witnesses. In the first column we have two entries,  
19 Cross Examination by the State and Inquiry by the  
20 Staff. The second column we have two entries, Cross  
21 Examination by the State and Inquiry by the Company.  
22 And in the third column we have two entries, Cross  
23 Examination by the Company, Cross Examination by the  
24 Staff.

25 We're nearly fully committed to the notion

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1 of managing this hearing, not only through cross  
2 examination plans, but cross examination time lines.  
3 In developing a fair allocation of time, it seems to  
4 us that four of those six entries involve real --  
5 well, let me start at the beginning. We're assuming  
6 for present purposes that the Staff reports will come  
7 out in favor of the company, because if they don't, we  
8 assume what will happen is the usual, the company  
9 would go back to the drawing board. So it's not  
10 prejudging or it's not saying the Staff isn't doing  
11 its homework.

12 It's saying that sooner or later when we  
13 get to this point, as always is the case, the Staff is  
14 on the side of the company at the hearing, because if  
15 they weren't, the company would go back to the drawing  
16 board and do something else. If something else  
17 emerges, we'll deal with it.

18 MR. TURK: And, Your Honor, just for the  
19 record, let me tell you that the Staff is working to  
20 now point to that conclusion with respect to these  
21 issues.

22 JUDGE FARRAR: Okay. Thank you, Mr. Turk.  
23 So what you have then is two parties on one side. I  
24 think in our matrix we drew a line between the first  
25 two columns and the third one. You have two parties



1 on one side, one on the other. Four of the six  
2 examinations of witnesses are what I would call real  
3 cross examination. The other two we have labeled  
4 inquiries, because it seems to me the Staff asking  
5 questions of company witnesses and the company asking  
6 questions of Staff witnesses certainly does not get in  
7 any time allocation equal treatment with the other  
8 four. Otherwise, you would have one side having twice  
9 the cross examination of the other side's case.

10 JUDGE ABRAMSON: Your Honor, also, because  
11 it is largely not adversarial.

12 JUDGE FARRAR: Exactly. So we would like  
13 you to look at that matrix and if we decide that this  
14 is a three week or a four week or a five week hearing,  
15 I think we've found that going late in the evening  
16 doesn't make sense in a long hearing, and when you add  
17 in breaks and lunch, you're really talking about six  
18 hours a day, most of which is well, will maybe allow  
19 two-thirds or three-quarters for cross examination as  
20 opposed to direct and redirect, but we'll leave that  
21 up to you. And so you come up with a total number of  
22 hours of cross examination over the course of hearing  
23 a certain number of witnesses and those should be  
24 allocated essentially half to one side and half to the  
25 other, although you have to fudge that a little to

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1 allow for these non-adversarial inquiries, but allow  
2 for them ever so slightly.

3 I'm not asking you yet if you agree with  
4 us, but does everyone understand the concepts we have  
5 just laid out? Mr. Gaukler?

6 MR. GAUKLER: Yes, I do. I have one  
7 question in terms of redirect how that fits into this  
8 scheme here that you have outlined.

9 JUDGE FARRAR: Yes, and, of course, we're  
10 assuming here we have the prefiled rebuttal.

11 MR. GAUKLER: Right.

12 JUDGE FARRAR: But you are right, redirect  
13 can be substantial, so work that into your  
14 discussions.

15 JUDGE ABRAMSON: But the concepts should  
16 be the same.

17 JUDGE FARRAR: Concepts are the same.

18 MR. GAUKLER: Right.

19 JUDGE FARRAR: And the rough time in  
20 allocations. It was a good question.

21 JUDGE ABRAMSON: There should be precious  
22 little redirect on the inquiry side, right?

23 JUDGE FARRAR: Right. Exactly. Mr. Turk,  
24 do you understand?

25 MR. TURK: No questions, Your Honor.

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1 JUDGE FARRAR: Okay. And, Ms. Chancellor?

2 MS. CHANCELLOR: So it's basically half of  
3 Utah, half the time for Utah, half the time for PFS  
4 and Staff, plus a little bit more for PFS and Staff  
5 with respect to the inquiry aspect of the proceeding,  
6 and then I think Mr. Soper has a question.

7 JUDGE FARRAR: Yes, sir?

8 MR. SOPER: If I could make an  
9 observation, Your Honor. Thinking about the last  
10 hearing, it seems to me that doing this on the basis  
11 of allocating time.

12 JUDGE FARRAR: Well, wait, Mr. Soper. The  
13 first question is do you understand what we've laid  
14 out not whether you agree with it, but do you  
15 understand what we have said?

16 MR. SOPER: Yes, maybe this isn't the  
17 appropriate time for my comment.

18 JUDGE FARRAR: Well, no, no.

19 MS. CHANCELLOR: But it is a half plus for  
20 PFS and the Staff to take into account the inquiry  
21 part of their cross.

22 JUDGE FARRAR: Right. Except I would add  
23 that at that inquiry, we will be perhaps more vigilant  
24 than we were last hearing to make sure that is a  
25 legitimate inquiry to resolve some possible

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1 inconsistency, rather than another chance just to have  
2 the witness say the same thing over again.

3 JUDGE ABRAMSON: Yes, and this is Judge  
4 Abramson. One of the things that we expect to be  
5 vigilant on generally is we're not going to be  
6 terribly tolerant of repetitiveness and we're not  
7 going to be terribly tolerant of verbally stating what  
8 is already in written records. You can state what you  
9 need to state to get the background, but we don't want  
10 to hear a repetition orally of everything we have been  
11 reading in writing.

12 JUDGE FARRAR: I think that we all endorse  
13 that, and I think one of the reasons for laying out  
14 the hearing with these now five sub-issues is, you  
15 know, in Salt Lake we took issues out of turn. We  
16 went within issues out of turn. And I think by  
17 organizing this hearing, we can accomplish perhaps  
18 better than we did there exactly what Judge Abramson  
19 just said.

20 JUDGE ABRAMSON: While you are on that  
21 topic, Judge Farrar, let me just ask the parties. You  
22 have laid out five sub-issues. When we talk about key  
23 determinations, I would expect that within each of  
24 those five issues there are further subdivisions. Is  
25 that accurate? Particularly, with structural, but I

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1 would think with speed and angles there are certain  
2 events you are going to look at for one set of speed  
3 and angles and you're going to want to make different  
4 sets of conclusions and difference of boarding facts.  
5 Is that accurate?

6 MR. GAUKLER: I believe that would be  
7 correct, Your Honor, yes.

8 JUDGE ABRAMSON: Okay.

9 MS. CHANCELLOR: Excuse me, Your Honor.  
10 What are the five sub-issues, just so that we're clear  
11 on that?

12 JUDGE ABRAMSON: The five sets you laid  
13 out earlier for your depositions.

14 JUDGE FARRAR: Well, there is a little  
15 disagreement among the parties. I was going with the  
16 ones the companies had, speeds and angles, let's call  
17 that sub-Issue A. B is the jet fuel fire/fires. C is  
18 ordnance. D is structural. And E is probability.  
19 Now, if you all want to agree, and I know you have  
20 your witnesses arranged differently, if you want to,  
21 you know, work within those or further subdivide them,  
22 you are free to. But those are the ones I was talking  
23 about now. And I know the State may have its  
24 witnesses or panels take up part of one and part of  
25 the other, but just for present purposes, those seem

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1 to be the subjects in front of us.

2 MS. CHANCELLOR: Okay. And you wouldn't  
3 treat CTB separate from casks?

4 JUDGE FARRAR: Well, I'm saying that --

5 JUDGE ABRAMSON: Within structural you may  
6 very well want to subdivide. You may want to talk,  
7 for example, in casks. You may want to talk about  
8 direct impact. You may want to subdivide it into sets  
9 that talk about tip-over and sets that don't, but  
10 that's up to you. But I'm thinking that when you  
11 present your key determinations, it would be very  
12 helpful to us if you've divided them into the way you  
13 see your particular case laying out, starting from  
14 these major categories and breaking them down into  
15 subsets.

16 JUDGE FARRAR: Ms. Chancellor, if you  
17 think it would be a good way to focus things right  
18 now, we can make it 6, you know, have structural casks  
19 and stuff.

20 MS. CHANCELLOR: No, no, no, Your Honor.  
21 I just wanted to be clear what you meant by side sub-  
22 issues, so that we knew what the reference was.

23 JUDGE FARRAR: Okay.

24 MS. CHANCELLOR: It may be more useful for  
25 the parties to hash this out, to figure out what the

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1 best breakdown is.

2 JUDGE FARRAR: Right. And as usual, we  
3 know if you come up with a better plan, you know,  
4 we're happy to endorse it. We just want to make sure  
5 you know what we are thinking. Well, then if everyone  
6 understands what we intended to say about the cross  
7 examination time, then let's start, Mr. Soper, with  
8 you on your -- and I don't know that any hearing has  
9 ever been run this way. We believe it would provide  
10 a good management mechanism, because, in effect, it  
11 turns the management over to you.

12 You know, rather than us saying you've  
13 gone too long on this witness, if you have 30 hours,  
14 you know far better than us you know which witnesses  
15 you need to challenge the most and we're happy to let  
16 you divide that time. But we do want to throw this  
17 out now, so that we could hear your observations or  
18 criticisms or suggestions. So, Mr. Soper, why don't  
19 we start with you?

20 MR. SOPER: Thank you, Your Honor. I'm  
21 not saying at this time that this concept is now  
22 workable, but I do have this concern. I'm thinking  
23 about the last hearing. There was occasions where  
24 given a block of time that you say the cross examining  
25 party can manage any way they want, I'm afraid that on

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1 occasion, in effect, it really puts the opposing  
2 witness in management of your time and in control of  
3 the number of questions and the length of the answer.

4 And I recall occasions trying to get an  
5 answer that appeared obvious, I think maybe to  
6 everybody in the room, we could not get that answer,  
7 even after having repeating the question, restating it  
8 a number of times. And I remember the Board even  
9 getting involved saying just a minute now, everybody  
10 be quiet. I want the witness to answer this question.  
11 And, in fact, it was just a simple straightforward  
12 question, yet because of the witness, it would burn up  
13 a number of questions and a lot of time.

14 And I understand that the Board, Judge  
15 Abramson said that the Board was going to be vigilant  
16 and maybe that will solve the problem. But that's my  
17 concern, Your Honor.

18 JUDGE FARRAR: That's well stated. I can  
19 say and I mean this as a sort of a compliment, Judge  
20 Abramson is one tough cookie. So I think we will be  
21 alert to this, but you've put your finger on a  
22 problem, Mr. Soper.

23 JUDGE ABRAMSON: We'll be sensitive to it.

24 JUDGE FARRAR: There is also a logistical  
25 problem, you know, we are not going to have a chess



1 clock, but maybe, in effect, the chess clock concept  
2 could be used. If you run into this situation and it  
3 takes you 20 minutes to extract what should have taken  
4 2 minutes, that doesn't come out of your time. In  
5 fact, maybe to make witnesses and their counsel doubly  
6 sensitive, not only does it not come out of your time,  
7 it comes out of their time. Now, that's easier said  
8 than managed, but you've certainly put your finger on  
9 a good point, and I think the part of the counsel will  
10 start working with their witnesses beginning today, if  
11 not today, tomorrow and tell them come up there and  
12 answer the question. You can give any explanation you  
13 want, but listen to the question and answer it and  
14 then we'll go from there and don't waste our time.

15           You know, one thing that happens when a  
16 witness wastes your time like that, I know we're not  
17 a jury and I know that demeanor credibility is not  
18 usually an issue in these hearings, but when a witness  
19 appears to be dodging the answer, it creates in our  
20 minds some suspicion that there is something that  
21 needs to be dodged. And so I think this is something  
22 you can work on with Mr. Soper. That's why we wanted  
23 to throw this concept out this early in the game,  
24 because the point you raised, I suppose all counsel  
25 could raise, and there were probably offending

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1 witnesses on all sides, but you've certainly put your  
2 finger on the difficulty of this concept.

3 The beauty of this concept is it keeps the  
4 hearing within the time frame that we all agree upon,  
5 whether that is two weeks or six weeks, and it allows  
6 you to say not all witnesses are equal and here is the  
7 person I really need to challenge and this other  
8 person I'm only working at the margins and I'll, you  
9 know, forego that. It makes you think about your case  
10 from the very beginning.

11 JUDGE LAM: And this is Judge Lam. I  
12 fully agree with that. I do think this concept is  
13 good, but it's not enforceable, because absent the  
14 timekeeper, there is no way we enforce it, I mean,  
15 totally, but conceptually it just crystalize  
16 everybody's thinking as to how much time eaten up.  
17 For four weeks hearing, it is only a total of about  
18 120 hours. If you divide that by three parties, each  
19 party have only about 40 hours total in presenting  
20 your case, in cross examination, in redirecting, in  
21 rebuttal, in everything. Everybody only about 40  
22 hours. So this concept would perhaps help everybody  
23 focus on what needs to be done first.

24 JUDGE FARRAR: Or alternatively, let's  
25 agree at the beginning it is not a four week hearing,

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1 it's an eight week hearing.

2 JUDGE ABRAMSON: Right.

3 JUDGE FARRAR: In other words, you know,  
4 as I said, we fell into that trap. When I came on to  
5 the case, you all had agreed on a schedule that in  
6 retrospect was absolutely impossible to meet.  
7 Couldn't we have managed it more tightly with the  
8 issues, you know, we're trying to accommodate a lot of  
9 witnesses schedules and taking issues out of order and  
10 that makes management of time a little more difficult.  
11 This when we think by taking them in the order in  
12 which you have laid out or either way you have laid  
13 out these sub-issues, makes management a lot better.

14 Now, there is other complications. You  
15 know, as you have noticed, the Board tends to ask a  
16 lot of questions.

17 JUDGE ABRAMSON: That's probably only  
18 going to get worse.

19 JUDGE FARRAR: I was going to compliment  
20 Judge Abramson again, but he has already complimented  
21 himself in that regard.

22 JUDGE ABRAMSON: I don't think that was a  
23 compliment.

24 JUDGE FARRAR: And so we --

25 JUDGE ABRAMSON: We need to allocate time

1 to us.

2 JUDGE FARRAR: And obviously, some  
3 questions of the Board, you know, become, in effect,  
4 part of your cross examination, because we're just  
5 looking for clarifications, but others are inquiries  
6 that we are off on our own, so you'll have to allow  
7 for that. And as you have noticed, we tend not to do  
8 what some Boards do, hold all our questions until the  
9 end. We find it makes more sense when a thought is on  
10 the table that we want to make sure that we understand  
11 it at the time, rather than come back here two hours  
12 later.

13 JUDGE ABRAMSON: Let me just say something  
14 in response to this whole discussion about trying to  
15 allocate time. We've set up five, what you're  
16 calling, sub-issues, which I think of sort of as  
17 general categories of issues that are going to be  
18 discussed at the hearing. And as the parties prepare  
19 their testimony, they are going to be focusing on  
20 subsets of each of these categories, and it may help  
21 if you outline your subsets early to think about how  
22 much time it will take you to put on your witnesses  
23 for each subset, rather than thinking about it in  
24 general.

25 JUDGE FARRAR: I think that's an excellent

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1 suggestion. Mr. Soper, was that the only observation  
2 you wanted to make on this point at this time?

3 MR. SOPER: Actually, there was another  
4 part to it, Your Honor, if I may?

5 JUDGE FARRAR: Yes, go ahead.

6 MS. CHANCELLOR: Go ahead.

7 MR. SOPER: And that is -- and I  
8 appreciate the Board's acknowledgement that cross  
9 examination by the Staff and by the company of each  
10 other's witnesses is not truly cross examination, but,  
11 as we would expect, easy questions to emphasize the  
12 testimony that has already been presented. So I  
13 appreciate the Board's acknowledging that. But even  
14 so, because the law in these cases is that the  
15 intervenor may make the entire case on cross  
16 examination, rather than direct evidence, there may be  
17 a need for the State as the intervenor to have some  
18 additional time over the company.

19 And we do have direct evidence that we are  
20 presenting, but we do intend to make a fair amount of  
21 our points in cross examination. And I'm wondering  
22 because of that distinction, that legal distinction in  
23 the status of the parties, if the State ought to be  
24 allocated maybe, I would suggest, an additional 15 or  
25 20 percent more than the company.

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1 JUDGE FARRAR: Mr. Soper, we understand  
2 and we'll wait to hear from the other parties, but to  
3 the extent the concept you just stated is legitimate,  
4 we would tend to ask you all to take that up on a sub-  
5 issue by sub-issue basis. In other words, if you each  
6 are having two witnesses and you are essentially  
7 making your case through your direct, then what you  
8 said would not hold for that sub-issue on something  
9 else where they have witnesses and you have none.

10 MR. GAUKLER: I would make one  
11 observation, Your Honor.

12 JUDGE FARRAR: Yes, go ahead, Mr. Gaukler.

13 MR. GAUKLER: To the extent the State  
14 makes it case on cross examination, there may be a  
15 need for more redirect by the Staff/applicant. But I  
16 mean, those two kind of go hand in hand. So I think  
17 a major question would be how we handle redirect time.

18 JUDGE FARRAR: And, in fact, let's take a  
19 hypothetical. The company has two witnesses, Staff  
20 has two witnesses, State has no witnesses. In a  
21 sense, the company and the Staff have no cross  
22 examination, no one to cross examine, so I guess that  
23 becomes, Mr. Gaukler, under what you just stated, that  
24 becomes your redirect time. And as we can see the  
25 deeper we get into this, the less perfect it is. But

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1 again, I think, if we take this up on an issue by  
2 issue basis, maybe that's the best way, rather than  
3 saying everybody has, you know, 100 hours for the  
4 whole case.

5 Maybe we will get it down to issue by  
6 issue, because maybe we will all agree that, you know,  
7 we will want to allocate these times on a sub-issue  
8 basis. So what you just said, Mr. Gaukler, and, Mr.  
9 Soper, what you said are both good points. Now, if  
10 somebody has a better way to run this railroad, we  
11 would hear it, but the more we talk about it, the  
12 more, you know, it puts us in overall control; but it  
13 relies on you to manage your cases, and it seems to me  
14 that is better than us having arbitrary assignments of  
15 time when you are more knowledgeable about what you  
16 are trying to demonstrate than we are. Mr. Turk or  
17 Mr. Gaukler, did you have any other observations, at  
18 this point?

19 MR. GAUKLER: No, maybe your idea of issue  
20 by issue might make sense, as I think about it also.

21 JUDGE FARRAR: Okay. And let me hasten to  
22 assure all of you we don't intend to end this  
23 conference with a ruling that okay, here is how it is  
24 going to be on cross, but we wanted to throw this out  
25 for you right now, so you have ample time to work

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1 among yourselves on how this might work. What we  
2 would like to do at the end of this call is say this  
3 is the concept or not, but if it is, we will leave it  
4 to you to help us flesh it out as the prehearing time  
5 goes along. I'm sorry, Mr. Gaukler, did you have  
6 another observation?

7 MR. GAUKLER: No, I did not, Your Honor.

8 JUDGE FARRAR: Okay. Mr. Turk?

9 MR. TURK: Just one observation about the  
10 Board's use of the term inquiry with regard to Staff  
11 cross examination of applicant testimony.

12 JUDGE FARRAR: Yes?

13 MR. TURK: Typically what we have tried to  
14 do in our cross examination of an applicant testimony  
15 is this proceeding is point out any holes or get  
16 commitments on the record from an applicant. So we  
17 have done that. We don't consider that to be really  
18 an inquiry. I think we've tried to use that.  
19 Actually, you might call it a friendly cross  
20 examination, because our point is not to invalidate  
21 the testimony, but rather to supplement to what we  
22 consider to be important additional information. But  
23 I certainly agree with, Your Honor, that the cross  
24 examination that we do of the applicant is far smaller  
25 in scope and certainly with no burden on the Staff and

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1 therefore does not require the kind of time that a  
2 full fledged cross examination takes of an opposing  
3 party.

4 JUDGE FARRAR: Thank you, Mr. Turk, that's  
5 an excellent point and, you know, we had come up with  
6 the word inquiry just, you know, to distinguish from  
7 the cross, but I think by whatever name we call it,  
8 you know, your point is a good one. However, the  
9 point is there are some legitimate purposes served by  
10 that examination and there are some illegitimate  
11 purposes that could be served and we want to commit to  
12 keep it to the legitimate purposes that you said.

13 And I understand that the Staff while the  
14 hearing in all these cases is about whether the  
15 applicant's proposal passes mustard, and I know there  
16 are decisions on the record that said even if the  
17 Staff does a bum job, the applicant can still get its  
18 license if it proves its case. But I understand the  
19 Staff's wanting to make sure that there is no  
20 uncertainty about the basis upon which they have acted  
21 in doing the good job that they attempt to do.

22 So maybe we can award a prize for whoever  
23 comes up with a better word than inquiry, but in any  
24 event, your point is well taken. Is there anybody who  
25 wants to argue that this concept makes no sense and,

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1 you know, ought to be abandoned at the outset? Mr.  
2 Gaukler?

3 MR. GAUKLER: No, Your Honor.

4 JUDGE FARRAR: Mr. Turk?

5 MR. TURK: No, Your Honor.

6 JUDGE FARRAR: Mr. Soper?

7 MS. CHANCELLOR: Just one point of  
8 clarification, Your Honor. The cross examination  
9 allocation, does that include rebuttal as well?

10 JUDGE FARRAR: That we'll leave --

11 MS. CHANCELLOR: Is it negotiated, are you  
12 saying?

13 JUDGE FARRAR: Yes, I think, yes. If you  
14 understand and accept the concept, then again we'll  
15 leave it to you knowing the witnesses better to work  
16 out on an issue by issue basis exactly what it means  
17 and we will be available to referee those disputes, so  
18 we're trying to make sure -- here's what we're trying  
19 to make sure of, that each side, and we have two  
20 sides, not three, that each side gets equal time to  
21 make its case and equal time to challenge the other  
22 side's case.

23 JUDGE ABRAMSON: And with the addition  
24 that the Staff has the opportunity to clarify  
25 situations where it may have reached the same overall

1 conclusion as the applicant, but done so with slightly  
2 different subconclusions and needs to point that out,  
3 make clear where there are differences.

4 JUDGE FARRAR: So I think, you know,  
5 within that general frame work, the role of redirect,  
6 the role of oral rebuttal remains to be fit in, but we  
7 will, in the absence of any objection, and since we  
8 have thought about this ourselves and think it is the  
9 best idea we've come up with, and since the Commission  
10 encouraged us to use innovative techniques, I think  
11 not only encouraged us in this case, but in all cases  
12 to use innovative techniques, this is the best one we  
13 can think of for efficiency. And if it works, it may,  
14 we would hope it would, become perhaps even standard  
15 in future cases, particularly, one that may prove even  
16 more complicated than this one.

17 So we have said in the last conference  
18 where we didn't get to these questions because of the  
19 argument about the scope of the issues, it said we  
20 wanted to -- I think this is transcript 14, 585 and  
21 586. We have said we want to subdivide the issues.  
22 We wanted to find out the number of witnesses and we  
23 had the notion of the overall allotment to cross  
24 examination. So I think we've now taken care of all  
25 the questions that got deferred last time.

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1                   One question we do have is where do you  
2                   take depositions since we have the safeguards problem?

3                   MR. GAUKLER:   Right now, we're seeing a  
4                   divided deposition gap between D.C. and Salt Lake  
5                   City.

6                   JUDGE FARRAR:   And what kind of space?

7                   MR. GAUKLER:   My idea is take in the  
8                   conference room space and we may need to provide a  
9                   file cabinet that would meet the safeguard  
10                  requirements for building that has the controlled  
11                  access to enable us to take the depositions from those  
12                  buildings.

13                  JUDGE ABRAMSON:   Maybe Mr. Turk can --

14                  JUDGE FARRAR:   Mr. Gaukler, you mean like  
15                  the conference room at the law firm?

16                  MR. GAUKLER:   Right, right.

17                  JUDGE FARRAR:   But I take it to do that  
18                  then you need some NRC security people to approve  
19                  those arrangements or are those preapproved or what  
20                  has happened there?

21                  MR. GAUKLER:   Well, as follow-up, I think  
22                  what we would need to do is have people sign the non-  
23                  disclosure affidavit who will have access and be  
24                  responsible for helping us maintain those files.

25                  JUDGE FARRAR:   Well, we have another

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1 problem. I know the security people have been  
2 wandering around our courtroom here and have concerns  
3 about transparent doors, about drop ceilings that  
4 someone could put a microphone in. You may say well,  
5 gee, that's overkill. People don't do that. But I  
6 don't know how we're going to resolve it here, but it  
7 seems to be the same people who are after us to make  
8 sure our courtroom is secure would want to have the  
9 same privilege at the -- or would want to make sure  
10 that the depositions are just as secure.

11 So we will have either Jack Whetstein or  
12 Sharon Marks-Perrini of our Staff get in touch with  
13 your people and pass along the names of who we are  
14 dealing with at security here. And Mr. Turk or Mr.  
15 Stapleton may want to get involved in that. But, I  
16 mean, these are all NRC security people who do not  
17 work for the Board. They work for the Commission, but  
18 I think wherever you are in D.C. or in Salt Lake,  
19 whatever they are making us do to our hearing room,  
20 you'll need to observe those same requirements.

21 MR. TURK: All right. Your Honor, this is  
22 Sherwin Turk. I think it's a good idea for Mr.  
23 Gaukler and Ms. Chancellor and myself to talk after  
24 this call and to find out who in the Staff we should  
25 be speaking with to make sure that the arrangements

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1 for depositions are secure.

2 JUDGE FARRAR: Okay.

3 MR. TURK: Is that all right to get the  
4 parties do that after this conference call?

5 JUDGE FARRAR: And I suppose one  
6 possibility if you can't come up with, you know, space  
7 in the law firm or downtown doesn't meet requirements,  
8 we could, you know, make our hearing room available to  
9 you if it's not --

10 JUDGE ABRAMSON: Or some other facility.

11 JUDGE FARRAR: Or some other facility at  
12 headquarters here if you can't come up with your own  
13 space. I don't know if that leaves you to solve the  
14 problem yourselves in Salt Lake, but I think that's  
15 something you need to focus on, because the problem  
16 here is more difficult than I thought it would be. I  
17 thought we had a hearing room and that's it, and that  
18 turns out not to be the case.

19 MR. TURK: Your Honor, this is Sherwin  
20 Turk again. When it might be an opportune moment, I  
21 would like to ask a question about something the State  
22 mentioned earlier in this phone call about other  
23 analyses that they are working on currently.

24 JUDGE FARRAR: Okay. I think as far as I  
25 can tell, we have wrapped up the three open items of

1 business from last time. We have now mentioned the  
2 security problem, so why don't we take up this matter,  
3 Mr. Turk?

4 MS. CHANCELLOR: Your Honor, if I could  
5 just interject for just one moment, it would be a  
6 significant burden for us to travel to D.C. for an  
7 extended hearing, as well as to take all of the  
8 depositions in D.C. I just think that burden would be  
9 overwhelming for us and unfair.

10 JUDGE FARRAR: Oh, okay. So you're saying  
11 because the hearing is here, you should get some kind  
12 of credit or carryover on the depositions?

13 MS. CHANCELLOR: Your Honor, we have had  
14 a very cordial relationship with working with opposing  
15 counsel, and Mr. Gaukler and Ms. Nakahara have always  
16 been able to negotiate, doing half the depositions in  
17 one place and half the depositions elsewhere, and it  
18 relieves both parties of having to fly their witnesses  
19 all over the country.

20 And in addition, as I said, I don't know  
21 if you want to call it credit, but, you know, the  
22 burden gets so great at some point that, you know,  
23 you're going to break the back of the State if you're  
24 going to require us to -- for the attorneys to pack up  
25 and go to Washington, D.C. for, in essence, about 10

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1 weeks and that's just too great.

2 JUDGE FARRAR: You raise a good point, Ms.  
3 Chancellor, in this sense. The practice at the  
4 Commission has always been to hold the hearings, not  
5 always been, but the preference is to hold the  
6 hearings in the locale. We decided that that made no  
7 sense in this case because of safeguards and public  
8 will not be allowed to see it, and so you have a point  
9 about the balance of the burden. Let us think about  
10 that. Let us think about that for a moment.

11 MR. GAUKLER: Your Honor, we are  
12 proceeding on the basis, I think, satisfactorily of  
13 dividing the depositions up in Salt Lake City and  
14 Washington, D.C., and we kind of had a schedule set  
15 assuming that things had gone forward on April 20<sup>th</sup>.

16 JUDGE FARRAR: Yes, hold on. Let's take  
17 a short off the record break without anybody going  
18 anywhere, so we can think about this among ourselves.

19 MR. TURK: Your Honor, before you break,  
20 can I mention one thing?

21 JUDGE FARRAR: Yes.

22 MR. TURK: We already have discussed the  
23 idea of having, approximately, one week of depositions  
24 in Salt Lake City and two weeks on the east coast, so  
25 unless the security people tell us that that's not

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1 feasible, I would be prepared to continue with that  
2 same approach. That is something that the State has  
3 said they would be interested in doing. So unless the  
4 security people tell us that there's a problem having  
5 depositions outside of Washington, D.C., I think all  
6 parties will try to work with the idea of having some  
7 depositions in Salt Lake and some here.

8 JUDGE FARRAR: We understand that. Hold  
9 on, Mr. Turk. We'll go off the record, at this point,  
10 and talk amongst ourselves here. Can anyone hear me?

11 JUDGE ABRAMSON: Mike, your whole point  
12 was they just have to have a secure facility.

13 JUDGE FARRAR: No, no, it's not our only  
14 concern.

15 (Whereupon, at 12:50 p.m. a recess until  
16 12:52 p.m.)

17 JUDGE FARRAR: We're back on the record.  
18 We have talked this over among ourselves and a couple  
19 of things are clear. One, wherever you hold the  
20 depositions, our first concern be that it be in a  
21 secure space and that's something you need to focus on  
22 perhaps more than you had before, because we had to  
23 focus on it more about the hearing.

24 Second, Ms. Chancellor, what exactly in  
25 terms of the burden of convenience and logistics, what

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1 exactly would you be proposing in terms of the  
2 location, the east coast versus Salt Lake location of  
3 the depositions?

4 MS. CHANCELLOR: As Mr. Gaukler mentioned,  
5 we had discussed breaking up the depositions and we  
6 had talked about doing all of the structural  
7 depositions here in Salt Lake and doing speed and  
8 angle in D.C. and probability, we hadn't really  
9 decided on where probability would occur, but in  
10 general the speed and angle, ordnance would be in D.C.  
11 and the structural would be in Salt Lake City, and  
12 those two components seem to be the major focus of the  
13 depositions in terms of, you know, the substantive  
14 issues. And then we really hadn't gotten to the more  
15 minor issues.

16 JUDGE FARRAR: And that arrangement you  
17 had made, are you still basically okay with that?

18 MS. CHANCELLOR: Yes, we are, Your Honor.  
19 We're not saying that we're unwilling to go to D.C.  
20 Now that radiation is out, we may have a different  
21 point of view, but that's our general thinking.

22 JUDGE FARRAR: All right. Well, we will,  
23 again, rely on your good working relationships to  
24 resolve those issues and, of course, we're here to  
25 referee anything that you cannot work out. Let's talk

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1 about next steps, Mr. Turk, well, first and we hope  
2 minor next step is this letter back to Ms. Chancellor  
3 and, as I said, we will assume that's done. We would  
4 like to hear from you no later than Monday evening.

5 MR. TURK: I really hope that you will  
6 hear from us today, Your Honor.

7 JUDGE FARRAR: Okay.

8 MR. TURK: I really expect that to be out.

9 JUDGE FARRAR: All right. Because it  
10 would seem that because people can't sign a letter,  
11 that would not be an excellent reason to suspend a  
12 proceeding, but tell your clients this has gone on  
13 just long enough and while we can't tell them how to  
14 do their work, we can keep one party, namely the  
15 State, from being deprived of the opportunity to do  
16 its work by just saying fine, we'll wait to start the  
17 proceeding until they get their answer, so we'll trust  
18 you to do that.

19 MR. TURK: Well, Your Honor, let me point  
20 out also it's clear that the structural analyses are  
21 going to be treated as SGI. The things that the State  
22 has focused on in particular that they would like to  
23 get released are dose consequences and criticality and  
24 those, you know, are going to be part of this hearing  
25 session, but that's not an excuse for not getting them

1 the letter and I will really try to get that letter  
2 out today. I will have the Staff really make that  
3 effort.

4 JUDGE FARRAR: Okay.

5 MS. CHANCELLOR: The other issue we  
6 mentioned was probability, too.

7 JUDGE FARRAR: Okay. Well, we will get  
8 that done or, I mean, the only remedy we have is to  
9 suspend the proceeding and I'm sure the Commission  
10 would not like us to do that, but if we suspend it, we  
11 will say to the Commission don't talk to us about it,  
12 talk to the Staff that reports to you about it.

13 MR. TURK: I understand that.

14 JUDGE FARRAR: Then, Mr. Turk, at the very  
15 beginning here, did you say that May 11<sup>th</sup> was, as far  
16 as you could tell, a firm date?

17 MR. TURK: Yes, Your Honor.

18 JUDGE FARRAR: Okay. Then we'll leave it.  
19 Let's start again. You all work with May 11<sup>th</sup>, rather  
20 than April 20<sup>th</sup> as your date. Work with our decision  
21 that Issue 3 will not be heard. Work with our two  
22 week hiatus, the week of August 23<sup>rd</sup> and August 30<sup>th</sup>,  
23 and let us know about doing some depositions as you  
24 work out that new schedule, some depositions before  
25 May 11<sup>th</sup>, but we understand that you don't want to

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1 depose an opposing witness until you know what that  
2 witness' report is going to say.

3 MR. TURK: Your Honor, one question I had  
4 raised is that the State early in this discussion or  
5 midway through the discussion mentioned that they are  
6 doing further analyses.

7 JUDGE FARRAR: Yes.

8 MR. TURK: In light of the applicant's  
9 revised analyses. We have not heard that before and  
10 I'm wondering what it is the State is working on and  
11 when we'll see those reports.

12 MR. SOPER: I assume that everybody would  
13 expect that after the original cask was abandoned and  
14 the new cask was adopted that we would, of course,  
15 have to look into that and that's what we're doing, I  
16 assume the same as what the Staff is doing.

17 JUDGE FARRAR: You're talking, Mr. Turk,  
18 about the changes that were the subject of Contention  
19 TT?

20 MR. TURK: Well, Your Honor, this was the  
21 first time that I have heard that the State is working  
22 on new analyses, so I don't know what it is they are  
23 working on. I know the Staff has been working all  
24 along.

25 JUDGE FARRAR: No, no. That question was

1 addressed to Mr. Soper.

2 MR. TURK: Yes. And I also would like to  
3 know how that will affect our scheduling.

4 JUDGE FARRAR: Mr. Soper?

5 MR. SOPER: We expect to have, of course,  
6 at whatever point depositions take place, we will make  
7 available any other analyses that we have prior to the  
8 depositions.

9 JUDGE FARRAR: But answer my preliminary,  
10 my preliminary question was, so I know what we're  
11 talking about, when you said the cask being abandoned,  
12 you mean the changes that were made that later were  
13 what triggered Contention TT? Are those the changes  
14 in the cask we're talking about?

15 MR. SOPER: Yes, that's what I was  
16 referring to. I'm sorry. Maybe I didn't put that  
17 exactly right, but that's right.

18 JUDGE FARRAR: No, that's all right. We  
19 just want to make sure that's what we're talking about  
20 and with that clarified, Judge Abramson has a  
21 question.

22 JUDGE ABRAMSON: Yes. So I assume that  
23 what the State's experts are doing is reperforming so  
24 much of their analysis as is affected by those  
25 changes, and it seems to me the logical question is

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1 from both the applicant and the Staff, one would  
2 expect that will change the results of your expert's  
3 analysis and at what point do you plan to make that  
4 new analysis available to the State and the Staff, I'm  
5 sorry, to the applicant and the Staff, so that they  
6 can look at that before they start trying to do  
7 depositions.

8 MR. SOPER: I don't know. Your Honor, I  
9 don't know that we have a firm date on that and we  
10 didn't contemplate actually issuing another report.  
11 The changes sort of came in. Well, actually, it came  
12 as an understated footnote that sort of caught  
13 everybody off guard, not in the form of a second  
14 report, so I'm not sure another report was  
15 contemplated by the State. We have just tried to play  
16 catchup and do the analyses required by these changes,  
17 and we don't have a firm time as of when these would  
18 end, but I can try to obtain that kind of data if you  
19 would like.

20 JUDGE ABRAMSON: I think that would be  
21 useful. Let me just sort of summarize what I think.

22 MR. SOPER: And also, the NRC report or,  
23 excuse me, the Staff's report hasn't been seen by  
24 anyone, nor has it been analyzed.

25 JUDGE ABRAMSON: I understand that.

1 MR. SOPER: And, of course, I thought this  
2 was just sort of things that people would understand.  
3 When the Staff releases theirs, of course, we will do  
4 additional analyses there as well.

5 JUDGE ABRAMSON: Let me just pick this up.  
6 You have seen, you and your experts have had available  
7 since sometime in December the new, the revisions in  
8 the cask design and the applicant has submitted new  
9 analyses, including very graphic pictures of how this  
10 design is altered and very detailed structural  
11 analysis of that new design, and we have reports from  
12 your technical experts doing structure analysis on the  
13 design prior to these changes.

14 Do we expect to see revised analyses from  
15 the State's experts incorporating these design changes  
16 or not?

17 MR. SOPER: Oh, yes, absolutely.

18 JUDGE ABRAMSON: And if so, I would expect  
19 you to make those analyses available in report form to  
20 the other parties just like the other parties have  
21 made them available to you. Now, I know you haven't  
22 got the State's analysis yet, because I think the --  
23 I'm sorry, the Staff's analysis yet, because I think  
24 the Staff's analysis is only going to focus on the  
25 revised design.

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1 MR. SOPER: Well, as is ours.

2 JUDGE ABRAMSON: Okay. So the point is  
3 everybody needs to see the other parties' analysis and  
4 if your old analysis is invalidated because of these  
5 revisions, then everybody needs to have a fair  
6 opportunity to see it.

7 MR. SOPER: Well, I think that's right.  
8 What I was indicating to Mr. Turk is that we would  
9 plan to make those available prior to depositions  
10 starting what seems to be the key time, and we're  
11 waiting for the Staff before we set depositions and,  
12 likewise, I would expect that whatever the State has  
13 prior to depositions, we would furnish as well.

14 If we would like to approach it a  
15 different way with a firm time, and I didn't know that  
16 we had an opportunity to file another report, but if  
17 we want to approach it on that basis, file a formal  
18 report, then we can do that.

19 JUDGE ABRAMSON: Well, from our  
20 perspective, we need to see your analysis and I'm sure  
21 that the applicant needs to see it and the Staff needs  
22 to see it. If your time frame was that you planned to  
23 deliver it by what was then April 20 and you now need  
24 to slip that to somewhere between April 20 and May 11,  
25 I guess that works. Everybody needs to see it before

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1 we can go forward, and certainly --

2 MR. SOPER: That's right, Your Honor. We  
3 will then produce. If we're going to produce any  
4 report, we will produce it on or before May 11<sup>th</sup> just  
5 as the Staff. How would that be?

6 JUDGE ABRAMSON: Well, I'm not sure I'm  
7 comfortable with the if, because if you're telling me  
8 that you're revising your analysis, then there  
9 shouldn't be any if on whether you're going to produce  
10 a report. That analysis has got to be made available  
11 to everybody in writing just like your old stuff was,  
12 because you're telling me that when you go to  
13 depositions, people can't rely on your old analysis.

14 MR. SOPER: Well, that's right. The if  
15 was, because just as the Staff has indicated, that  
16 indications right now point to the fact that they will  
17 be aligned with the applicant, meaning that they are  
18 indefinite, at this point, and I can't speak for the  
19 conclusions that our experts are going to be drawing  
20 since they are involved in the analysis at this time.  
21 But assuming that we do have -- I mean, we're not  
22 going to put forth analyses that are inappropriate or  
23 they don't support a position in our favor. We're not  
24 going to make that claim. So that is why the if, Your  
25 Honor. Whatever we're going to file, we will file it

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1 by May 11<sup>th</sup>.

2 JUDGE FARRAR: All right.

3 MR. TURK: May I respond briefly? And I  
4 don't know if Mr. Gaukler has a comment on this. But,  
5 Your Honor, part of what the Staff has been working on  
6 is an analysis of what the State's previous report  
7 showed, and we have had computer runs been going on to  
8 tell us what is the merit of the State's analysis.  
9 Now, we have not heard until today that they may not  
10 be relying on that analysis, but we will prepared to  
11 go to deposition on the old analysis.

12 And I think what has happened in this  
13 proceeding in the past, that I hope we can forestall  
14 today, is that the State does not present in testimony  
15 new analyses that we have never seen before or even  
16 had the opportunity to depose upon, and I would ask  
17 that if the State does intend to change its position  
18 in any way, that there be a deadline given for them to  
19 come out and tell the parties what their new position  
20 is and give us the report or any information that they  
21 will rely on by some date before we go into  
22 depositions, rather than find out in deposition what  
23 the new information is or after deposition as has  
24 happened in the past.

25 JUDGE ABRAMSON: Well, that was exactly

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1 what I was requesting, Mr. Turk, is that if the State  
2 is going to revise its analysis, they give written  
3 report describing its new analysis prior to starting  
4 deposition. I think I heard Mr. Soper agree that they  
5 would do that to the extent that they are revising to  
6 support their new view of life and I am, frankly, kind  
7 of surprised that the Staff is spending a lot of time  
8 reviewing the State's structural analysis based on the  
9 old design.

10 MR. TURK: Oh, no. It's not necessarily  
11 based on the old design. We are looking at both the  
12 original PFS analysis and the State's criticism of  
13 that, as well as the new PFS analysis. The only thing  
14 we have had to work with until now in terms of the  
15 State proposed testimony is what they have filed  
16 previously based on the old design. We couldn't just  
17 throw that away and say we don't need to look at it  
18 anymore, because we expected the State to rely on it  
19 in their testimony.

20 Only today are we hearing that they may  
21 not do that, and let me give you a little more  
22 information about the reason for our schedule slip  
23 today, we're having numerous runs on a LS Dyna to be  
24 able to show what the State did not do properly in  
25 their analysis. Now, I don't know if the State's

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1 further work will rely on their LS Dyna runs or not,  
2 but until I see that, I really don't know what I'm  
3 going to present in response to that.

4 JUDGE ABRAMSON: All right. And I think  
5 it's reasonable for you to expect that their structure  
6 analysis is going to change, because there are changes  
7 to the structure implemented with the changes, the  
8 subject of Contention TT, and if that means that the  
9 Staff needs to do supplemental analysis once it  
10 receives the State's revised analysis, so be it. We  
11 should try not to slip the depositions unless it's  
12 absolutely necessary.

13 So you, it seems to me, now are aware that  
14 the State is going to revise its analysis. My guess,  
15 from a technical perspective, is that that revision  
16 should only reflect the structural changes that were  
17 subject to TT and should not reflect the methodology  
18 changes, but State can tell me what they are going to  
19 do.

20 JUDGE LAM: Well, this is Judge Lam. I  
21 think the State is perfectly entitled to make these  
22 changes commensurate with what Contention TT talks  
23 about, and even if the State comes up with new  
24 methodology, I think the State's obligation is only to  
25 disclose it. Now, if that delays the proceedings, so

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1 be it.

2 JUDGE ABRAMSON: I agree.

3 MR. TURK: I don't disagree with the  
4 concept. They should be allowed to evaluate the new  
5 cask design, but in terms of fairness to all parties,  
6 we should have a deadline by when their report has to  
7 come out, so that all parties can give depositions and  
8 go forward to hearing.

9 JUDGE ABRAMSON: I think that's fair. So  
10 met me ask Mr. Soper, until today, Mr. Soper, it was  
11 your impression, as it was ours, that the Staff's  
12 report was going to be out April 20, so I presume that  
13 you were marching ahead with your experts, planning to  
14 have your experts done with their analysis by April  
15 20? Is that a fair assumption?

16 MR. SOPER: That's a fair assumption. To  
17 what extent? I mean, the applicant and the Staff have  
18 both asked for extensions. The State has not. We  
19 filed our original report on the date that was  
20 announced, and we're marching ahead hoping to have  
21 everything done prior to depositions. I mean, we have  
22 never suggested that we would surprise somebody at  
23 deposition or after deposition or anything like that,  
24 and I suppose that in the event that we're told by our  
25 experts they couldn't have it completed by then, maybe

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1 we would have asked for an extension. I don't know,  
2 but our intentions have always been to try to work  
3 within the time that has been allotted originally.

4 So I have mentioned before to Mr. Turk  
5 that our experts are working on this and, like Judge  
6 Abramson said, I can't imagine we would evaluate  
7 something that's not going to be used any longer. At  
8 any rate, I missed the outstanding question.

9 JUDGE ABRAMSON: That's all. The question  
10 really was since the applicant and the Staff are  
11 suggesting that they would like to have some time to  
12 see your analysis, particularly since the Staff,  
13 presumably, has subcontracted with Sandia to do some  
14 confirmatory analyses to look at what the State's  
15 experts have said, the question is when do you think  
16 you can make your reports available, because obviously  
17 the Staff is now going to ask for some time to look at  
18 that?

19 MR. SOPER: Well, I think that's right,  
20 and we have always assumed that we would need time and  
21 so would the applicant to review the Staff's after it  
22 was done. But again, I would say we would be happy to  
23 adopt the date that the Staff has chosen to make  
24 theirs available and I think the Staff, as Mr. Turk  
25 indicated, is plagued by the same problem we are and

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1 that is the length of these computer runs is extensive  
2 and it can take considerable time just waiting for the  
3 machine to crank out the analyses at least on the  
4 simulations that we have done. I don't think the same  
5 is true for the PFS. It's kind of simplified. So  
6 anyway, May 11<sup>th</sup> would be the date.

7 JUDGE ABRAMSON: So now, let me ask Mr.  
8 Turk. If you get a technical report or revised  
9 technical report from the State on May 11, and Mr.  
10 Gaukler, now, Mr. Turk you tell me that you have been  
11 doing confirmatory analyses of the State's work. What  
12 do you envision you will need to deal with that and at  
13 least that needs to be considered when you all start  
14 talking about schedule?

15 MR. TURK: Your Honor, this really is the  
16 first time that Mr. Soper has ever mentioned to me,  
17 and it's the first time I have ever heard from the  
18 State and I haven't had any discussion with PFS about  
19 any new work being done by the State other than, I  
20 guess, the assumption that their experts must be doing  
21 something, but we had no idea what is going on.

22 I can't tell you how long it would take us  
23 to review it, because I haven't seen it, but I'm not  
24 going to ask for additional time in the schedule, at  
25 this point, not knowing what it is that we're going to

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1 look at. If we see something from the State on May  
2 11<sup>th</sup> that requires additional analysis, I think all  
3 parties, including PFS, would then want to decide  
4 together how much time do we need to look at the new  
5 information.

6 JUDGE FARRAR: And it's not just for you  
7 to look at their new information. They will want to  
8 look at your new information.

9 MR. TURK: I'm sure that's right.

10 JUDGE ABRAMSON: Well, now, I assume that  
11 the Staff, that the applicant has revised its  
12 analysis. You have all had that since December. It  
13 would be, in my mind, verging on malpractice,  
14 professional malpractice, for an engineer to have  
15 realized that there were going to be changes made in  
16 a design and not to analyze the new design. So I find  
17 it rather remarkable that, Mr. Turk, you can say that  
18 you didn't expect the State to do this or it's the  
19 first time you heard from it.

20 MR. TURK: Your Honor, I didn't say we  
21 didn't. What I did say, Your Honor, is that it's the  
22 first time we have heard. We did expect that they  
23 must be doing something, but Mr. Soper has not told us  
24 that there is anything new coming out until today.

25 JUDGE ABRAMSON: I understand that, but

1 let's get real about this. I don't believe for a  
2 minute that you didn't expect, that the Staff didn't  
3 expect the State to reanalyze the new geometry, and  
4 for the Staff to have continued pursuing analysis of  
5 the old geometry is probably a waste of federal funds,  
6 and perhaps I will call Senator McCain and advise him  
7 of it, but before we go down that path I think you  
8 need to be objective about this. I realize everybody  
9 needs to see everybody's analysis. You should be  
10 preparing the Staff for dealing with corrected  
11 analysis coming in from the State, and you need to all  
12 put that in your planning for schedule.

13 MR. GAUKLER: Well, I guess it's one thing  
14 if the State's analysis is just limited to the  
15 addition of what was discussed in TT. If there is  
16 other changes, that's something else, because we have  
17 all looked at it in terms of the broader aspects of  
18 the analyses and in terms of just TT, I don't know  
19 what, you know, if that was the only thing that  
20 changed, impact it would have on the State's analyses,  
21 that's something on what you're seeing.

22 In terms of, as Mr. Soper was saying, that  
23 he thought he would have it done by depositions, we  
24 originally were thinking of depositions for the week  
25 of May 5<sup>th</sup> or May 3<sup>rd</sup>, excuse me, for my time, timed

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1 together, and so it might make sense for the State to  
2 get whatever they are going to do about it by the 1<sup>st</sup>  
3 of May.

4 JUDGE ABRAMSON: Well, if the State is  
5 telling us they need more time, it would hardly be  
6 fair for us to say to them we can't give them more  
7 time when Staff has just come in and asked for three  
8 more weeks.

9 JUDGE FARRAR: And that gets to the  
10 question of fundamental fairness that we have talked  
11 about or talked around. It's the applicant's  
12 application and we have given them, when they needed  
13 more time for analysis, we have given them whatever  
14 time they needed. The law is we can't tell the Staff  
15 how to do its business, so they take as long as they  
16 need and when they say it's going to take longer,  
17 everyone is disappointed, but we can't issue an order  
18 saying take shorter.

19 Now, we do have the authority to tell the  
20 State how long they can take, but those of you who  
21 have watched us for the last couple of years know that  
22 the rules are not going to be different for one party  
23 than for another, so I have not heard Mr. Soper ask  
24 for anything today that's beyond what the other  
25 parties have done and so, at this point, I think on

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1 the representations that he has made we can go ahead.

2 Mr. Gaukler, I have been assuming that  
3 kind of everything is slipping three weeks.

4 MR. GAUKLER: That's one of my major  
5 concerns and I looked at the schedule and a slippage  
6 of three weeks, and with the Board being out two weeks  
7 the last part of August and September, you end up with  
8 a split hearing and, you know, I probably would urge  
9 the Staff in discussions, may not have any success in  
10 that, but I would urge the Staff to, if they could,  
11 slip it two weeks, which I think would enable us to  
12 get the hearing done prior to that August 23<sup>rd</sup>  
13 deadline, and then basically the schedule would be  
14 intact pretty much as we have it.

15 JUDGE FARRAR: You're right. You want the  
16 hearing to start July 19<sup>th</sup>?

17 MR. GAUKLER: It's just that I think two  
18 weeks, and so it will meet Your Honors' commitments  
19 the last week in August.

20 JUDGE FARRAR: Right. You're right. If  
21 the hearing started August 2<sup>nd</sup> and if the hearing were  
22 a three week hearing, and if I took a poll of my Board  
23 Members right now I don't know that they would agree  
24 that a 13 to 15 panel hearing is a three week hearing.  
25 You're right. If we start August 2<sup>nd</sup>, we could finish

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1 Friday, August 20<sup>th</sup>.

2 JUDGE ABRAMSON: Well, at the very least  
3 we could deal with some selected categories of events  
4 prior to having to break, but I think that you are  
5 faced as a group of parties with something a little  
6 more fundamental before you can say you're going to  
7 start on whether it's in August or September or July.

8 You need to hear from the Staff about what  
9 they will need to do in the way of further  
10 confirmatory analysis assuming, and Mr. Soper correct  
11 me if I'm wrong, but assuming that the revisions in  
12 State analysis will only relate to the changes, which  
13 were the subject of TT, and then we need to know what  
14 the -- since the Staff is telling us, Staff counsel is  
15 telling us, that Staff has done confirmatory analysis  
16 of the State's structural analysis of the cask prior  
17 to those modifications and that, therefore, the Staff  
18 wants or expects to revise those analysis and all of  
19 you will need to see those revised analyses, does that  
20 slip your schedule or can you manage your depositions,  
21 so that that does not slip your deposition schedule?  
22 And you need to talk about that.

23 JUDGE LAM: This is Judge Lam.  
24 Furthermore, the way things are shaping up, of course,  
25 your schedule will slip. If you talk about, you know,

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1 the old schedule, it's grossly unrealistic. With what  
2 Judge Abramson has described, I full expect the  
3 schedule to slip. The issue would then be from  
4 everybody, come back to us and let us know how much  
5 slippage are we talking about.

6 MR. TURK: I think the parties should talk  
7 after we break, Your Honor.

8 JUDGE FARRAR: I think you're right and  
9 that's why we have tried to lay out. I would  
10 apologize to you for the fact because of the Board's  
11 other commitments, we have a two week hiatus, but I'm  
12 not going to apologize, because --

13 JUDGE ABRAMSON: It's going to be  
14 irrelevant.

15 JUDGE FARRAR: No, no. Well, but we also,  
16 you know, talked about Judge Kline not going on a trip  
17 last November and we had blocked out this spring for  
18 the hearing, and the applicant took more time and the  
19 Staff took more time and so we're stuck with those two  
20 weeks. What we are saying though is anything we can  
21 do before those two weeks on any of the sub-issues,  
22 we're happy to do, and anything we can do afterwards  
23 on the sub-issues, we'll do, but the tenor of the  
24 discussion here sounds like not only do we have the  
25 three week delay, but we don't necessarily have a

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1 three week hearing.

2 And so, Mr. Gaukler, I appreciate, you  
3 know, your desire to get the hearing done before the  
4 end of August and maybe that's still possible and if  
5 it is, we will do that, but I think Mr. Turk's  
6 suggestion that the parties get together and talk  
7 about this is good.

8 That being the case, when should we plan  
9 to next get together?

10 MS. CHANCELLOR: Your Honor, I would just  
11 like to mention that we're not sitting here doing  
12 nothing. We have a number of deadlines, filing  
13 deadlines, with respect to financial assurance and so  
14 I would request that any conference call not come on  
15 a date that we have something due over to the Bollwerk  
16 Board or to the Commission.

17 JUDGE FARRAR: All right.

18 JUDGE ABRAMSON: Well, let's find out how  
19 long it takes them to get together and discuss what  
20 these things do.

21 JUDGE FARRAR: Well, and here we are on  
22 April 8<sup>th</sup>. Can we have another conversation in --

23 JUDGE ABRAMSON: A week.

24 JUDGE FARRAR: -- a week, two weeks? What  
25 is your preference?

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1 MR. TURK: I would suggest one week, next  
2 Friday. On Thursday both us and State have something  
3 due and the Commission should have something due with  
4 respect to filing with the Commission, so I would  
5 suggest next Friday.

6 JUDGE FARRAR: Friday the 16<sup>th</sup>?

7 JUDGE ABRAMSON: Friday is not good.

8 JUDGE FARRAR: We have a trial commitment  
9 here. How about Monday the 19<sup>th</sup>?

10 MS. CHANCELLOR: That will work for us,  
11 Your Honor.

12 MR. GAUKLER: That works good, Your Honor.

13 MR. TURK: That's fine for the Staff, Your  
14 Honor.

15 JUDGE FARRAR: All right. Then for now,  
16 let's set 1:30 eastern, 11:30 mountain time on Monday  
17 the 19<sup>th</sup>. And if you want to submit to us in advance  
18 a revised schedule along the lines of what you did on  
19 March 26<sup>th</sup>, we would welcome that or if your  
20 discussions take too long and you can't do that, we'll  
21 talk it through.

22 JUDGE ABRAMSON: And we would hope that by  
23 the time you come back to us, you will have had the  
24 opportunity to discuss to some resolution the issues  
25 that revolve around the State's revised analysis

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1 related to TT and what that means for the Staff and  
2 what that means for your deposition schedule.

3 MR. TURK: That's fine for the Staff, Your  
4 Honor. May I make one other point though? We don't  
5 consider that it's our burden to rebut the State or to  
6 even analyze what the State presents, so we may well  
7 see what the State has developed ultimately and say  
8 well, that's their case, let them try to make it, and  
9 we may go forward without having to do analysis of  
10 what the State has done.

11 JUDGE FARRAR: That's fine.

12 MR. TURK: I'm not suggesting that the  
13 schedule needs to slip, because of a Staff need to  
14 evaluate the State's further work.

15 JUDGE ABRAMSON: Good.

16 JUDGE FARRAR: Right. And that does avoid  
17 kind of an endless circle of every time somebody has  
18 a new analysis, the other side needs to analyze that.

19 JUDGE ABRAMSON: PFS may want to look at  
20 it. I don't know.

21 JUDGE FARRAR: I think we have an  
22 understanding. We're disappointed to hear of the  
23 delay in the Staff analysis, but as we have said  
24 before, whether or not we agree with the Staff  
25 analysis at a hearing, the long term practice and

1 thought has been that the process benefits by having  
2 Staff analysis. We do not supervise them in their  
3 work. We're, in fact, precluded from supervising them  
4 in their work and so there is no criticism by us in  
5 terms of the time that this is taking.

6 JUDGE LAM: Furthermore, you know, this is  
7 Judge Lam, the Staff's analysis in the past has been  
8 extremely beneficial to this proceeding. I think, you  
9 know, the independent confirmatory analysis, it's a  
10 valuable contributor to this process.

11 JUDGE FARRAR: All right. Then is there  
12 anything else we need to take up? All right. Then we  
13 will send out our usual email about another  
14 conference, scheduling a conference call on Monday,  
15 April 19<sup>th</sup> at 1:30 eastern, 11:30 mountain.

16 Thank you all, we appreciate. I know  
17 there are some frustrations with how long the case  
18 takes, but it's a significant case and a significant  
19 project for the country and it is waste disposal  
20 practices, and so perhaps it's not unexpected that a  
21 case of this complexity and significance would take  
22 this long. So thank you all.

23 MR. TURK: Thank you, Your Honor.

24 MR. GAUKLER: Thank you, Your Honor.

25 MS. CHANCELLOR: Thank you, Your Honor.

1 (Whereupon, the pre-hearing teleconference  
2 was concluded at 1:28 p.m.)  
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CERTIFICATE

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

Name of Proceeding: Private Fuels Storage

Docket Number: 72-22-ISFSI

Location: Rockville, Maryland

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Rebecca Davis

Rebecca Davis  
Official Reporter  
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