

NUCLEAR REGULATORY COMMISSION

Title: Private Fuels Storage, LLC

Docket Number: 72-22-ISFSI

Location: (telephone conference)

Date: Monday, April 19, 2004

DOCKETED
USNRC

April 21, 2004 (10:14AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Work Order No.: NRC-1433

Pages 14736-14827

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

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4 ATOMIC SAFETY AND LICENSING BOARD

5 (ASLB)

6 * * * * *

7 PRE-HEARING TELECONFERENCE

8 -----X

9 IN THE MATTER OF: :

10 PRIVATE FUELS STORAGE, LLC : Docket No.

11 (Independent Spent Fuel : 72-22-ISFSI

12 Storage Installation) :

13 -----X

14 Monday, April 19, 2004

15
16 The above-entitled matter came on for
17 hearing, pursuant to notice, at 1:30 p.m.

18
19 BEFORE:

20
21 MICHAEL C. FARRAR Chairman

22 PETER S. LAM Administrative Judge

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

(1:34 p.m.)

CHAIRMAN FARRAR: We're here at 1:30 on Monday, April 19th, hoping that at long last we'll get to set a prehearing and hearing schedule in the PFS matter.

This is Mike Farrar. I'm at headquarters. With me in the room are Judge Peter Lam and Judge Paul Abramson, as well as our law clerk Susan Lin. And the Court Reporter is in the room here with us, as is SherVerne Cloyd, who has done a lot of the logistics for us.

For the Company?

MR. GAUKLER: Paul Gaukler and Sean Barnett.

CHAIRMAN FARRAR: All right. Welcome.

For the State?

MS. CHANCELLOR: Denise Chancellor, Connie Nakahara, and Jim Soper.

CHAIRMAN FARRAR: Welcome.

And for the Staff?

MR. TURK: Sherwin Turk and Laura Zaccari, with Mr. Michael Waters in attendance.

CHAIRMAN FARRAR: All right. Thank you.

We received a little while ago from the

1 Applicant proposed alternative hearing schedules. We
2 appreciate you all putting that together. We have in
3 front of us a five-column document which has
4 milestones, the standard milestones in the left-hand
5 column, the last board-approved schedule from --
6 actually, from last year when we -- before the
7 iterative process between the Applicant and the Staff
8 began to consume so much time.

9 Then, we have three columns of currently
10 proposed schedules. The first one is a PFS proposal
11 that assumes depositions at a certain time. The third
12 column is a PFS proposal that assumes the depositions
13 start at a later time -- namely, the time the State
14 suggests -- in the last column.

15 Then, after that, the fourth and fifth
16 columns depart in certain respects. So do I -- Mr.
17 Gaukler, do I understand that paper correctly?

18 MR. GAUKLER: Yes, you do, Your Honor.

19 CHAIRMAN FARRAR: Thank you.

20 Then, the first question I guess is -- oh,
21 Mr. Turk, which of those columns does the Staff
22 endorse?

23 MR. TURK: The next-to-the-last column.

24 CHAIRMAN FARRAR: Okay.

25 MR. TURK: Hearings completed in August.

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1 CHAIRMAN FARRAR: All right. And, Mr.
2 Turk, it's April 19th. Are we going to see the angles
3 and speeds report on April 20th, as had been promised?

4 MR. TURK: That's our intention, Your
5 Honor. I could see at worst that we file it late in
6 the night tomorrow or possibly first thing the next
7 morning on the 21st. But it's pretty close to being
8 finished.

9 CHAIRMAN FARRAR: All right. So we will
10 proceed on that assumption. That's good news. And at
11 this point, you're still on target for the May 11th
12 date for the rest of the report?

13 MR. TURK: Yes, Your Honor.

14 CHAIRMAN FARRAR: All right. Then, before
15 we start going down the three columns, do any of the
16 parties have anything to bring to our attention, or
17 any background we need to know about?

18 Okay. Hearing none, we'll go ahead. The
19 first key point, then, becomes on the depositions.
20 The Company would start May 10th and go to June 11th.
21 The State wants to start May 24th and go to June 18th.

22 I guess the Board has a preliminary
23 question. If we need -- if you need to have time
24 after the reports before you start depositions, why
25 are we not doing the depositions in two phases --

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1 namely, starting May 1st or thereabouts, on the angles
2 and speeds, then taking a break while you all
3 assimilate the Staff's May 11th report, and then
4 restarting up depositions?

5 Mr. Gaukler, was that possibility
6 discussed?

7 MR. GAUKLER: That was a possibility that
8 was discussed, and I had proposed starting, say, with
9 the speeds and angles May 3rd as an alternative, what
10 I proposed on -- with respect to May 10th specifically
11 for that point, with the idea that they would have had
12 10 days with respect to the speeds and angles. We
13 could get those depositions out of the way before the
14 reports, and then we would have the break following
15 that to -- up to the second set of depositions
16 starting, say, May 24th.

17 CHAIRMAN FARRAR: All right. And did the
18 State or the Staff object to that?

19 MR. GAUKLER: The State did object to it.
20 I'll let the State speak for itself, but basically
21 they claimed that they were busy preparing their own
22 report. I'll let Ms. Chancellor speak for herself.

23 CHAIRMAN FARRAR: All right. Go ahead,
24 Ms. Chancellor.

25 MS. CHANCELLOR: Your Honor, yes, we

1 thought it was important that we make the May 11
2 deadline that you have set. And in order to do that,
3 the attorneys need to work with the experts, just like
4 PFS did, when it was late in filing its reports. And
5 that if we are to work with our experts, we can't be
6 in depositions at the same time.

7 And in addition, I believe there was --
8 there may be conflicts with witness availability. But
9 primarily we're working on getting the structural
10 analysis, and to the extent that that affects
11 probability getting to -- to put those reports
12 together, so that we can file them by May 11th as
13 promised.

14 JUDGE ABRAMSON: Ms. Chancellor, this is
15 Judge Abramson. When we discussed this in our last
16 conference, you all led me to believe -- led us all to
17 believe, I think, that the State had been proceeding
18 on its revised structure analysis and had planned to
19 submit that structural analysis when the Staff
20 submitted its report, which at that point, as far as
21 everybody knew, would have been done by April 20.

22 So I'm a little confused about -- I know
23 you said you need to May 11. But as I thought about
24 this, and discussed it with the other members of the
25 Board, I'm still confused about why that report would

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1 not be available on April 20, which was the date you
2 thought you had -- were going to receive the Staff
3 report.

4 MS. CHANCELLOR: As you can appreciate,
5 Judge Abramson, the computer runs that are involved in
6 analyzing the structural impacts take days to run.
7 And to the extent that we can use that time to hone
8 our reports and to make them as complete as possible
9 we think that that will provide a much better product.

10 And also, Your Honor, I believe that the
11 April 20th date was optimistic for us, just like it
12 was for the Staff. We would probably have had to come
13 to the Board and request an extension, saying that we
14 weren't ready for depositions because we hadn't
15 finished those reports. It's just extremely time-
16 consuming.

17 JUDGE ABRAMSON: Well, I must say that I
18 find this a little disturbing, that you were expecting
19 a State report on April -- a Staff report on April 20,
20 that in the last conference call you indicated you had
21 no intention of submitting a new written report on
22 your new analysis.

23 When we pressed and probed on what the
24 story was, we got a response to the effect that you
25 didn't realize you had the right to submit a new

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1 report, which I find rather remarkable. But I'm new
2 to this process, so maybe I don't understand how
3 things work with you.

4 And now I understand that, of course, the
5 report would be better if you had three more weeks.
6 But if you have -- if you take three more weeks here
7 to do that, then the Staff takes more time to review
8 that analysis, and everything gets pushed back. So
9 I'm just a little concerned that we're pushing things
10 back for reasons of litigation strategy rather than
11 for reasons that are really related to the report.

12 MS. CHANCELLOR: Your Honor, if I may, you
13 will notice that PFS took 75 percent longer than it
14 anticipated in getting its structural reports to the
15 NRC. And that we certainly haven't been dragging our
16 heels, and it has taken us this much time, and it will
17 take us until May 11th to finish those reports.

18 Now, with respect to whether we are going
19 to file a formal report or whether we are otherwise
20 going to get the data to the NRC and PFS, it has
21 always been the State's intention to be open with what
22 it is we are doing and whether that was in the form of
23 a formal report or whether it was in the form of
24 exchange of data. We were somehow going to get that
25 information before the NRC.

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1 Where we are is that we -- we don't have
2 established procedures here. Typically, we would be
3 in discovery, we would be exchanging documents, there
4 would be set timelines. And we are doing the best we
5 can based on the fluctuating schedule, which
6 originally was driven by PFS and the amount of time it
7 took for its structural analysis.

8 MR. GAUKLER: I'd just like to make one
9 point, if I could. Our report has been available
10 since the end of January. Also, the State does have
11 three counsel who are working on this case, and so
12 it's more than just one counsel involved for the State
13 -- on the State's behalf.

14 CHAIRMAN FARRAR: All right. Let us take
15 a moment here among ourselves. We'll go off the
16 record.

17 (Whereupon, the proceedings in the
18 foregoing matter went off the record at
19 1:45 p.m. and went back on the record at
20 1:46 p.m.)

21 CHAIRMAN FARRAR: Is there any more to be
22 said on this issue? We have kind of the three
23 possibilities -- start -- one not stated here -- start
24 on May 3rd and break the depositions into two parts;
25 start on May 10th is -- the Company's first proposal

1 is, and go straight through even though the Staff
2 second report would be filed during that time; or
3 defer things until May 24th.

4 Those are -- are there any other
5 possibilities in front of us?

6 MR. TURK: Your Honor, this is Sherwin
7 Turk. I would --

8 CHAIRMAN FARRAR: Mr. Turk, come a little
9 closer to the phone if you would.

10 MR. TURK: I'm sorry. I'll try to speak
11 -- get up close to the phone.

12 CHAIRMAN FARRAR: That's much better.

13 MR. TURK: I wouldn't propose any
14 additional schedule modifications. I would still stay
15 with my support for that next-to-the-last column. But
16 I would note that we, as counsel for the Staff, will
17 be involved in helping to get our report out by
18 May 11th. So during that period we'll have very
19 limited time available for depositions.

20 It is possible, if the aircraft angles and
21 speed depositions can be done in Washington, which I
22 believe was the proposal until now, that we could take
23 some time off from finishing the report by May 11th to
24 participate in those depositions. But I can
25 understand the State's concern that they also will

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1 need to be involved -- their counsel will need to be
2 involved in getting their reports out by May 11th, and
3 that would deprive them of time to participate in
4 angles and speed depositions prior to May 11th.

5 So for that reason, I really think the
6 fourth column is preferable.

7 I also would pose a question to the State,
8 and that is -- if possible, could we get more
9 information about what their analyses will consist of?
10 So we know in setting our own schedules what we will
11 need to ask our witnesses to do in reviewing their
12 reports that come out on May 11th. Are these merely
13 updates to the previous analyses? Is this anything
14 different from that approach?

15 CHAIRMAN FARRAR: Ms. Chancellor, that
16 seems like a fair question. Can you address that?

17 And as I understand, Mr. Turk, you don't
18 want the answer. You want to know the framework that
19 you're going to be presented with.

20 MR. TURK: Yes.

21 MS. CHANCELLOR: Your Honor, as we get
22 closer to finalizing the report, we'd be happy to have
23 a conversation with Mr. Turk. They're in draft form
24 at the moment.

25 CHAIRMAN FARRAR: But if they're in draft

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1 form, Ms. Chancellor, does that not imply that you
2 know what substantive matters you're going to cover?
3 That's all the State -- that's all the Staff wants to
4 know.

5 MS. CHANCELLOR: I'll let Mr. Soper
6 address that, Your Honor.

7 MR. SOPER: The question is sort of
8 unclear. The substantive matters are the structural
9 analyses of the casks under impact conditions. I
10 don't know how I can say it any more specifically
11 without giving you, you know, the results of what
12 those are, and --

13 JUDGE ABRAMSON: I think, Mr. Soper,
14 that's all the Staff is asking. They're wondering if
15 you're going to revise other analyses or just the
16 structure analyses.

17 MR. SOPER: Oh, is that -- all right. On
18 that question, the -- of course, depending on what the
19 structure analysis says, in the end it will affect, I
20 assume, somewhat the probability report, which we will
21 also file along with it.

22 I notice that PFS's new structural
23 analysis affected their probability report. I don't
24 see how it could not.

25 CHAIRMAN FARRAR: All right. Mr. Turk,

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1 does that give you the -- your people the answer they
2 need?

3 MR. TURK: No, Your Honor. But I think
4 the best thing would be for us to discuss among the
5 parties, sometime prior to May 11th, what we are
6 looking at, so we can plan our time better.

7 CHAIRMAN FARRAR: Excellent. We encourage
8 you to do so.

9 So, Mr. Turk, as I understand it, your
10 argument for the fourth column is pretty much the same
11 as the State's. It would be too big a drain on your
12 resources to work on the report and be in the middle
13 of depositions.

14 MR. TURK: Yes, Your Honor.

15 CHAIRMAN FARRAR: All right.

16 JUDGE ABRAMSON: Mr. Turk, let me just --
17 this is Judge Abramson. Let me just clarify one
18 thing. I think this was covered in the last
19 conference call, but I want to make sure that I
20 understood you correctly. The question is: will the
21 Staff require any additional time for submission of
22 its reports because it is getting a new report from
23 the State?

24 MR. TURK: No. The report that we file on
25 May 11th will not consider whatever it is the State is

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1 working on now. Our testimony that we submit this
2 summer will try to address the new information that
3 the State comes up with. But that won't hold us back
4 on May 11th.

5 CHAIRMAN FARRAR: All right.

6 MR. GAUKLER: I'd just like to add one
7 point in terms of this issue -- is that I think the
8 parties had agreed that angles and speeds would be
9 held in D.C., as Mr. Turk suggested, and that we will
10 be holding the structural depositions out in Utah. So
11 that portion -- the first portion of the depositions
12 would be in D.C.

13 CHAIRMAN FARRAR: Okay. During the break,
14 we, the Board, had consulted amongst itself. And
15 taking the State's representations at face value, we
16 think given the time that's been consumed, and the
17 effort by the other parties, into preparing the
18 reports and getting ready, that we have to accede to
19 the State's and the Staff's representation that trying
20 to do the depositions -- part of the depositions while
21 doing their own reports just is asking too much
22 against the framework and background of how long this
23 has taken.

24 So we will reject the Applicant's
25 suggestion, which I know was made in good faith, that

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1 we start on May 10th with depositions, and, in fact,
2 we'll start on May 24th.

3 Another reason behind that -- and I want
4 you to bear in mind as we discuss the rest of the
5 schedule -- this case has taken a long time to get to
6 this point. Even though it has only been a single
7 issue, there have been a lot of detailed analyses that
8 you all have spent a lot of time on.

9 That suggests to us -- it may not prove to
10 be the case, but that suggests to us that this is a
11 close and a difficult case. And after all of the work
12 that has been put into this, we want you all to put
13 your best foot forward in the presentation -- in the
14 things that you do, and we want to be able to be as
15 well prepared as possible and to produce a product at
16 the end that's worthy of all of the effort you all
17 have put into this.

18 So let's bear that in mind as we go
19 through the schedule.

20 I take it now, Mr. Gaukler, we can depart
21 from -- we can kind of cross out your third column,
22 and we'll now be debating column 4 versus column 5?

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

24 CHAIRMAN FARRAR: All right. Thank you.

25 All right. So you have depositions -- you

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1 have a three-week deposition period, with everybody
2 having had a good amount of time, nearly -- well, I
3 guess two -- almost two work weeks to look over the
4 May 11th report, and then allowing three weeks for
5 discovery.

6 At an earlier point, I think we had talked
7 about four weeks. We were talking at our last
8 discussion of possibly 15 witness panels. So who
9 wants to tell us why you think, in two different
10 locations and with that many witnesses, you can do
11 this in 15 -- in three work weeks rather than four?

12 MS. CHANCELLOR: Your Honor, I think it is
13 four work weeks.

14 MR. GAUKLER: For depositions it is four
15 work weeks, Your Honor.

16 CHAIRMAN FARRAR: Oh, okay. I was -- I'm
17 sorry. I was doing days.

18 MR. GAUKLER: Yes. We'll go from Monday
19 to a Friday, so that's how we end up with basically
20 three and a half --

21 CHAIRMAN FARRAR: It's --

22 MR. GAUKLER: It's seven work weeks, but
23 actually -- 3.7 weeks, but actually four work weeks.

24 CHAIRMAN FARRAR: Yes. That's my mistake
25 -- thank you -- on that. All right. So that's

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1 consistent with what we had said before. It's
2 consistent with the not quite one a day rule that we
3 found for witnesses. And then I think we can go ahead
4 with that.

5 JUDGE LAM: This is Judge Lam. I want to
6 ask the party -- how much margin do you have in doing
7 all of the depositions in four work weeks? Do you
8 have a lot of margin? I mean, do you account for
9 surprises -- people out sick, travel schedules, all
10 that? Is this something you can do within reasonable
11 limits?

12 MR. GAUKLER: We have begun the process of
13 negotiating schedules and trying to arrange schedules
14 for depositions. We're not completed yet, but
15 assuming some unforeseen unavailability, we should be
16 able to do it within four weeks I believe.

17 MS. CHANCELLOR: I would endorse that,
18 Your Honor. We've agreed to try and work with each
19 other where our witnesses have conflicts. And there
20 are some that have already arisen, and we'll continue
21 to discuss that.

22 JUDGE LAM: Thank you.

23 CHAIRMAN FARRAR: All right. All right.
24 So we have depositions finishing on Friday, June 18th.
25 And the Company would allow two and a half -- with the

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1 4th of July in there -- two and a half work weeks, and
2 the State wants three to do prefiled testimony.

3 In an earlier discussion, we had talked
4 about three and a half weeks. Why do we think that
5 two and a half or three is sufficient?

6 MR. GAUKLER: If I could address that,
7 Your Honor, and also I would like to kind of address
8 everything I've put together, kind of as a package,
9 from -- some prefiled testimony on through hearing.

10 CHAIRMAN FARRAR: Go ahead, Mr. Gaukler.

11 MR. GAUKLER: And there are several
12 reasons why I believe the schedule that I proposed in
13 that fourth column is reasonable and achievable, which
14 would allow a hearing to be held in August. First of
15 all, Your Honor, all of the parties will have expert
16 reports from their experts. This will cut down
17 significantly what would normally be preparing
18 prefiled direct testimony in terms of stating your
19 affirmative case.

20 In fact, the Staff at one point said it
21 would just put a paper on it and file that as its
22 direct testimony. I know we plan -- you've had our
23 reporter for a long time. You've had the State's
24 reports for a significant time and will have the
25 remaining State reports and Staff report May 11th.

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1 So we would expect our affirmative case in
2 terms of to the extent that it talks about points we
3 made in our reports to be a summary of those reports.

4 Second --

5 CHAIRMAN FARRAR: Mr. Gaukler, that's --
6 is that different? How is this phase of the case
7 different, say, from the first phase? In the first
8 phase of the case, you all have done a safety report
9 and the Staff has done its own report. But then the
10 contentions come in.

11 Is that the point there, that the
12 materials you filed in advance don't necessarily focus
13 directly on the contentions that an intervenor comes
14 up with? In this case, you have focused specifically
15 -- your materials are more focused than they would be
16 in an ordinary case?

17 MR. GAUKLER: That certainly is the case,
18 Your Honor. Now, there is -- in terms of our direct
19 case that we filed in December of 2002, we did have
20 some reports which we summarized, but a lot of those
21 were reports that had been prepared in the course of
22 the license application that didn't have that much
23 explanation in them. Therefore, it required further
24 explanation just to make them understandable and
25 explainable.

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1 And here we have set forth -- trying to
2 set forth in as clear as possible a fashion the
3 technical information as well as words that explain
4 the technical information. So we believe that the
5 reports -- all prior reports -- we'll really have a
6 good leg up on preparing what would normally be made
7 part of your affirmative direct testimony.

8 MR. TURK: If I can answer that, Your
9 Honor, for the Staff.

10 CHAIRMAN FARRAR: Yes.

11 MR. TURK: In our testimony, for instance,
12 on seismic issues, as well as on aircraft issues, back
13 in 2002, we were addressing numerous subparts of the
14 contentions explicitly, so that our testimony was
15 structured according to the words of the contentions.

16 Here the issue is more general, and we're
17 not limited to trying to address each little subpoint
18 of the contention. So the reports, therefore, can be
19 submitted without having to be cut and diced into the
20 framework of the contention itself.

21 MS. CHANCELLOR: Your Honor, this is
22 Denise Chancellor. Our direct case will consist of
23 expert reports. It will also address NRC and PFS
24 reports. It will address what comes up in
25 depositions. This will take some time to put

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1 together, especially what comes up in depositions,
2 because under Mr. Gaukler's schedule there is very
3 little time to address that.

4 In terms of whether we're dealing with a
5 contention, or whether we're dealing with a more
6 generalized case, we're still dealing with three or
7 four different issues -- speed and angles, speed and
8 angle and ordnance, jet fuel fires, structural
9 probability. So while we're not -- while it may not
10 address specific wording, it's still addressing a
11 multitude of issues.

12 MR. GAUKLER: Your Honor, I'd like to --
13 I was going to get on to -- I have several other parts
14 I think that should be addressed in the prefiled
15 direct testimony. Ms. Chancellor has referred to a
16 couple of them.

17 I think the next part that we would be
18 addressing in our prefiled testimony, which I think
19 all the parties should address, would be their
20 responses to the other parties' reports. The State
21 has had our reports -- analysis and report since the
22 December/January timeframe. We've had the State's
23 basic report -- Staff has had the State's basic report
24 since September.

25 And we and the State will have the Staff's

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1 report as of April 20th. Approximately May 11th --
2 we'll have the remainder of the State's reports as of
3 May 11th. So I think the second part of the testimony
4 should be -- everybody should have their basic
5 response to the other parties' expert reports, much of
6 which has been available for a long time.

7 Third -- the third point that Ms.
8 Chancellor mentioned, which I think also should be
9 included in the prefiled testimony should be
10 information that comes up in the depositions, both to
11 the extent that you would use this information to
12 challenge the other side's reports, or to the extent
13 you would respond to what you better understand to be
14 the other parties' challenges to the reports. So I
15 think all of those points should go into your prefiled
16 testimony.

17 If that is the case, then that might
18 argue, some say, for a longer time for a prefiled
19 testimony. It might be. But if everybody includes
20 that in their prefiled testimony, we could even accept
21 some longer time like the State with respect to
22 prefiled testimony, because then the rebuttal
23 testimony all should really be limited to new
24 materials that you had no idea -- or new elaborations
25 or explanations of materials that you didn't

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1 understand before the filing of the prefiled
2 testimony.

3 So I think that two weeks is much more
4 than sufficient for the filing of rebuttal testimony.
5 By the same token, the bulk of your information
6 material should be in hand by the time you've done
7 your prefiled testimony, such that you can get most of
8 your key determinations done in the process of
9 preparing your rebuttal testimony.

10 And, therefore, I think rebuttal testimony
11 and key determinations would support the dates that we
12 have set there, even if we were to accept a small
13 additional delay in filing of prefiled testimony.

14 Following that, I think we can have a
15 hearing --

16 CHAIRMAN FARRAR: Mr. Gaukler, let me
17 interrupt you there while we go off the record and
18 talk for a moment among ourselves. We'll get back to
19 you.

20 (Whereupon, the proceedings in the
21 foregoing matter went off the record at
22 2:04 p.m. and went back on the record at
23 2:06 p.m.)

24 CHAIRMAN FARRAR: We're back.

25 Judge Lam has a question of Mr. Turk that

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1 ties in with what Mr. Gaukler just said.

2 JUDGE LAM: You know, this is Judge Lam.

3 Mr. Turk, based on what Mr. Gaukler has
4 described, which is very, very consistent with what my
5 understanding is on the prefiled testimony -- on the
6 prefiled direct, now in the last conference call you
7 indicated you may or may not do any additional
8 confirmatory analysis on the May 11 report to be
9 submitted by the State.

10 The question is, if you, indeed, want to
11 do additional confirmatory analysis on the May 11
12 State report, how would that impact on this proposed
13 schedule?

14 MR. TURK: Your Honor, I believe what I
15 had indicated the last time is that we do not -- or if
16 I didn't indicate it clearly, let me indicate it
17 today. We don't know what the State's report will
18 look like, so we don't know yet whether we're going to
19 want to do confirmatory analysis of it or not. I
20 suspect we will want to, if for no other reason to
21 satisfy ourselves whether there's merit in the State's
22 argument or not.

23 But I don't foresee that we would look to
24 extend the schedule because of that, and my reason is
25 -- ties into what I did say in the last conference

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1 call, which was we don't see that it's our burden to
2 rebut the State. After all, it is PFS's application,
3 and they bear the burden of convincing the Board and
4 the Commission that the application should be granted.

5 We have found, however, in our review of
6 what the State submitted the first time various issues
7 that we believe are important for us to present to the
8 Board, and they will be in our report that we submit
9 on May 11th. So I suspect that when we get the
10 State's revised analysis we will do further review of
11 what the State presents on May 11th, and we will seek
12 to put that in front of the Board through our
13 testimony. But we do not anticipate extending the
14 schedule in order to do that.

15 JUDGE LAM: Thank you, Mr. Turk. That's
16 very helpful.

17 JUDGE ABRAMSON: So picking up then --
18 this is Judge Abramson. Picking up, then, on what
19 we've discussed several times among this group, and
20 following up what Mr. Gaukler just said, it's the
21 Board's understanding I think that what we will see in
22 prefiled direct will cover everything that the parties
23 have heard up to that point, which includes not just
24 reports but everything they picked up during
25 depositions.

1 So that at that point, your prefiled
2 testimony will represent the status as of that date.
3 And that all that you will need to then be filing in
4 your rebuttal will be rebutting things that are new in
5 the other parties' prefiled direct that came up after
6 the date of the filing -- or it came up in the
7 prefiled direct. Is that accurate?

8 MR. GAUKLER: That's exactly my
9 understanding, Your Honor.

10 JUDGE ABRAMSON: Is that accurate -- does
11 the State agree with that view?

12 MS. CHANCELLOR: Yes. Yes, Your Honor.
13 I would add that to the extent we may have
14 misunderstood something, and it's clarified in
15 testimony, then we would address that. But, yes, I
16 agree with your proposition.

17 JUDGE ABRAMSON: Okay. Good. So --

18 CHAIRMAN FARRAR: Mr. Turk, do you agree
19 with that also?

20 MR. TURK: That's our intention, Your
21 Honor.

22 CHAIRMAN FARRAR: So let --

23 MR. TURK: You know, there always could be
24 a reason for some party to say, "Well, that was our
25 intention today. Perhaps we need to alert the Board

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1 to some new problem that developed." But we don't, at
2 this point, foresee any problem developing that would
3 cause us to stray from the schedule that's proposed
4 today.

5 CHAIRMAN FARRAR: So putting what Judge
6 Abramson said in a slightly different fashion, your
7 direct will have -- your prefiled direct will have not
8 only your case, why you think your case is a winner,
9 but why you think the other side's case, what you know
10 of it to that point, is a loser, is that correct?

11 MR. TURK: Yes.

12 MR. GAUKLER: Yes, Your Honor. That's our
13 understanding.

14 CHAIRMAN FARRAR: All right.

15 MR. GAUKLER: Paul Gaukler speaking for
16 PFS.

17 CHAIRMAN FARRAR: Right. And Mr. --

18 MR. TURK: I indicated the same for the
19 Staff, Your Honor.

20 CHAIRMAN FARRAR: And Ms. Chancellor?

21 MS. CHANCELLOR: Your Honor, I'm sorry.
22 There was a phone ringing in the background. I
23 couldn't quite hear the question.

24 CHAIRMAN FARRAR: The question is just
25 that we all agree that everyone's prefiled direct does

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1 not only have the strength of their case, why they
2 think it's a winner, but also why they think, based on
3 what they know of the other side's case to that point,
4 why their -- the other side's case is a loser.

5 MS. CHANCELLOR: That is correct, with the
6 proviso that, based on our litigation strategy, some
7 of that may come out through cross examination rather
8 than in our direct prefiled testimony.

9 JUDGE ABRAMSON: But it will be raised
10 during discovery, is that right? Or are you thinking
11 it will not be raised until the hearing?

12 MS. CHANCELLOR: Your Honor, we will raise
13 in discovery -- our experts will answer in discovery
14 whatever questions PFS puts to us, and our reports
15 will be available to them.

16 CHAIRMAN FARRAR: All right. Hold on, Ms.
17 Chancellor. Let us go off the record again here.

18 (Whereupon, the proceedings in the
19 foregoing matter went off the record at
20 2:12 p.m. and went back on the record at
21 2:14 p.m.)

22 CHAIRMAN FARRAR: All right. We're back
23 on the record.

24 Mr. Gaukler, I see, then, you would have
25 two and a half weeks for prefiled direct, and then two

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1 weeks for rebuttal. The State, in effect, has three
2 weeks for direct and two for rebuttal. But what you
3 said -- you're almost suggesting we should have more
4 time for direct and less for rebuttal, is that -- did
5 I --

6 MR. GAUKLER: We could easily accept the
7 State's July 12th date for -- or some date, say, in
8 July, say Friday, July 11th, or something like that,
9 for -- excuse me, July 12th, for the prefiled direct,
10 as long as the rebuttal was held the same, because per
11 my understanding what we intend to do -- rebuttal, as
12 we have talked about, should be just limited to new
13 stuff that appears in the prefiled direct.

14 CHAIRMAN FARRAR: So then we would have
15 three full -- three full work weeks. If we took the
16 State's July 12th, that would give you three full work
17 weeks for direct. And, again, there has been a
18 suggestion that a good part of the direct comes out of
19 your own reports, although, as Judge Abramson has made
20 clear, you also need to have rebuttal of the other
21 side, to the extent you can.

22 MR. GAUKLER: Right.

23 CHAIRMAN FARRAR: And then you would go --
24 and you're saying if that's filed July 12th, then
25 in --

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1 JUDGE ABRAMSON: Two weeks.

2 CHAIRMAN FARRAR: -- what looks like 10
3 days was really two weeks, you could do rebuttal.

4 MR. GAUKLER: Yes, Your Honor.

5 CHAIRMAN FARRAR: Let's hold that thought
6 for a minute. Mr. Gaukler, you then would give a week
7 for -- slightly less than a week for key
8 determinations. The State -- well, I guess it's the
9 same -- it looks like a different number of days, but
10 it's really the same number of work days for key
11 determinations.

12 Now, remember, that's an important aspect
13 of the case for the Board. At one point, we had
14 talked about two weeks for key determinations, because
15 it's --

16 JUDGE ABRAMSON: And we want it right.

17 (Laughter.)

18 CHAIRMAN FARRAR: We want it right and the
19 word "key" -- it is a key document for us in terms of
20 a road map for us. In other words, we can read your
21 prefiled testimony, and we will want to have the
22 prefiled testimony with that same little summary page
23 on it saying what you are trying to prove by that
24 witness. But those key determinations were very
25 helpful in getting us ready for the case.

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1 Both of you are suggesting you take less
2 time than we would have thought you needed, and that
3 we had talked about before. Have you both thought
4 that through?

5 Mr. Gaukler?

6 MR. GAUKLER: I think based upon what we
7 did last time, knowing when we get the key
8 determinations on seismic, which was an extensive
9 effort -- the amount of time it took us to put
10 together -- and admittedly -- admittedly, there would
11 be more this time, I think that six days would be
12 sufficient, probably more than sufficient.

13 I would think that we probably would do it
14 in -- could do it in three full work days.

15 CHAIRMAN FARRAR: Ms. Chancellor?

16 MS. CHANCELLOR: Your Honor, I agree with
17 the sentiment of the Board that the key determinations
18 are not easy to write. They take a lot of thought and
19 a lot of effort into boiling down the testimony and
20 supporting the case that you want to make.

21 So I would not budge off that July 29
22 date, and would be happy if the Board wanted to extend
23 that.

24 CHAIRMAN FARRAR: Well, we don't want to
25 extend it. All we want to do is make sure that what

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1 you give us after we've done one reading of your
2 testimony, that now we can go back and read it again,
3 making -- you know, with this road map, and that's
4 helpful. But you've both suggested a very short time,
5 and I think we would stick with that.

6 Now, Mr. Gaukler, the real -- if we follow
7 this down -- and we may change the amount of time for
8 direct and rebuttal, but you and the State at this
9 point are only a day off. Where you then pick up a
10 lot of time is you give very short or no shrift to
11 motions in limine and the -- oh, no, you -- okay. You
12 would both file motions in limine when you file your
13 key determinations, but the State then takes more time
14 to get to the hearing.

15 JUDGE ABRAMSON: Mr. Gaukler?

16 MR. GAUKLER: Yes, Your Honor.

17 JUDGE ABRAMSON: Yes. Mr. Gaukler, you've
18 got us basically with few working days between the day
19 we see your key determinations and the day we start
20 the hearings. And we had said -- and I don't see why
21 we should deviate much from -- that we wanted, as a
22 Board, 10 days to look at key determinations and try
23 to make some sense out of them and sort out what we
24 were expecting to hear at hearings before we started
25 the hearing.

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1 So I don't think this Board is willing to
2 jump in three days after key determinations into
3 holding the hearings.

4 CHAIRMAN FARRAR: Mr. Gaukler, without --
5 why don't you address --

6 MR. GAUKLER: Why we think we should be.
7 (Laughter.)

8 CHAIRMAN FARRAR: While we try to keep an
9 open mind, knowing the effort that you all have put
10 into this, and that we -- while we've been able to
11 read the reports that have already been filed, there's
12 nothing like having the actual testimony and talking
13 among ourselves about it.

14 So I think you've got an uphill battle to
15 take on or to convince Judge Abramson and the rest of
16 us that what he just said is not the way we should go.

17 MR. GAUKLER: Okay. Well, Your Honor,
18 first of all, I believe that the -- I believe the key
19 determinations on my part could be pushed up a couple
20 of days to the first part of that week, to Monday,
21 etcetera, which would help alleviate somewhat the
22 Board's concern, but certainly would not address all
23 of us.

24 Second, I think that the -- I would point
25 out that the key determinations will be set out for

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1 the various issues, which will then -- not all of
2 which would be heard right away. In other words, you
3 will have your -- the parties have proposed right now
4 to try the case by issues, so, therefore, we haven't
5 specifically set this downward.

6 But we talked about last time in the
7 conference call we would do, for example, speeds and
8 angles first. So there would be one issue with
9 respect to speeds and angles that would be the focus
10 of the Board and the parties for that first phase of
11 the hearing, and we would be going through all of the
12 witnesses with respect to that issue.

13 So, therefore, it would certainly be very
14 important for the Board to have gone through the key
15 determinations with respect to that issue that is
16 first going to be on the plate. Then, there would be
17 additional time --

18 CHAIRMAN FARRAR: Mr. Gaukler, let me
19 interrupt you there. That's a good point. Let me ask
20 you -- my recollection of the seismic hearing is there
21 were many times we asked questions, and we were told,
22 "Well, the answer to that will come later, because we
23 took things out of order. We took the third issue
24 before the first two," or whatever.

25 What you're saying here is we could cram

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1 and get ready for the first issue, and we -- the day
2 the trial starts on whatever the first issue is, all
3 we'd have to be thoroughly prepared and conversant
4 with would be that issue, and we could in our
5 nighttime or weekend hours get ready for the other
6 issues and not have lost anything in terms of our
7 ability to handle the first week of trial.

8 Is that what you're saying?

9 MR. GAUKLER: That's what I'm saying, Your
10 Honor. Yes.

11 CHAIRMAN FARRAR: Does every -- Mr. Turk,
12 do you agree with that?

13 MR. TURK: I don't think it's very
14 practical, Your Honor. There is so much to do during
15 the course of the hearing, as well as we'll be
16 preparing cross examination plans every night to
17 present to you on the next piece of testimony. I
18 think the Board will have plenty to deal with without
19 looking at key determinations in the course of the
20 hearing.

21 I have another suggestion which I'd like
22 to suggest, which I have not mentioned until now to
23 the other parties. So if you don't mind, let me put
24 it on the table.

25 CHAIRMAN FARRAR: All right.

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1 MR. TURK: Because the Board wants to have
2 additional time with the key determinations, why
3 couldn't the parties perhaps take a little longer to
4 file their initial testimony, file key determinations
5 along with the initial testimony. And when we submit
6 our rebuttal testimony, to the extent that we have any
7 additional or supplemental key determinations, put in
8 a second set that would address simply the rebuttal
9 piece that we're submitting. That way the Board would
10 have the initial key determinations well in advance of
11 the start of hearing.

12 CHAIRMAN FARRAR: That would be -- our
13 initial reaction is that would be very helpful, if it
14 can be done.

15 Ms. Chancellor, you've heard some
16 suggestions from Mr. Gaukler and Mr. Turk. Can you
17 respond to those?

18 MS. CHANCELLOR: Yes, Your Honor. The
19 State is not enamored with either of those proposals.
20 Addressing Mr. Gaukler's issue, key determinations
21 relate to the entire case. And even though the issues
22 will be tried separately, they overlap and relate to
23 the entire case. And the Board, I believe, should
24 have an understanding of how the pieces fit together
25 before we start the hearing.

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1 It's going to be difficult enough to
2 prepare for hearings and file all of the documents
3 that are required -- prefiled testimony, rebuttal
4 testimony, key determinations, motions in limine,
5 responses to motion in limine, without having to
6 supplement or file a second set of key determinations.

7 And while I've got the floor, I would like
8 to point out to the Board that the burden is on the
9 State to prepare and pack up and come to NRC
10 headquarters in Rockville. Under Mr. Gaukler's
11 schedule, he has given us -- we filed key
12 determinations on a Wednesday. There are two working
13 days left in that week. Then we have to travel to
14 Washington, D.C., and the hearings will start on the
15 following Tuesday morning.

16 That, I submit, is simply not feasible.

17 MR. GAUKLER: Your Honor, I'd like to make
18 two points if I could real quick. With respect to
19 motions in limine, I don't foresee them being an issue
20 at the end of the process. Those dates are in there
21 as a fail-safe. We have agreed to limit motions in
22 limine to matters that would be out of scope, number
23 one. Number two, we have agreed to identify and bring
24 to the parties' attention as soon as we identify those
25 materials and try to resolve it, and, if not, file a

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1 motion ahead of those times -- that time.

2 We have reviewed the State's expert
3 reports. We have identified one topic, which we
4 believe would be out of scope, and we intend to pursue
5 that with the State during the deposition process.
6 And we would be filing any motion for limine on that
7 issue far before the date specified in the schedule.

8 CHAIRMAN FARRAR: Mr. Gaukler, that's an
9 issue other than the one we -- the -- other than the
10 dose issue that we rejected the other day?

11 MR. GAUKLER: Yes. Yes. It's a fairly
12 limited focus, but it's one issue that we believe is
13 out of scope. And we'll be getting into that with the
14 State and discuss it with the State, and, if we don't
15 resolve it, then we will be filing a motion in limine
16 with respect to that one issue.

17 CHAIRMAN FARRAR: Okay. Is that something
18 you all can tell us about ahead of time rather than
19 wait until the last day?

20 MR. GAUKLER: We would expect to file the
21 motion in limine far earlier than the last day.

22 CHAIRMAN FARRAR: Right. In other words,
23 rather -- oh, okay. I see. You say the last day, not
24 the day.

25 MR. GAUKLER: Right. Right.

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1 CHAIRMAN FARRAR: So --

2 MR. GAUKLER: So we would expect to file
3 that motion in limine, which we have if we don't reach
4 agreement with the State -- we would expect to file
5 that far before the date provided for in the schedule.

6 CHAIRMAN FARRAR: That would be very
7 helpful for us, because, you know, while we're trying
8 to get prepared as we go along, our work really begins
9 when you file your -- you know, your prefiled direct.
10 And up to then, there's a limit to what we can do.
11 And so looking at a motion in limine before that time
12 is certainly very helpful to us in terms of conserving
13 our resources.

14 MR. GAUKLER: And we don't foresee the
15 motion in limine would be that much in terms -- if
16 it's an out of scope issue, it wouldn't be that much,
17 and we would have that filed before the prefiled
18 direct.

19 CHAIRMAN FARRAR: All right. Then --

20 MR. GAUKLER: A point I'd like to make
21 real quick is that -- and maybe we don't have the
22 burden the State does, but we also will be packing up
23 our files and moving out to Rockville. The last time
24 that we had the hearing in Rockville I don't believe
25 I came down to my office once during that period of

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1 time we had hearing out there.

2 So basically, maybe we can send people
3 down, get stuff back and forth, so -- it wasn't the
4 same as the State. I'm not saying it is, but we also
5 have a burden in that respect in terms of putting our
6 files together and moving them out to Rockville to a
7 big conference room or to some type of appropriate
8 facilities in a hotel where we would then operate out
9 of like we did the last time.

10 MS. CHANCELLOR: Your Honor, I appreciate
11 Mr. Gaukler's having to move out of his office.
12 However, it's very difficult for the State to send a
13 runner back from Rockville to Salt Lake City, unlike
14 it is for Mr. Gaukler to have runners go back to his
15 office.

16 But what I'd like to mention is that our
17 focus was not so much on the motions in limine but the
18 key determination filing date, which would be -- which
19 is going to be quite a massive undertaking. And then
20 three days -- a couple of days later be on a plane to
21 D.C. That was the focus of what I thought was just
22 unachievable for the State.

23 CHAIRMAN FARRAR: Let me ask you this. I
24 think it was Mr. Turk who said, "Why not give us your
25 key determinations with the testimony in chief?"

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1 MS. CHANCELLOR: Your Honor, we did that
2 when we filed seismic and it almost killed us. The
3 effort of actually writing the prefiled testimony and
4 getting it on paper, it is true that you can, at the
5 same time, begin a draft of the key determinations,
6 but trying to finalize those two documents on the same
7 day or in the same time period is -- was really a
8 killer.

9 And I think you will notice that, you
10 know, PFS filed their key determinations at 5:06 a.m.
11 in the morning, and the State was like midnight or
12 2:00 a.m. And I think the product suffers for that,
13 and the Board has said that that document, if you'll
14 excuse the pun -- is key, and that if you want to set
15 that date you -- the product you will get will not be
16 as good as if you give us sufficient time to write a
17 document that is worthy of your consideration.

18 MR. TURK: Your Honor, this is Sherwin
19 Turk. If I can respond very briefly.

20 CHAIRMAN FARRAR: Yes, go ahead.

21 MR. TURK: What we did with our key
22 determinations last time -- and I don't know if the
23 Board found them useful or not -- but we essentially
24 went through our direct testimony and listed
25 sentences, made them into the key determinations. So

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1 the testimony already had the outline that we were
2 following in the key determinations.

3 In this go-around, because the testimony
4 is intended to address everything that we know in the
5 case up until the time the testimony is filed,
6 including whatever comes out of depositions and
7 whatever the other reports are from other parties, I
8 think the testimony, again, could be used -- could be
9 the road map for the key determinations.

10 My proposal would be to establish
11 July 15th, Thursday, as a date to file both the
12 initial key determinations and the initial testimony.
13 That date is three days later than the State has
14 proposed for filing direct testimony.

15 I would suggest filing rebuttal testimony
16 and any rebuttal or any further key determinations
17 that could not have been filed earlier because of
18 matters that were not known when the testimony was
19 filed, do that July 26th, along with motions in
20 limine, have responses to motions in limine filed by
21 the end of that week -- for instance, Thursday. Or
22 actually, you could have them filed on Friday, and on
23 Monday have the parties set up rooms and start
24 hearings on Tuesday, the 3rd of August.

25 CHAIRMAN FARRAR: Let me make sure I

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1 understand that. So direct testimony would be
2 Thursday, July 15th.

3 MR. TURK: Yes.

4 CHAIRMAN FARRAR: Rebuttal would be just
5 about -- well, it seems like 11 days. It's really
6 only a little more than a work week afterwards, on
7 Monday, July 26th. And then you're saying that would
8 be a way to get to a hearing on the 3rd?

9 MR. TURK: Yes.

10 MR. GAUKLER: I would like to make just
11 one small suggested modification to what Mr. Turk
12 said. I would still keep the testimony date July 12th
13 or 13th, and have the key determinations July 15th.

14 So that would take care of the problem
15 that Ms. Chancellor talked about, which I can
16 certainly testify to, of trying to do two things at
17 once. And you would have one deadline for the
18 prefiled testimony -- earlier, and then you would have
19 two or three days in between for your next deadline.
20 That would be one advantage.

21 The other advantage would be that during
22 that two or three days we could send out -- the
23 testimony out to our experts, so that they'd have a
24 chance to look at it while we're working on the key
25 determinations, for which we don't need expert input.

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1 MR. TURK: I can support that, Your Honor.

2 CHAIRMAN FARRAR: Judge Abramson has a
3 question. Ms. Chancellor, then, we'll let you address
4 that.

5 JUDGE ABRAMSON: Did I understand that
6 parties are now saying that they'd like to give us --
7 or at least the Staff and the Applicant are saying
8 that they'd like to see key determinations delivered
9 within a few days after prefiled direct?

10 And I just want to caution all of you that
11 what we see in the key determinations has to be
12 concise, has to be to the point, has to be in an
13 outline form, the way we've discussed it before.

14 And I think we didn't complete the
15 discussion of this last time, but we talked about five
16 categories of things you were going to discuss. And
17 we all agreed I think that each of those categories
18 would then require some subdivision, and at some point
19 you will all need to address what that subdivisoning
20 is, because you will probably be needing to file a key
21 determination, not just on each category but on each
22 subdivision of each category.

23 So if you can determine those things
24 before you start preparing your -- or while you're
25 preparing your prefiled direct, maybe that works. But

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1 it would be I think useful, maybe even necessary, for
2 us to make sure that we're not getting apples from one
3 of you and pears from somebody else.

4 We have to make sure that the key
5 determinations we're seeing from all of you all
6 address the same series of things. So at some point
7 we need to have you agree on what those are going to
8 be.

9 CHAIRMAN FARRAR: Have you all made
10 progress in that regard? We had a general outline
11 last time. But there was a little bit of disagreement
12 on exactly what those categories and subcategories
13 would be. Have you all had a chance to talk about
14 that since we last spoke?

15 MR. GAUKLER: We have not, Your Honor. I
16 think we've been -- both the State and us have been
17 pretty busy with the filings concerning financial
18 issues proffered by the Board's decision on
19 disclosure, and then also we had our briefs due on the
20 financial issues. So --

21 CHAIRMAN FARRAR: Is that something that
22 with a reasonable -- reasonably brief amount of effort
23 you all can address what Judge Abramson just said, so
24 that you would lay out, here is the most sensible way
25 to break up these categories and issues and

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1 subcategories?

2 MS. CHANCELLOR: Your Honor, if I could --

3 CHAIRMAN FARRAR: Yes.

4 MS. CHANCELLOR: -- we're really dealing
5 with a case of apples and bananas, as Mr. -- or apples
6 and pears, I believe Judge Abramson mentioned. PFS's
7 analysis goes off in one direction dealing with
8 unanalyzed event probability. The State's goes off
9 diametrically opposed and the probability of a breach.

10 And so I don't think it's -- I don't think
11 it's fair to put us in the same boxes, because we view
12 the world differently. And I don't -- we could reach
13 resolution on whether we are going to address jet fuel
14 fires, ordnance, probability, structural analysis,
15 CPB, but in those subissues the way we view the world
16 is very, very different.

17 CHAIRMAN FARRAR: Let me interrupt you
18 there, Ms. Chancellor. If that's the case, you're not
19 suggesting we go back to the system where the Company
20 puts on its entire case, and the Staff puts on its
21 entire case, and you put yours on.

22 MS. CHANCELLOR: No, Your Honor. I don't
23 break down into discrete portions, such as speed and
24 angle and ordnance, structural probability, and then
25 some miscellaneous issues. I agree that that is a

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1 logical way to do it where one complete issue gets
2 wrapped up, and then we move on to the next one.

3 What I was addressing was Judge Abramson's
4 thought that we should all agree on the various
5 subissues that our key determinations should address.
6 So that our outlines would look -- the topic headings
7 for our outlines would look very similar.

8 And as Mr. Soper was whispering to me, the
9 defenses that each party raises will be very, very
10 different.

11 JUDGE ABRAMSON: Let me pick up on this
12 just for a moment. I understand that the State's view
13 of how this all evolves is different from that of the
14 Applicant, and probably also different from the Staff.
15 But there are certain things that you all do have to
16 address.

17 You do have to address the speed and angle
18 of these various crashes, and you have to address the
19 probability that certain speeds and angles fall within
20 certain categories.

21 And, in fact, while I'm on that point, it
22 seems to me it would be useful, rather than separating
23 those two concepts, that they follow sequentially in
24 your case, in your presentation. So you give us the
25 -- your case on speed and angle, and you follow that

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1 with your case on the probability of the impacts at
2 those speeds and angles, not talking about what
3 happens if there's a crash at that speed and angle,
4 but just tell us what the speed and angle data says,
5 and what the probabilities are that you get from that.

6 Similarly, with ordnance and fuel fires,
7 now I can understand with structural you may have
8 different views of how the structural response works,
9 and maybe you'll have different cases on that. But
10 for the first three areas, it seems to me that it's --
11 I'm at a loss to understand why you would have
12 different things to talk about.

13 MS. CHANCELLOR: Your Honor, I think what
14 we should do is talk amongst ourselves and see if we
15 can reach resolution on general concepts and
16 principles that we will all address. And I assume
17 that the Board is not going to insist that we address
18 a particular issue in a particular -- as long as the
19 issue is addressed in our key determinations, it
20 shouldn't -- it should be the parties' choice as to
21 how it presents its case to the Board.

22 CHAIRMAN FARRAR: Ms. Chancellor, I think
23 we can cut you off there. That makes -- we're all
24 nodding in agreement. Maybe the way to frame it is
25 you're going to present your cases in compatible, but

1 not identical, fashions and --

2 MS. CHANCELLOR: Thank you, Your Honor.

3 No, that was my bumbling way of trying to say that.

4 CHAIRMAN FARRAR: So let's -- that allows

5 us to --

6 JUDGE ABRAMSON: So where are we? We're
7 at July 29 for key determinations?

8 CHAIRMAN FARRAR: No. The --

9 JUDGE ABRAMSON: Were we at -- we were at
10 the July 12th date for prefiled direct, and we're
11 stumbling about whether that's going to slip to the
12 15th, and we're going to move key determinations up to
13 the 15th, or whether we're going to stick with the
14 right-hand -- right-most column. Is that where this
15 discussion is?

16 CHAIRMAN FARRAR: Yes. The last proposal
17 from the Company and the Staff was direct testimony on
18 July 12th, as the State has it now, key determinations
19 moved up to the next week, Thursday, the 15th, or that
20 same week, Thursday, the 15th, taking advantage of
21 mailing of the testimony out to the various witnesses
22 that have to look at it, and then rebuttal coming in
23 Monday, July 26th, that being two weeks after the
24 direct and 10 days after the key determinations.

25 JUDGE ABRAMSON: And we heard the State

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1 saying that they needed more time to do key
2 determinations, or they might not be the best set of
3 key determinations they could present, if they had to
4 do it in three days. Is that correct, Ms. Chancellor?

5 MS. CHANCELLOR: That's exactly right,
6 Your Honor. My understanding is that you want more
7 than what we did in seismic, and maybe it's possible
8 in three days after we prefile testimony to give you
9 the outline form that we did in seismic.

10 But I would be concerned about the level
11 of detail that you required and our ability to do
12 that, and I think that we need the time to hone that
13 document.

14 CHAIRMAN FARRAR: Judge Abramson has
15 always been looking for brevity -- you know,
16 thoroughness but brevity in the key determinations.
17 And didn't we --

18 JUDGE ABRAMSON: We pointed out some that
19 we thought were good examples.

20 CHAIRMAN FARRAR: And some calls ago,
21 didn't we -- without saying that others weren't
22 particularly good, we focused on one that we thought
23 was particularly good.

24 JUDGE ABRAMSON: And we focused on one
25 that we thought was not particularly good.

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1 MS. CHANCELLOR: Your Honor, sometimes it
2 is more difficult to write things succinctly and hone
3 in on the point -- it's like trying to write a
4 statement for appeal. I mean, you have to keep on
5 writing it and rewriting it and honing it until you
6 think you've got it captured and boils down the
7 essence of what you're trying to prove. And that's
8 not easy.

9 CHAIRMAN FARRAR: I think you'd find
10 agreement here on that point.

11 Let us go off the record here for a
12 moment, and we'll talk amongst ourselves.

13 (Whereupon, the proceedings in the
14 foregoing matter went off the record at
15 2:43 p.m. and went back on the record at
16 2:50 p.m.)

17 CHAIRMAN FARRAR: All right. We're back
18 on the record. Let us ask a couple of questions. Mr.
19 Gaukler, in terms of the timing of a decision is there
20 any date that the company is facing outside of the NRC
21 process that's crucial to you. In other words, if you
22 don't have your -- I know in some previous cases if
23 somebody doesn't have an NRC license by a certain
24 date, then some other license or permit that they're
25 holding expires. Is there anything like that at work

1 here?

2 MR. GAUKLER: Not that I'm aware of, Your
3 Honor.

4 CHAIRMAN FARRAR: Okay.

5 MR. GAUKLER: I know that the BLM and BIA
6 final approval process hinges on the NRC final
7 approval process, but I'm not aware of any expiration
8 with respect to those two processes if the NRC date is
9 one week or another week.

10 CHAIRMAN FARRAR: Right. So we wouldn't
11 be faced with the decision two days late hurting you
12 other than the two days delay.

13 JUDGE LAM: Now this is Judge Lam. That
14 being the case, Mr. Gaukler, this proceeding has taken
15 eight long years in which I am a part of you as much
16 as you were, Mr. Gaukler.

17 MR. GAUKLER: Yes, Your Honor.

18 JUDGE LAM: Now looking at these two
19 schedules here, I see only a three to four week
20 difference. The State of Utah has proposed a final
21 decision by us on January 11, 2005 and your proposed
22 schedule is talking about December 17, 2004. Within
23 the bigger picture of things, what difference does it
24 make if we are talking about only three weeks or four
25 weeks in the process that has taken eight long years?

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1 MR. GAUKLER: It's been a very long
2 process, Your Honor. We all know that who have
3 participated through it. I would say two things.
4 First of all, there are potential conflicts with
5 Jewish holidays in September, both there. Also it
6 would put the Board in writing its decision over the
7 Christmas timeframe.

8 PFS has been trying to get this license as
9 quickly as they reasonably could and been trying to
10 get a license so that they would have the decision by
11 the Board by the end of this year. Just the idea of
12 this going into another year begins to cause great
13 concern and issues with respect to the project and
14 with respect to PFS's members and other potential
15 customers.

16 From that point of view, a couple of weeks
17 do make a difference, Your Honor. I think that the
18 importance of getting of a decision out this year by
19 the Board is very important. I believe that the
20 schedule that we put together can reasonably achieve
21 that.

22 I just want to make one point in terms of
23 the recent key determination that Ms. Chancellor
24 referred. I think that in terms of what we did last
25 time for seismic we basically put that together in a

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1 half day to a day and seismic had a lot more issues
2 than what we're talking about here. Admittedly, the
3 seismic did not go down the additional levels that
4 Judge Abramson wants us to do, but that we would have
5 additional time for to do.

6 I think we built time into the schedule if
7 we go from Monday following testimony and Thursday,
8 we're in and Friday, the key determination. I think
9 that will give sufficient time to get good key
10 determinations to look over that the Board can then
11 use at two weeks prior to hearing and if the parties
12 include everything in their testimony that we've
13 talked about then the rebuttal testimony and
14 additional ought to be relatively minimal.

15 I think that we there have the capability
16 of getting the hearing done in August. The benefits
17 of that is that everybody drives from that including
18 the State not having to make two trips and the other
19 potential conflicts that come in down the road.

20 I would like to make one other point.
21 There are a couple of issues which I hope to pursue,
22 the stipulation with the State and the Staff has
23 mentioned that as well. I've not mentioned that
24 because obviously that is something you can't count on
25 in terms of developing the schedule, but that's

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1 something we are also going to be pursuing in terms of
2 trying to minimize and make most efficient use of the
3 time.

4 CHAIRMAN FARRAR: Mr. Gaukler, that
5 touches on a question that I was going to ask.
6 Speaking for myself, I get nervous when we talk about
7 15 witnesses and slightly less witnesses or panels of
8 witnesses in slightly less than 15 hearing days. If
9 I knew we could finish by August 20th, that would be
10 an enormous benefit in terms of not losing the two
11 week break time.

12 But I would hate to make everybody work
13 faster and harder than they felt comfortable with the
14 production of a high quality product that would help
15 us do our job and then find out once again that what
16 you all said was a three week hearing was a four and
17 a half week hearing. How much warranty or guarantee,
18 how confident are you that the August 3rd to August
19 20th is sufficient to finish 15 witnesses or panels of
20 witnesses? Because speaking for myself, I'm skeptical
21 based on what happened last time.

22 MR. GAUKLER: Yes, I understand, Your
23 Honor. Assuming we aren't successful getting anything
24 stipulated and I hope to particularly since the State
25 will not be having its own affirmative witnesses,

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1 I was looking at that issue and I think the heart of
2 the case is structural and you have two other issues
3 which aren't as detailed, nearly as detailed, as the
4 structural issue. One is the speed and angle issues
5 for aircraft and ordinance and the other one is the
6 probability issue. Those are the three basic issues
7 in terms of substance.

8 If we assume that the State witnesses and
9 the Staff witnesses and PFS's witnesses on structural
10 issues each take three days and for purposes here I'm
11 including jet fuel fire in that, that gives you nine
12 days. You then assume that we'll use two and a half
13 days for probability and two and a half days for
14 speeds and angles that gives you 14 days.

15 I believe those are reasonable timeframes
16 in which to do various issues. I believe that will be
17 enhanced by what the Board has ready talked about in
18 terms of setting an amount of time for cross
19 examination which the parties then would divide up
20 among the various witnesses as they see fit. I think
21 that in order for the Board to manage the hearing they
22 ought to ask the parties what amount of time they
23 generally expect to spend in each category of the
24 witnesses so the Board can see whether or not we're on
25 progress as we go through the case. And to the extent

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1 that we have guidelines or set times for cross
2 examination, that will force the parties to focus on
3 those issues that are most important in terms of the
4 overall case and should be therefore most important to
5 the Board.

6 CHAIRMAN FARRAR: All right. We've asked.
7 Mr. Gaukler's expressed himself on a number of
8 subjects. We've asked him some questions. Mr. Turk,
9 what do you think of the last few thoughts that have
10 been expressed?

11 MR. TURK: I do think that the hearing can
12 be completed within three weeks. I would note that
13 I'm hoping that speeds and angles can be resolved by
14 stipulation of the parties before we ever get to
15 hearing. I mentioned that to the other parties before
16 and I really hope that we can do away with that issue
17 so that we come down only to looking at the structural
18 issues including the fuel and ordinance and the
19 probability issue.

20 CHAIRMAN FARRAR: Give me that again.
21 Speeds and angles can be?

22 MR. TURK: I think we can stipulate to
23 speeds and angles. The parties won't be able to
24 address that with me until they see what the Staff
25 produces tomorrow in the way of our speed and angle

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1 report. But even if we had to assume that that issue
2 is part of the case, I still think we can do the
3 hearing in a total of three weeks particularly if the
4 Board establishes limits in advance of how much cross
5 examination the parties will be able to conduct. Then
6 all parties will be forced to do it within those time
7 frames.

8 CHAIRMAN FARRAR: Hold on a minute, Mr.
9 Turk, if you would and everyone else. We'll go off
10 the record here.

11 (Whereupon, the foregoing matter went off
12 the record at 2:59 p.m. and went back on
13 the record at 3:02 p.m.)

14 CHAIRMAN FARRAR: On the record. Mr.
15 Turk, we're not clear here on what part of the case
16 you think can be stipulated. Can you walk us through
17 that? Because if in fact we're going to eliminate
18 one-sixth or so of the hearing, that's a big step.
19 Tell us just what it is you think there's a
20 possibility of a stipulation on.

21 MR. TURK: Okay, Your Honor. Again let me
22 mention that my comments will be based on the report
23 that Staff issues late tomorrow on the aircraft speeds
24 and angles. What that report will address is the
25 historic record of F-16 crashes that are pertinent to

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1 your consideration in terms of the probability of
2 various speeds and angles being involved in an
3 aircraft crash at the PFS site.

4 The Staff's report is approximately 45
5 pages long, maybe 43 pages long and it compares the
6 documented and estimated data provided PFS with the
7 Staff's assessment of the documented and estimated
8 data. It provides curves that we believe show the
9 conservative nature and acceptable nature of the PFS
10 report on angles and speeds and we think it's a
11 comprehensive report that in our mind does away with
12 the question of "What are the various speeds and
13 angles that should be expected with any particular
14 aircraft crash at the PFS site?"

15 I'm hoping that when all parties see it,
16 we can reach an agreement that that issue has been
17 resolved, but the other parties have not seen it.
18 They may disagree with me. The State may find holes
19 in our work which I don't anticipate, but I can't
20 foreclose that possibility. We are hopeful that that
21 issue will be resolved upon issuance of the Staff's
22 report.

23 MR. GAUKLER: Hold on. Let me interrupt
24 you there. We'll go off the record again.

25 (Whereupon, the foregoing matter went off

1 the record at 3:04 p.m. and went back on
2 the record at 3:06 p.m.)

3 CHAIRMAN FARRAR: We're back on the
4 record. The first thing is we'll see the report
5 tomorrow or soon thereafter and then the parties can
6 see whether they are in agreement with it. But let me
7 ask Ms. Chancellor. Is this a realistic hope in your
8 opinion that Mr. Turk is holding out?

9 MS. CHANCELLOR: Your Honor, I found in
10 this proceeding that what can go wrong will go wrong
11 and what you think is settled isn't settled.

12 CHAIRMAN FARRAR: Is there any possibility
13 that this could settle, only that issue can settle?

14 MS. CHANCELLOR: Your Honor, before seeing
15 the report, I cannot give you an answer, but let me
16 just throw out a couple of things. The question is
17 whether the reports address severe speed, lower speed
18 and angle - crashes involving severe speed and where
19 those speed and angles come from and whether the Staff
20 has had any F-16 pilots involved in preparing their
21 reports. We are certainly willing to look at the
22 Staff's reports and determine whether we can stipulate
23 to it, but at this point, I think that it's premature
24 to take this out of the schedule. I do have some
25 other issues I'd like to address when I have the

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1 opportunity.

2 CHAIRMAN FARRAR: All right. I think we
3 had interrupted Mr. Turk. We'll let him finish and
4 then we'll hear from you.

5 MR. TURK: All right. Thank you, Your
6 Honor. The report will be out within the next 24 to
7 48 hours. The State will have it in their hands. I
8 think it's better that we just wait until they receive
9 it for us to discuss it.

10 CHAIRMAN FARRAR: All right.

11 MR. TURK: Let me mention that we did go
12 outside the Staff for some issues. They'll see that
13 discussed in the report as well.

14 CHAIRMAN FARRAR: All right.

15 MR. TURK: The only other point I would
16 like -- By the way, the speed and angle issue as Mr.
17 Gaukler laid it out would take up approximately two
18 and a half days of hearing time. So if we do away
19 with the issue, those two and a half days become
20 available for the other issues. But in any event,
21 that's not a significant part of the hearing time that
22 Mr. Gaukler projects and I would agree with him in
23 terms of the estimated amount of time to deal with all
24 the issues.

25 CHAIRMAN FARRAR: So wait. So you're

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1 agreeing with his nine days on structural, two and a
2 half on probability and two and a half on speeds and
3 angles.

4 MR. TURK: I am. I think perhaps
5 structural will take a little more than the nine days.
6 It may go to ten or eleven. We may need to go into a
7 Saturday session or perhaps a few extra days in which
8 there's one extra hour tacked on. But I'm in pretty
9 close agreement to what he's proposed.

10 CHAIRMAN FARRAR: Well let me say to you
11 and Mr. Gaukler both and I guess Ms. Chancellor to the
12 extent she was part of the first one. There's an old
13 saying "Fool me once, shame on you. Fool me twice,
14 shame on me." We're not going to go by that rule.
15 You all know how we feel about this and fool us twice
16 and it is going to be shame on you. I'm taking both
17 of your representations that we're looking at 14 days.
18 I'm taking those as your serious reflection and
19 commitment that knowing how long things took last
20 year, knowing how badly we felt put upon by being
21 duped - it may be too strong a word, maybe it isn't -
22 that knowing all that history you all are telling us
23 it's 14 days.

24 Now granted, that depends on us coming up
25 with this cross examination time allotment which I

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1 think will be a good controlling feature. But if
2 you're making this representation, that's very
3 important to us.

4 JUDGE LAM: And furthermore, just talking
5 a simple schedule has taken two hours, gentlemen, and
6 you think this trial can be done in 15 days.

7 JUDGE ABRAMSON: Two hours? Two hours
8 today. Two hours last time. Two hours the day before
9 that. We're already up to one working day.

10 CHAIRMAN FARRAR: Moving right along, Mr.
11 Turk, go ahead.

12 MR. TURK: Judge Farrar, let me note. I
13 was extending the Applicant's time somewhat. I was
14 allowing the possibility of an extra Saturday session
15 which he does not include in his 14 days and
16 possibility some evening, not evening, but extra hours
17 tacked on. So my estimate instead of being 14 days
18 might be up to 16 days.

19 CHAIRMAN FARRAR: You remember when we did
20 extra hours which I went into with great spirit and it
21 didn't work out.

22 MR. TURK: No, my suggestion would not be
23 that we add an evening session, but rather than
24 instead of six hour hearing day, perhaps we go to a
25 seven hour hearing day.

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1 JUDGE ABRAMSON: Well, let's go on.

2 CHAIRMAN FARRAR: But at least we know
3 what ballpark we're talking about. Go ahead, Mr.
4 Turk.

5 MR. TURK: The only other point I would
6 make. I guess I would make two points. If we went to
7 the State's proposed schedule which would have one
8 week in August and resume right after Labor Day for
9 hearing September 7th to the 17th, that period of time
10 includes three to four days in which I'm not available
11 personally. My youngest son will be bar mitzvahed on
12 September 11th and I'll be off for Jewish holidays the
13 16th and 17th.

14 CHAIRMAN FARRAR: Tell me how the holiday
15 works on the 16th and 17th. Does that start on the
16 evening of the 16th and go the next day?

17 MR. TURK: It starts the evening of the
18 15th.

19 CHAIRMAN FARRAR: The evening of the 15th,
20 continues the 16th and 17th.

21 MR. TURK: Yes.

22 CHAIRMAN FARRAR: Okay.

23 MR. TURK: Now I don't want my personal
24 days away to affect your schedule, but I just wanted
25 to put it on the table so you're aware of it. If I'm

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1 not there, somebody else may have to be brought in who
2 may not be familiar with the case or Ms. Sacari (PH)
3 will be tasked with the job of being present at the
4 hearings without me which we could do depending on
5 upon which witnesses would be presented that day. But
6 I think I would be more comfortable if I was there to
7 defend Staff witnesses under cross examination.

8 CHAIRMAN FARRAR: All right. So?

9 MR. TURK: So we then may have to extend
10 rather than completing the 17th. It might be more
11 realistic to suggest that we complete the 24th of
12 September.

13 CHAIRMAN FARRAR: And then the next
14 holiday, does that start the evening of the 24th?

15 MR. TURK: Yes. Now it would be my
16 suggestion, the final point I would make, that we set
17 a schedule in which we attempt to complete hearings in
18 August with the recognition that things could develop
19 that are unanticipated which may force us to extend
20 the hearing into September. In fact, I would say if
21 there's a chance that we could attain the August
22 completion date my suggestion would be let's try it at
23 this point and I say that with due regard to the
24 Commission's early instruction to us that we attempt
25 to expedite to the extent that we can so that we can

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1 complete this as expeditious as possible.

2 CHAIRMAN FARRAR: All right, Ms.
3 Chancellor. A lot has been said in the last 10, 15,
4 20 minutes. Do you want to respond to some of it?

5 MR. BARNETT: Your Honor. This is Sean
6 Barnett. If I might just one point I would like to
7 make in the vein that Mr. Turk was speaking. I think
8 there is a possibility of reaching a stipulation with
9 respect to jettison ordinance impact speeds and angles
10 as well as aircraft based on the information we have
11 from the State and based on the information we've
12 provided to the Staff. We will be presenting that as
13 well.

14 CHAIRMAN FARRAR: All right. Good.
15 Anything else, Mr. Barnett?

16 MR. BARNETT: No, nothing, Your Honor.

17 CHAIRMAN FARRAR: All right. Thank you.
18 Ms. Chancellor.

19 MS. CHANCELLOR: Your Honor, I would like
20 to step back to Judge Lam's comments. We're dealing
21 with a critical safety issue. The State has been
22 involved in this proceeding as you know from many long
23 years and Mr. Turk mentioned the Commission's order
24 and we thought that we're going to get the opportunity
25 to address radiation and criticality. That may never

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1 happen.

2 In addition, the hearing will not be at
3 the location of the facility. They will be in
4 Washington, D.C. This is not a complaint. This is
5 just laying where we are on the table. So I think
6 that we need to take whatever time it takes to do this
7 correctly.

8 Moving on to key determinations. This is
9 partly where the crunch comes and Mr. Gaukler made the
10 point that it shouldn't be too difficult to write
11 testimony because he used the example of the Staff
12 putting a cover on their expert reports. That is not
13 the case with key determinations. Key determinations
14 will require us to analyze and succinctly summarize
15 the key points in both our expert report and in the
16 expert reports put out by the other parties.

17 Just looking at the schedule, it's
18 unfortunate that the Board is going to be absent, but
19 the State came up with a schedule based on a
20 reasonable amount of time for it to prepare its case,
21 file the necessary documents, pack up and get to
22 Rockville, Maryland. With respect to compressing the
23 hearing into two weeks, up until this point we have
24 not had a firm hearing date.

25 We have not yet been in touch with our

1 experts to determine whether they will be available
2 for the hearing dates that will be coming up. To say
3 that you are going to have particular witnesses
4 available and sequence them over a two week period, I
5 believe is totally unrealistic. I believe that's all
6 I have at the moment, Your Honor.

7 JUDGE ABRAMSON: Ms. Chancellor, it's
8 Judge Abramson. Can I ask you just one question about
9 this order of filing things?

10 MS. CHANCELLOR: Yes, sir.

11 JUDGE ABRAMSON: The Applicant and the
12 Staff have suggested that there might be some time
13 saving available, but because we, the Board, are the
14 ones who need time after filing of key determinations
15 to be able to start the hearings. They thought there
16 might be some saving available and it seemed to us to
17 be a pretty good idea if you think it can be achieved
18 by say changing the order of things a little bit.

19 So your prefile directis, according to
20 your schedule, would be filed on July 12 and then you
21 were suggesting filing your rebuttal on July 26 and
22 your key determination on July 29. Is there any
23 advantage in your mind or is it feasible in your mind
24 to change the order of key determination filing and
25 rebuttal filing so that the key determination filing

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1 date could be pushed up a little bit for us and maybe
2 slip your prefile rebuttal date a little bit? So that
3 from our point of view we would have the key
4 determinations a little earlier which might enable us
5 to push up the start of the hearing a little.

6 MS. CHANCELLOR: Let me ask you a question
7 if I may. When we file rebuttal testimony, would you
8 also expect us to file additional key determinations
9 or supplemental key determinations?

10 JUDGE ABRAMSON: I don't think so unless
11 you felt that your rebuttal necessitated some revision
12 in which case you certainly would be permitted to
13 modify your key determinations. I mean our thought
14 was --

15 CHAIRMAN FARRAR: We would not be
16 expecting that from you. But if you wanted to then
17 file a supplement or modification you could, but we
18 want not expect that.

19 JUDGE ABRAMSON: Our thought is that your
20 key determinations are really based on your case as
21 you see it and they should be more or less unrelated
22 to what you're going to file in your rebuttal because
23 in your rebuttal you're really only going to be
24 rebutting stuff that showed up suddenly in the other
25 parties' prefile direct.

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1 MS. CHANCELLOR: I agree, Your Honor. I
2 was just asking for purposes of work order of whether
3 you expected -- We will do whatever is most convenient
4 to you. Typically if you give the parties the
5 opportunity to do something, everybody will do it
6 because they will think the other party is doing it
7 too.

8 JUDGE ABRAMSON: Yes, it's not our intent
9 to make extra work for you. We know we've made a lot
10 of work as it is. But if in your mind, let's say you
11 could move up your key determinations from July 29 to
12 July 21 or something.

13 MS. CHANCELLOR: Your Honor, we would be
14 willing to switch the order in which we presented key
15 determinations and rebuttal.

16 JUDGE ABRAMSON: And could key
17 determinations be moved up without sacrificing quality
18 by a couple of days?

19 MS. CHANCELLOR: We will try. I believe
20 it could.

21 JUDGE ABRAMSON: Would you take a look at
22 that? Let's say your prefile rebuttal is due on the
23 29th rather than the 26th of July. If we could have
24 your key determinations somewhat closer to the 12th,
25 say the 19th or somewhere in between the 29th and the

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1 12th, that gives us more time to look at that before
2 we start the hearings and that is a nice efficient to
3 maybe start the hearings a little earlier without
4 disadvantaging anybody.

5 MS. CHANCELLOR: I think reorganizing that
6 will work, Your Honor, and it helps to relieve the
7 burden. Just packing up after we file key
8 determinations two days after we file key
9 determinations is not something we're looking forward
10 to. We'd be willing to switch key determinations and
11 rebuttals depending on the timing.

12 JUDGE ABRAMSON: Well, the dates now are
13 the 26th and 29th. So you're only talking about
14 giving us three more days. It's fine with us. I
15 think for us it works fine if you move your rebuttal
16 to the 29th, but I'm asking whether you thought you
17 might get your key determinations ahead of the 26th,
18 say the 21st or the 19th or something like that. It's
19 just a question of how much time you need from the
20 12th when you file your direct to get your key
21 determinations together. One week would put you to
22 the 19th. So I'm thinking maybe the 21st or
23 something. That gives you nine days.

24 MS. CHANCELLOR: Let's make it the 21st.

25 JUDGE ABRAMSON: Okay. I think that's

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1 very helpful. That enables us then to start the
2 hearings earlier I think.

3 MS. CHANCELLOR: Oh, I shouldn't have
4 agreed.

5 CHAIRMAN FARRAR: Well, wait a minute, Ms.
6 Chancellor. I'm not sure what was wrong with Mr.
7 Gaukler's or Mr. Turk's suggestion that everyone works
8 hard and gets their direct filed. The next step in
9 the process is you get the other side's direct and you
10 send it out to your witnesses. The witnesses need two
11 or three days, I assume, to look at it before you can
12 start talking to them about what do we do with
13 rebuttal and at that time, the witnesses have gotten
14 back to you and then in three days, you can get them
15 done, get them out. Get the key determinations done
16 in three days so that now the rest of your time is
17 just for rebuttal. I'm not sure why you, Judge
18 Abramson, were so lenient.

19 MR. ZINKHAM: I'll tell you why I'm so
20 lenient in this unique circumstance, Judge Farrar.
21 I'm sensitive to all the parties' suggestions that
22 these key determinations are to repeat the pun (PH)
23 key and that I would like to see them as succinct and
24 as well thought out as possible.

25 I don't like the idea of forcing somebody

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1 to do them in three days. Ms. Chancellor said she
2 thought she could do them in nine and I think that's
3 fine. That means that we have the key determinations
4 on July 21st and we could then a week or ten days
5 later start the hearing instead of having to wait
6 until August 16.

7 CHAIRMAN FARRAR: And now you have to have
8 rebuttal.

9 JUDGE ABRAMSON: Rebuttal is going to come
10 in on the 29th.

11 CHAIRMAN FARRAR: If rebuttal comes in on
12 the 29th, what are all of your different views on when
13 you could start the hearing?

14 MR. TURK: May I ask? When would the
15 parties perceive that we would put the rebuttal
16 testimony on before the Board? Would it be put on
17 with the witnesses when they put on their direct or
18 would it wait until the direct cases are done?

19 JUDGE ABRAMSON: It's filed.

20 MR. GAUKLER: My idea had always been to
21 put rebuttal testimony on at the same time we put
22 direct on.

23 CHAIRMAN FARRAR: Right.

24 JUDGE ABRAMSON: You're talking about
25 having testimony topic by topic so that includes

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1 everything.

2 CHAIRMAN FARRAR: Right. The whole scheme
3 here is when a witness gets on the stand the witness
4 says here's what I believe and here's why the other
5 side is wrong. So in effect, the direct --

6 JUDGE ABRAMSON: The witness goes on. The
7 witness goes on. That's it.

8 CHAIRMAN FARRAR: The witness says
9 everything. And that we don't with having prefile
10 direct which includes some rebuttal as we've talked
11 about earlier and then prefile rebuttal which is only
12 the really late developing things that the witness
13 gets on and presents both of those at once. The only
14 need for a rebuttal witness would be real, real
15 surprise during the course of the hearing.

16 JUDGE ABRAMSON: But the idea is, Mr.
17 Turk, that this is to be a subdivided, topical
18 hearings. You say start with as you've all suggested
19 speed and angle assuming you don't settle that one
20 away. You start with speed and angle. Each party
21 will put on its witnesses on speed and angle. We'll
22 have hearings on speed and angle. Everything you want
23 to say about speed and angle including your rebuttal.

24 CHAIRMAN FARRAR: Right. Every time a
25 witness takes the stand, before cross examination,

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1 that witness will give us the whole story of
2 everything that witness has to say.

3 MS. CHANCELLOR: Your Honor, I would like
4 to a suggestion. Here's what I think is manageable
5 for the State without killing us. We file key
6 determinations on July 21.

7 CHAIRMAN FARRAR: Wait. Direct.
8 Everyone's direct is July 12. Is that right?

9 MS. CHANCELLOR: What?

10 CHAIRMAN FARRAR: Everyone's direct is
11 Monday, July 12th.

12 MR. TURK: Yes, Your Honor.

13 CHAIRMAN FARRAR: Okay.

14 MS. CHANCELLOR: Key determination is July
15 21. Rebuttal and motions in limine are on July 29.
16 Responses to motions in limine August 4.

17 JUDGE ABRAMSON: August 4.

18 MS. CHANCELLOR: And start the hearing
19 August 9. So it's moved a week.

20 CHAIRMAN FARRAR: Say that. Let's start
21 again. Monday, July 12 is direct. Wednesday, July 21
22 is key determinations. Thursday, July 29, is that
23 what you said is rebuttal?

24 MS. CHANCELLOR: Correct.

25 CHAIRMAN FARRAR: Rebuttal and what else?

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1 MS. CHANCELLOR: Motions in limine.

2 JUDGE ABRAMSON: Which was already there.

3 If you look at the right column, that's what they had.

4 CHAIRMAN FARRAR: Right. And?

5 JUDGE ABRAMSON: August 4 for responses
6 rather than 5th.

7 CHAIRMAN FARRAR: Wednesday, August 4 is
8 responses to the motions.

9 MS. CHANCELLOR: Start hearing August 9.

10 JUDGE ABRAMSON: So whatever oral
11 arguments, if any, have to be between the 4th and the
12 9th.

13 MS. CHANCELLOR: The reason for that, I'm
14 assuming if there are any motions in limine they will
15 be only one or two. We would be in position to pack
16 up and get to D.C. for the August 9th start.

17 JUDGE ABRAMSON: And that's very
18 constructive. I think that gives an extra week.

19 MS. CHANCELLOR: That's a busy schedule,
20 but we're willing to try.

21 CHAIRMAN FARRAR: All right. Then that
22 would give us two weeks before the break. Let us --

23 MS. CHANCELLOR: Your Honor, that may
24 allow most of it to be done except probability.
25 Maybe. Maybe not.

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1 CHAIRMAN FARRAR: Hold on. Let us go off
2 the record here a moment before we have the other
3 parties respond.

4 (Whereupon, the foregoing matter went off
5 the record at 3:28 p.m. and went back on
6 the record at 3:31 p.m.)

7 CHAIRMAN FARRAR: We're back on the
8 record. The Board has been talking about the
9 proposals. Mr. Gaukler and Mr. Turk, you've heard Ms.
10 Chancellor's latest proposal which would in effect
11 start the hearing one week later than the Company's
12 schedule, but a week earlier than the State had
13 proposed. It would move things around a little bit.
14 Mr. Gaukler, what's your reaction to that?

15 MR. GAUKLER: It certainly is preferable
16 to start the hearing on August 16th. We believe that
17 by just pushing the key determinations up to say July
18 19th, Monday, as opposed to Wednesday and then cross
19 examination due July 26th, the Monday, that we still
20 would be able to start the hearing on Tuesday, August
21 3 as we suggested. That's what I would propose.

22 CHAIRMAN FARRAR: All right. Mr. Turk,
23 what's your though here?

24 MR. GAUKLER: I just want to make one
25 point here, Your Honor.

1 CHAIRMAN FARRAR: Yes.

2 MR. GAUKLER: The key determinations are
3 in outline form. It's not like as if you're writing
4 a brief where you really are getting into nuisances of
5 words, etc. Obviously it's important that we put time
6 into it and get the points correctly, but it's so much
7 a matter of phraseology as to make sure we've listed
8 the points in outline form. That's all I had to say.

9 MR. GAUKLER: All right.

10 MR. TURK: Your Honor, this is Sherwin
11 Turk. I agree with Mr. Gaukler. Before he started to
12 speak, I had written out a list of the dates that I
13 would suggest. Following the State's lead, instead of
14 July 21st for key determinations make those due July
15 19th. Rebuttal as Mr. Gaukler intimated make that due
16 July 26th instead of the 29th. We could follow
17 responses July 30th and start hearing on Monday or
18 Tuesday, August 2nd or 3rd.

19 I think August 2nd is a good day for us to
20 set up in the hearing. I think all parties will need
21 to get their document in there that Monday and to
22 establish some orderly way of conducting the hearing
23 in terms of where their documents are and how they are
24 going to get at them. Also that Monday, we can ask
25 the Board to issue rulings on the motions of limine

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1 and then Tuesday start the hearing, August 3rd.

2 MS. CHANCELLOR: Excuse me, Mr. Turk.
3 What date do you have us filing motions in limine
4 under your schedule?

5 MR. TURK: I would file them along with
6 rebuttal testimony.

7 CHAIRMAN FARRAR: On the 26th?

8 MR. TURK: Yes.

9 MS. CHANCELLOR: And then four days later
10 the responses to motions in limine would be due.

11 MR. TURK: Yes.

12 MR. GAUKLER: I would add, Your Honor,
13 that I was thinking the State could file theirs later
14 than that because their witnesses even in the first
15 category would not be on the first day.

16 CHAIRMAN FARRAR: I'm sorry. So the
17 Company goes first at the trial. The State could have
18 more time to respond in motions in limine.

19 MR. GAUKLER: Yes. The first category of
20 witnesses or, even more so, in the other category.

21 JUDGE ABRAMSON: Well, this is Judge
22 Abramson. Let me make an observation here, folks.
23 You are pressing. The Applicant and the Staff are
24 pressing hard to start this a few days earlier than
25 the State suggests and it seems to me that the sole

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1 premise of that press is that the belief which I think
2 and Judge Lam indicates he thinks are misguided that
3 you could finish these hearings before the break in
4 August. It would be foolish of all the parties and
5 this Board in my mind to press ahead on such a premise
6 and then feel pressed to try to finish something which
7 we probably can't finish and wind up having gained
8 nothing and create a lot of pressure.

9 JUDGE LAM: And furthermore - this is
10 Judge Lam - I felt that the State's proposed August
11 9th starting date for a hearing is more than doable
12 and it's fair to the State. Repeatedly I have heard
13 the State of Utah had said they are pressed with
14 resources. They need more time to do preparation of
15 their case and for just a few more days of preparation
16 that would satisfy their needs.

17 I personally do not see that starting on
18 August 3rd it would be a wise choice for us and for
19 everybody and particularly with what Judge Abramson
20 about "Gee, are we really dealing with a three-week
21 hearing schedule?" If the hearing does indeed take
22 more than three weeks, then there is nothing to be
23 gained.

24 MR. GAUKLER: I had nothing to add, Your
25 Honor. I think we've made the various points that we

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1 believe make August 3 reasonable and I have nothing to
2 add beyond what I've already said.

3 CHAIRMAN FARRAR: Let me add this, Mr.
4 Gaukler. Judge Abramson and Judge Lam have both come
5 at this and stated this from slightly different ways.
6 I guess I would add a third way of looking at it. At
7 every stage of this proceeding the last few months,
8 it's taken the Applicant and the Staff longer than
9 they predicted to do something. We've never been
10 critical of them for doing that because this is
11 Company's proposal. They've been at it for a lot of
12 time and they were entitled to put their best foot
13 forward in response to the Staff's questions.

14 The Staff has taken longer than they said
15 it would to do their work and the Commission (1) won't
16 want to tell them to do it faster and (2) the fact
17 that the Commission has some decisions which tell us
18 we can't do that. It seems to me that when you then
19 come to the third party and they say we need some more
20 time because this is just in effect a complicated and
21 difficult case. It just seems unfair to me that we
22 would say to them "Well, sorry. We have to in effect
23 make up this time." I guess I'm with my colleagues
24 that it's just not worth it.

25 JUDGE ABRAMSON: It's a gamble anyway.

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1 CHAIRMAN FARRAR: And as Judge Abramson is
2 saying, it's a gamble anyhow. I don't think any of us
3 even though, Mr. Turk and Mr. Gaukler, you gave us
4 your solemn commitment, I think we're still atheists
5 here.

6 JUDGE ABRAMSON: Well, you guys haven't
7 seen me asking questions yet.

8 CHAIRMAN FARRAR: We'd hate to cut
9 people's preparation time short and then find out it
10 wasn't a three week hearing after all. I think we
11 like this revised proposal which has the hearing
12 starting on August 9th. Now maybe you all are right
13 and it's a 14 day hearing and you'll stipulate some
14 things and maybe we can do it in 10 days, but I
15 wouldn't count on it.

16 There is also this problem. The schedule
17 is tight. The Commission thought we would finish a
18 year ago. At every stage, we thought we've had all
19 these different time deadlines and none of which have
20 been met.

21 So we're sitting here saying this is a
22 great new schedule. But the notion that over the next
23 four months, nothing will happen to have any slippage.
24 Given all the scheduling and logistics and the
25 safeguards constraints, that it's not a wise thing for

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1 us to try to force it in and finish it by August 20th.
2 So our decision then would be that as it says here in
3 the State's proposal prefile direct will be July 12th.
4 Key determinations can be --

5 Ms. Chancellor, you really think you need
6 that nine days. I just don't see that. When you're
7 doing your work and having done your prefile testimony
8 and wanting to devote your attention to rebuttal, I'm
9 still not convinced and I think Judge Abramson was
10 having a change of heart that you need until
11 Wednesday, July 21st.

12 MS. CHANCELLOR: Well, Your Honor, we're
13 trying to satisfy Judge Abramson on what he expects
14 from us. I think we do need that amount of time. You
15 can't just prefile testimony and then turn around at
16 9:00 a.m. and start writing key determinations. You
17 usually have to have a day or so down time so that you
18 can get your sanity back and then start in on the next
19 project.

20 CHAIRMAN FARRAR: All right. Then let's
21 stick then with the Wednesday, July 21st for key
22 determinations.

23 JUDGE ABRAMSON: Prefile rebuttal on the
24 29th.

25 CHAIRMAN FARRAR: Prefile rebuttal on

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1 Thursday, the 29th.

2 JUDGE ABRAMSON: Along with --

3 CHAIRMAN FARRAR: Along with any motions
4 in limine that have not been filed by then. But
5 again, I would hope you would all do motions in limine
6 earlier than that. Then responses to motions in
7 limine by Wednesday, the 4th.

8 JUDGE ABRAMSON: They do oral arguments
9 the next day almost because if you're starting the
10 hearing on the 9th.

11 CHAIRMAN FARRAR: Right, what we will do
12 is let's reserve the morning of the 5th. Now motions
13 in limine, can you file those -- Can you talk around
14 safeguards for those, do you think, so that we can get
15 them by email?

16 MR. GAUKLER: The one that we're thinking
17 of right now, yes, Your Honor.

18 MS. CHANCELLOR: We have no idea, Your
19 Honor.

20 CHAIRMAN FARRAR: Yes.

21 MR. TURK: Your Honor, I think if we can
22 identify the parts to strike by indicating page and
23 line without indicating what the contents of that page
24 is and we just put the initial word.

25 CHAIRMAN FARRAR: Right. Excellent.

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1 MR. TURK: We can do that.

2 CHAIRMAN FARRAR: Because if you'll get
3 them to us the evening of the 4th, we could have oral
4 argument at our standard 1:30 p.m. time frame, either
5 have a conference call set up at 1:30 p.m. on Thursday
6 --

7 MS. CHANCELLOR: Your Honor, this is
8 Denise Chancellor. We'll be packing up all of our
9 documents. The safeguards document, there is only a
10 limited amount of people who have access to those
11 document. We'll be grubbing around with files on
12 Thursday and Friday. We may not even have access to
13 the materials, but I guess we could keep them out.
14 But I was hoping that we could just set aside that
15 time to pack up documents and figure out how we're
16 going to ship everything. Maybe we could just take
17 the first hour of the hearing on the 9th so we don't
18 have to talk around safeguards issues if in fact there
19 is anything that we need to address.

20 CHAIRMAN FARRAR: All right. We'll either
21 do this. We'll either give you a ruling without oral
22 argument on the 5th or we'll take up as the first
23 order of business on the 9th. Now how much time do
24 you need to set up or do we want to arrange for
25 everyone to come in Sunday or just take time for you

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1 on Monday for you to set up?

2 MR. GAUKLER: I think it would be good for
3 us to come in on Sunday and do whatever we need.

4 MR. TURK: I think you'll have a lot of
5 problem with NRC security coming in on Sunday.

6 JUDGE ABRAMSON: Yes, I believe that's
7 right.

8 MR. TURK: They don't allow visitors into
9 the building on weekends.

10 JUDGE ABRAMSON: It's going to have to be
11 Monday.

12 MR. TURK: Apart from the SGI issue.

13 JUDGE ABRAMSON: Yes, I think that's
14 right.

15 CHAIRMAN FARRAR: All right. Then we'll
16 just have to come in Monday and we'll plan to get
17 started after lunch.

18 JUDGE ABRAMSON: Or get started as soon as
19 we can. They will start cranking.

20 CHAIRMAN FARRAR: We'll be ready here and
21 whenever you're set up, we will start. Then that
22 seems like the best approach. You all need to be
23 thinking about how you're going to organize how the
24 issues should be organized and subcategorized in terms
25 of what order you think what issues. We need to talk

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1 some more about cross examination time allotments.
2 When can we usefully have another call that we let you
3 all get your work done, have time to talk to each
4 other and come back to us on some of these
5 organizational matters?

6 MR. GAUKLER: Your Honor, this is Mr.
7 Gaukler. Staff and the State will be preparing
8 reports. Maybe we just do it -- I don't know if we
9 can do it sometime next week or whether we just do it
10 a day or two after the reports assuming that our
11 experts will be looking at the reports at that point
12 in time which might be a down time for us to talk
13 among ourselves and get back to the Board.

14 CHAIRMAN FARRAR: Do you mean after May
15 11th?

16 MR. GAUKLER: Yes, maybe just a couple of
17 days after May 11th. That's just an idea I'm throwing
18 out off the top of my head.

19 JUDGE ABRAMSON: Well, we have a schedule
20 set up now. These other things, although they're
21 important, are more ministerial, aren't they?

22 CHAIRMAN FARRAR: They are. Why don't we
23 do it on the 18th of May because that why you'll do
24 your reports and then you'll have a better idea on the
25 cross examination, on the organization. You'll have

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1 a few days to talk to each other. Let's do 1:30 p.m.
2 on the 18th of May. Does that work for everybody?
3 All we're talking about -- In other words, that's not
4 a time sensitive conversation. That talks about cross
5 examination time allotments and the order of
6 proceeding, the categorization of the issues.

7 MR. GAUKLER: That's be good for me, Your
8 Honor.

9 CHAIRMAN FARRAR: All right. Then let's
10 do 1:30 p.m.

11 MS. CHANCELLOR: Your Honor, the comment
12 here was we have no other life. We'll make ourselves
13 available.

14 MR. TURK: May I also ask while we'll
15 setting the hearing schedule? When does the Board
16 foresee hearing closing if we do the two weeks in
17 August?

18 CHAIRMAN FARRAR: We'll do the two weeks
19 in August.

20 JUDGE ABRAMSON: It's actually now up to
21 three, isn't it?

22 CHAIRMAN FARRAR: From the 9th through the
23 20th. Then we would reconvene on the 7th and now
24 Labor Day is the 6th. Maybe reconvene on the
25 afternoon of the 7th.

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1 JUDGE ABRAMSON: Yes, give people time to
2 set up and go as long as we can.

3 CHAIRMAN FARRAR: And then go --

4 JUDGE ABRAMSON: Go until we're done.

5 CHAIRMAN FARRAR: And go, but then we have
6 the Jewish holiday problem.

7 JUDGE ABRAMSON: We'll take a break for
8 the Jewish holidays if we're going through them. I
9 think that's only appropriate.

10 CHAIRMAN FARRAR: All right.

11 JUDGE ABRAMSON: We'll finish when we
12 finish, but we'll take a break for those holidays.

13 MR. TURK: That gives us approximately one
14 week afterwards for the holidays themselves though.

15 CHAIRMAN FARRAR: And if you're right that
16 it's a three week hearing, then we manage to finish
17 before the holidays.

18 JUDGE ABRAMSON: And if we didn't, we
19 didn't.

20 CHAIRMAN FARRAR: All right. Then we've
21 made good progress again. We appreciate the way you
22 all have represented your clients and presented your
23 arguments, your legitimately different views on how to
24 do this and our decision is based on our experience
25 with it and what we think is fair to all sides given

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1 the background and the context of prior proceedings
2 and how difficult this has proven for the Applicant
3 and the Staff already.

4 So if there is no other business, does
5 anyone else have anything that needs to be taken up?
6 Hearing nothing, we're done for today. Thank you.
7 Off the record.

8 (Whereupon, at 3:51 p.m., the proceedings
9 went off the record.)
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CERTIFICATE

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

Name of Proceeding: Private Fuel Storage, LLC

Docket Number: 72-22-ISFSI

Location: telephone conference

were held as herein appears, and that this is the
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Alex Patton
Official Reporter
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