

RAS 7750

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

Title: Private Fuel Storage

Docket Number: 72-22-ISFSI

Location: (telephone conference)

Date: Thursday, May 18, 2004

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

\* \* \* \* \*

ATOMIC SAFETY AND LICENSING BOARD PANEL  
PRE-HEARING CONFERENCE CALL

\* \* \* \* \*

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IN THE MATTER OF:

PRIVATE FUEL STORAGE, L.L.C

Docket No. 72-22-ISFSI

(Independent Spent Fuel  
Storage Installation)

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Thursday, May 18, 2004

Teleconference

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

BEFORE:

MICHAEL C. FARRAR Chairman

PETER S. LAM Administrative Judge

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OTHER NRC STAFF PRESENT:

KATHY LYONS-BURKE

CINDY HARBAUGH

JAMES CAVANAUGH

ANDREW WELKIE

JACK WHETSTINE

SHARON MARKS PERINI

PATRICIA HARICH

SUSAN LIN

JACK GUTTMAN

BOB SHEWMAKER

MEHENDRA SHA

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

1:32 p.m.

JUDGE FARRAR: Well go on the record.

This is Mike Farrar at NRC Headquarters. We're having another in our series of three hearing conference calls on PFS matter. Let me introduce the room full of people I have here, most of them for this second item in my email, the safeguards protections which we'll take up first so that they can go about their other business.

With me here is Judge Peter Lam. Not with us is Judge Paul Abramson who is on official travel and will not be able to call in, so Peter and I will be handling things. Also with us is Susan Lin, our law clerk. Several people you may not be familiar with. Kathy Lyons-Burke is from elsewhere in the NRC. She's in the Office of Chief Information Officer and she'll be helping us with the information security issues, safeguards issues. On the phone calling in from vacation which started a day late because of her working here yesterday on this matter is Cindy Harbaugh. Cindy, thanks for calling in.

MS. HARBAUGH: You're welcome.

JUDGE FARRAR: From our office are Jim Cavanaugh who handles the overall Commission contract

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1 with the Neal Gross court reporters and he's familiar  
2 with all those procedures and Andrew Welkie who is our  
3 Information Technology person working on Yucca  
4 Mountain and other matters. Also with us from our  
5 administrative side are Jack Whetstine and Sharon  
6 Marks Perini and Trich Harich, all of whom will be  
7 charged with implementing some of the things we'll  
8 talk about today. Who do we have for the State?

9 MS. CHANCELLOR: Denise Chancellor and  
10 Connie Nakahara and with me is Jean Brackson (PH),  
11 paralegal, and Scott Murrell, who is the IT manager  
12 for the Attorney General's office.

13 JUDGE FARRAR: Oh, good. Thanks for  
14 bringing him in. From the Company?

15 MR. GAUKLER: Paul Gaukler and Sean  
16 Barnett.

17 JUDGE FARRAR: All right. Welcome again.

18 MR. GAUKLER: Thank you.

19 JUDGE FARRAR: And from the Staff?

20 MR. TURK: Sherwin Turk. With me are  
21 Laura Zaccari, Jack Guttman, Bob Shewmaker and  
22 Mehendra Sha.

23 JUDGE FARRAR: All right. We received a  
24 week or so ago their reports that were promised on May  
25 11th. We appreciate having those and know that like

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1 with all the other parties, a lot of effort went into  
2 those, I know, each time. Any of you who files one of  
3 these documents or set of documents know it represents  
4 a lot of work, so we appreciate that and we appreciate  
5 that we received the State's report on the same day  
6 and we appreciate you both meeting that deadline  
7 because that allows us to head down with this  
8 schedule.

9           You all got my email of May 13th and let's  
10 take up the second item first in the matter of  
11 safeguards protections. And there are two aspects of  
12 that, the information security which Kathy is our  
13 resident expert on and physical security which Cindy  
14 is the expert on. We thought as we get into the next  
15 phase where you're going to be doing depositions in  
16 Salt Lake and then if we head to the hearing, it was  
17 timely to talk about things.

18           The principal issue on the information  
19 side are the affidavit connected with our Safeguards  
20 Protective Order we issued in this case. It has a  
21 clause in it running on pages three to four of the  
22 attached affidavit that if any protective information  
23 is backed up or stored on a computer hard drive or  
24 other device, that drive or device shall be capable of  
25 being removed and stored in a special container and so

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1       forth.

2               As we've been understanding this, that  
3       meant if you had a removable hard drive that you save  
4       things to, then you had to remove it and store it in  
5       an appropriate safe. But as the Agency and everybody  
6       has zeroed in on possible areas of concern, they  
7       became concerned that even if you save material to a  
8       floppy disk, it resides on your hard drive and even if  
9       you can't get it, someone with the right technology  
10      can recover the material off your hard drive.

11             So while when we wrote our protective  
12      order and we said if it was stored on a computer hard  
13      drive, we meant when you save it to your hard drive  
14      we're now looking at that in a more sophisticated  
15      fashion.     The first question I have is your  
16      depositions in Salt Lake, who has hired the court  
17      reporter?

18             MS. NAKAHARA: Your Honor, this is Connie.  
19      Nakahara.   We haven't actually hired the court  
20      reporter yet. We're still trying to make sure we can  
21      comply with safeguard requirements. The first option  
22      is for the court reporter that uses a standalone court  
23      reporting machine which they said have a hard drive,  
24      but they can save to a disk which sounds like that's  
25      not an option right now. We're trying to see if they

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1 can bypass the disk and save to a laptop with an  
2 external hard drive that the State will provide and  
3 retrieve after the transcripts have been completed.

4 We will also provide them with a security  
5 storage container where they can store the safeguard  
6 data while they're preparing the transcript. We will  
7 retrieve that and all notes and the electronic copies  
8 from the court reporter when they're completed. As a  
9 backup if that doesn't work, they are willing to  
10 record the depositions and then transcript it with an  
11 external hard drive provided by the State.

12 MS. LYONS-BURKE: This is Kathy Lyons-  
13 Burke. Can the hard drive that you provide be the  
14 only hard drive accessible to the computer?

15 MS. NAKAHARA: It could be, yes.

16 MS. LYONS-BURKE: If you did that and you  
17 secured that hard drive, then you would meet the  
18 requirements.

19 MS. NAKAHARA: Okay.

20 MS. LYONS-BURKE: But there can't be  
21 another -

22 MS. HARBAUGH: Having said that, Kathy, as  
23 we've been talking - this is Cindy - would you like to  
24 address the notion of, from my layman's terms because  
25 I'm not an IT person, the cleanup software.

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1 MS. LYONS-BURKE: Yeah, but let me make  
2 sure that they understand that it means that there's  
3 not another hard drive running an operating system.  
4 That is the only hard drive running on that system at  
5 that time. The operating system and everything is on  
6 that single hard drive. Is that correct?

7 MS. NAKAHARA: Yes.

8 MS. LYONS-BURKE: Okay.

9 MS. NAKAHARA: I'm looking to Scott  
10 Murrell for confirmation, but yes.

11 MS. LYONS-BURKE: Okay. The other thing  
12 that we wanted to --

13 MS. NAKAHARA: And he did confirm. Sorry.

14 MS. LYONS-BURKE: The other thing that we  
15 wanted to provide as another safety mechanism is the  
16 possibility of using something like SecureClean as an  
17 example we have provided by AccessData that will clean  
18 up a lot of the trail left behind. If you have any  
19 other computers that have been used that are not  
20 secured because you saved it to another piece of  
21 media, SecureClean can clean up all of the trail left  
22 behind and that can be used as well.

23 MR. GAUKLER: How does that work, Kathy?

24 MS. LYONS-BURKE: The SecureClean looks on  
25 your hard drive for temporary files and deleted files

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1 and actually overwrites them, so that that data is not  
2 left behind on that disk.

3 JUDGE FARRAR: So, Kathy, let me see if I  
4 understand that. That's if you had a nonremovable  
5 hard drive. Save to a floppy. You then run the  
6 SecureClean and that would clean up your hard drive.

7 MS. LYONS-BURKE: Right. It's less  
8 desirable than the removable drive, but it's better  
9 than nothing.

10 JUDGE FARRAR: Does everybody follow that?

11 MS. NAKAHARA: But does that mean the  
12 court reporters could use their laptops and not use it  
13 for anything else until they ran this SecureClean  
14 software?

15 MS. LYONS-BURKE: We would prefer the  
16 removable hard drives.

17 MS. NAKAHARA: Without a removable hard  
18 drive with the understanding that they would lock up  
19 the laptop when it was not in their possession.

20 MS. LYONS-BURKE: We would prefer  
21 removable hard drives.

22 MS. NAKAHARA: That's doable. We'll just  
23 go that route.

24 MS. HARBAUGH: The software that you're  
25 referring to, Kathy, I take it is readily available

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1 and what provider again and what kind of cost are we  
2 talking about?

3 JUDGE FARRAR: Yeah, the Internet printout  
4 I have here, it's SecureClean. It's \$39.95 from  
5 AccessData, one word, AccessData.com. Hold on one  
6 second here. Off the record.

7 (Whereupon, the foregoing matter went off  
8 the record at 1:43 p.m. and went back on  
9 the record at 1:45 p.m.)

10 JUDGE FARRAR: Let's go back on the  
11 record. We've been talking amongst ourselves here to  
12 make sure we understand and we have a couple of  
13 questions, one about what our Agency people insist on  
14 and what's preferable compared to other things. But  
15 we had a question about the State's initial  
16 description. Andy, do you want to?

17 MR. WELKIE: Well, the configuration for  
18 the court reporter connecting to a PC with a removable  
19 hard drive, is the court reporter, whatever machine  
20 they're using to record the information connected  
21 directly to the PC and that PC has the removable hard  
22 drive so that there's nothing between the court  
23 reporter's machine and that workstation?

24 MS. NAKAHARA: Yes, that's correct.

25 MR. WELKIE: So how does the --

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1 MS. NAKAHARA: The only thing we need to  
2 verify -- I shouldn't say the only thing. One of the  
3 things we need to verify is whether it can bypass the  
4 hard drive on the court reporting machine.

5 MR. WELKIE: So there is a hard drive on  
6 the court reporter machine.

7 MS. NAKAHARA: Yes, both the court  
8 reporting machine and the laptop have the hard drives,  
9 but it was the court reporter's understanding that the  
10 hard drive could be bypassed and we just need to  
11 confirm that.

12 JUDGE FARRAR: In other words, so that  
13 hard drive is not removable.

14 MS. NAKAHARA: The court reporting machine  
15 or the laptop?

16 MR. WELKIE: The court reporting machine.

17 MS. NAKAHARA: I don't know the answer to  
18 that.

19 JUDGE FARRAR: And I think our IT people  
20 here are saying even if you think it's being bypassed,  
21 you and I think it's bypassed because we can't find  
22 it, but electronically it's not being bypassed and  
23 there are bits and pieces hiding in there which  
24 SecureClean can take care of although that's not the  
25 way our people prefer that we go. I think we're

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1 caught here between what our protective order now says  
2 and what the emerging rules are for the Commission  
3 things internally. Whereas, of course, now this is  
4 not under Commission contract. This is not our  
5 information. This is what you're doing externally, so  
6 we have a little bit of leeway there. But we're  
7 trying to make sure that we do all the things in as  
8 rational and coherent and consistent a fashion as  
9 possible.

10 MS. NAKAHARA: Your Honor, since I don't  
11 have the information, I would suggest that I get  
12 Scott, our IT person, into looking at the court  
13 reporting machine and perhaps he could communicate  
14 with Mr. Welkie and Ms. --

15 JUDGE FARRAR: Lyons-Burke.

16 MS. NAKAHARA: -- Lyons-Burke.

17 JUDGE FARRAR: Kathy, what's your phone  
18 number?

19 MS. LYONS-BURKE: 301-415-6595.

20 JUDGE FARRAR: 6595, Kathy Lyons-Burke.  
21 She's with the Office of Chief Information Officer and  
22 Andy Welkie is in our office. Andy, you're 415 --

23 MR. WELKIE: 6541.

24 JUDGE FARRAR: 6541. Why don't we ignore  
25 the ex parte rules. I guess it's not really a

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1 violation of the ex parte, but, Connie, have your  
2 person, Scott, talk directly to Kathy and Andy and see  
3 how far we get with this.

4 MS. NAKAHARA: Could you repeat your phone  
5 numbers again? I'm sorry.

6 JUDGE FARRAR: Yes. Kathy's ends in 6595  
7 and Andy's is 6541.

8 MS. NAKAHARA: Okay. Thank you.

9 MS. HARBAUGH: Do we have the need to, of  
10 course, think about maybe printers as well? I presume  
11 that that will be part of this whole package in the  
12 discussion.

13 JUDGE FARRAR: That was Cindy.

14 MS. NAKAHARA: But the printer will be a  
15 standalone printer.

16 MS. HARBAUGH: Okay.

17 MS. NAKAHARA: Hooked to the standalone  
18 laptop.

19 JUDGE FARRAR: All right. Now your first  
20 depositions, in fact, why don't you give me the entire  
21 deposition schedule? You're starting next Monday.

22 MR. GAUKLER: Next Saturday, actually.  
23 The Saturday, May 22nd.

24 JUDGE FARRAR: Okay.

25 MR. GAUKLER: We have depositions of

1 General Jefferson and Colonel Fly (PH) Saturday. Then  
2 we pick up back here in D.C. and we've contracted with  
3 Neal Gross to do the depositions here in D.C. which  
4 they should be able to follow since the contracts with  
5 the NRC would follow the same procedures for the  
6 depositions as they would for the NRC.

7 JUDGE FARRAR: Okay.

8 MR. GAUKLER: We then have depositions  
9 Monday through Thursday going into Friday, the  
10 following week, the week of the 24th here in D.C. We  
11 then go to Salt Lake City with depositions of Allen  
12 Soler and the staff structural people June 1st through  
13 June 4th.

14 JUDGE FARRAR: Hold on, Mr. Gaukler, just  
15 a second here. So that starts on what day?

16 MR. GAUKLER: Tuesday, June 1st.

17 JUDGE FARRAR: Okay.

18 MR. GAUKLER: And goes through Friday,  
19 June 4th.

20 JUDGE FARRAR: So that's the first time  
21 you're in Salt Lake and would have to have the new  
22 court reporter ready.

23 MR. GAUKLER: That's correct.

24 JUDGE FARRAR: Okay.

25 MR. GAUKLER: And then we had a difficulty

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1 in scheduling the remaining depositions and it so  
2 happens that we can schedule all the remaining  
3 depositions that wouldn't be held the first week here  
4 in D.C. or the week of June 1st the week of June 21st.  
5 So we would have no depositions for two weeks is what  
6 we would propose from June 5th through June 21st and  
7 then we have that last week of depositions in Salt  
8 Lake City starting Monday morning, June 21st going  
9 through if need be Saturday albeit we think we'll be  
10 done by Friday. That's outside the four week window,  
11 but given the fact we don't have depositions for two  
12 previous weeks, the parties don't believe that the  
13 schedule would need to be changed.

14 JUDGE FARRAR: Okay. Thank you, Mr.  
15 Gaukler. So our deadline then for making sure that  
16 the Salt Lake court reporters are doing things  
17 properly we have to be ready by Tuesday, June 1st  
18 which is right after Memorial Day. We really have to  
19 get it resolved next week.

20 MS. HARBAUGH: A couple of other questions  
21 with respect to the court reporter. This is Cindy.  
22 I gather from your email that this company has  
23 recently done some Department of Homeland Security  
24 possibly classified depositions or transcripts. I'm  
25 presuming that they have a copy of the Security

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1 Authority and probably have a facility plan already in  
2 place and that would give me a warm and cozy  
3 comfortable feeling if I could get confirmation of  
4 that. Therefore, I would like to request if you have  
5 a point of contact that I may call at City Court in  
6 order to ascertain whether or not they have the  
7 facility approval for another government agency. I  
8 would appreciate that.

9 MS. NAKAHARA: Cindy, this is Connie  
10 Nakahara. I will email you Lynette Shinderling's  
11 phone number who is one of the co-owners and that's  
12 who I've been working with.

13 MS. HARBAUGH: Fantastic. In some of your  
14 emails, you've indicated that they are in a controlled  
15 access building with additional controlled access into  
16 the office and, of course, that's one of the  
17 requirements and that you would be providing the  
18 appropriate security container for them. So once we  
19 resolve some of these IT issues, I believe that we'll  
20 probably be in fairly good shape from my perspective,  
21 but I will follow up on this other aspect and that'll  
22 give us hopefully even a warmer, cozier feeling.

23 JUDGE FARRAR: All right. So we don't get  
24 a scramble of phone calls late next week, let me make  
25 sure I understand Kathy. Whatever may be said for

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1 what the rules are for NRC internally, at this point  
2 while you wouldn't like it, if we had to have the Salt  
3 Lake court reporters on the SecureClean system, you  
4 wouldn't say no. You wouldn't give a resounding yes,  
5 but you wouldn't say no.

6 MS. LYONS-BURKE: Correct. My concern is  
7 whether or not it would run on a court reporting  
8 machine. That is another issue that I don't know.

9 JUDGE FARRAR: Right. All right. Then I  
10 think we have --

11 MS. NAKAHARA: Your Honor, could I ask a  
12 question about the sanitizing software?

13 JUDGE FARRAR: Yes.

14 MS. NAKAHARA: Scott Murrell has been  
15 familiar with a locally developed software called  
16 WipeDrive and it's approved by the Department of  
17 Defense which appears to be a similar type software.  
18 Could we use that software versus SecureClean?

19 MS. LYONS-BURKE: Yes.

20 JUDGE FARRAR: Yeah, none of us own stock  
21 in SecureClean and we're just using that as an  
22 example. But anything else that would accomplish the  
23 same purpose would be fine.

24 MS. LYONS-BURKE: And certainly if it's  
25 DoD approved, it's better. I would consider that a

1 better solution than one that is not.

2 JUDGE FARRAR: Excellent.

3 MR. TURK: This is Sherwin Turk. I wonder  
4 if I could make a suggestion.

5 JUDGE FARRAR: Go ahead.

6 MR. TURK: If the State provides a laptop  
7 to the court reporter to use and then when the court  
8 reporter is done, let the State send it in to NRC to  
9 use whatever we consider to be appropriate to make  
10 sure that there's nothing left on it.

11 MS. NAKAHARA: But we wouldn't have the  
12 use of our laptop to develop deposition and prefile  
13 testimony and anything else we need to work on.

14 MR. TURK: Right. You would need a new  
15 laptop, I suppose, but then it could be returned to  
16 you and used for other purposes.

17 MR. GAUKLER: But also it applies to any  
18 laptops that we use as well in terms of creating  
19 prefile testimony because we would be saving it on  
20 disk. That's all standard practice and we will get  
21 this SecureClean based on what we understand based on  
22 this conversation now.

23 JUDGE FARRAR: So, Mr. Gaukler, what  
24 you're saying is the same problem we're worried about  
25 with the court reporter, you've been having a

1 nonremovable hard drive saving to a disk and you've  
2 been assuming you were all right because you didn't  
3 save.

4 MR. GAUKLER: And we'd go in and we'd know  
5 that. We've talked about that. I've seen people who  
6 have gone in and gotten rid of backup stuff. We've  
7 done that in terms of where files were saved, etc. I  
8 would assume they told us all those places where they  
9 would be so we make it a practice of doing that. But  
10 we just get this Secure thing now and we take care of  
11 it, but it wouldn't only affect us.

12 It would also affect our experts who work  
13 the same way because we have experts who work  
14 preparing reports. Okay, they're preparing reports.  
15 Put them on disks from their regular laptop computer.  
16 So I mean is this much wider than just the court  
17 reporter which would require a major change in the way  
18 that we've been operating?

19 MS. NAKAHARA: But it's not a major  
20 impact.

21 MR. GAUKLER: What?

22 MS. NAKAHARA: It's major change, but not  
23 a major impact.

24 MR. GAUKLER: Well, we have to get  
25 separate hard drives.

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1 MR. BARNETT: We'd have to buy new  
2 computers or our experts would have to buy new  
3 computers in order to do that.

4 MS. NAKAHARA: And, Your Honor, at least  
5 speaking for the State, Mr. Murrell has been involved  
6 with the Attorney General's office in identity theft  
7 issues and has been very involved in knowing how to  
8 clean hard drives and computers for other purposes and  
9 we're very confident in his capability to clean any  
10 hard drives that we use with this WipeDrive or  
11 SecureClean or any sanitizing software.

12 JUDGE FARRAR: Okay. Let me interrupt  
13 here for a second. Our court reporter does not have  
14 the luxury of working with you all for the last three  
15 or five or seven years like we have and doesn't pick  
16 up on your voices as well as we do. So if you would  
17 be sure to introduce yourself, that was Connie  
18 Nakahara, but if you all would be sure to mention your  
19 names when you start. Kathy, it sounds to me like  
20 everybody has been acting in good faith to comply with  
21 our protective order and this might be a particularly  
22 bad time to try to get them be buying new equipment  
23 and so forth. Do we continue the way they said with  
24 the cleanup that they, both the Company and the State  
25 are doing?

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1 MS. LYONS-BURKE: Yes, again, we would  
2 prefer the removable drives, but yes.

3 JUDGE FARRAR: Okay.

4 JUDGE LAM: This is Judge Lam. I had a  
5 question for Kathy. I thought Ms. Lyons-Burke had  
6 raised a third option. One is the removable hard  
7 drive. The second one is using this cleanup software.  
8 The third option is to use a laptop to be locked up.  
9 Am I correct?

10 MS. LYONS-BURKE: And the laptop has to be  
11 controlled as safeguards information.

12 JUDGE LAM: So there are three options out  
13 there. Whichever suits everybody's needs would be  
14 fine as Ms. Lyons-Burke is concerned.

15 MS. LYONS-BURKE: Right. Then the laptop  
16 is no longer controlled as safeguards and has to be  
17 cleaned in some appropriate way.

18 JUDGE FARRAR: All right. I think we have  
19 an understanding of how to proceed. Kathy, are you  
20 here all next week?

21 MS. LYONS-BURKE: Yes, I'm in class most  
22 of next week, but somebody can get me out of class if  
23 there's an issue.

24 JUDGE FARRAR: We'll find you. Andy, are  
25 you here?

1 MR. WELKIE: I'm available.

2 JUDGE FARRAR: Okay. Good. Then, Ms.  
3 Nakahara, have Scott work directly with Kathy and  
4 Andy.

5 MS. NAKAHARA: Yes, sir.

6 JUDGE FARRAR: And we'll get involved if  
7 we have to, but I think whatever you all work out. As  
8 we've indicated in these proceedings, we on the Board  
9 do not claim any expertise in NRC's security  
10 practices, but while we can urge or explain the  
11 proceedings to our security people and ask them to  
12 impose their restrictions in the most reasonable way,  
13 the final call on all these things are theirs. They  
14 are the experts. They're the ones charged with the  
15 responsibility, so work with them. Kathy, thanks for  
16 coming down to join us. Andy.

17 MS. NAKAHARA: Your Honor, while you still  
18 have your experts there, can we ask a few more  
19 clarifying questions?

20 JUDGE FARRAR: Sure.

21 MS. NAKAHARA: In one of the conference  
22 calls on June 25, 2003 when Mr. Stapleton tried to  
23 provide us with expertise, he mentioned that NRC was  
24 required to portion-mark their documents.

25 MS. LYONS-BURKE: Yes.

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1 MS. NAKAHARA: And what we were wondering  
2 if we could get copies of the portion-marked documents  
3 so we would know clearly what we could discuss over  
4 the phone with our experts while we're preparing  
5 prefile testimony and what we would have to send  
6 through a different safeguard channel.

7 JUDGE FARRAR: Now --

8 MR. TURK: May I address that, Your Honor?

9 JUDGE FARRAR: Yes, I think you rather  
10 than Kathy would be the person.

11 MR. TURK: Okay. This is Sherwin Turk.  
12 I indicated to the State's lawyers previously by  
13 telephone that we do not portion-mark other people's  
14 documents.

15 MS. NAKAHARA: And that's in contradiction  
16 to what Mr. Stapleton said earlier.

17 MR. TURK: Mr. Stapleton, if he said that,  
18 was wrong. So I've told you this by telephone. It's  
19 still the correct answer. We will not be portion-  
20 marking other people's documents. It takes too much  
21 of our resources to do that and it's not our policy to  
22 do that.

23 MS. NAKAHARA: Okay. We just wanted to  
24 clarify because it's in the transcript.

25 JUDGE FARRAR: Okay. So what that means

1 is that anything that's called safeguards, you're  
2 forced to treat the whole thing as safeguards. Is  
3 that correct, Mr. Turk?

4 MR. TURK: Yes.

5 MS. HARBAUGH: I would concur with that.  
6 This is Cindy.

7 JUDGE FARRAR: Okay. So if it's not  
8 portion-marked, then anything they want to talk about,  
9 for example, cannot be on the telephone.

10 MS. NAKAHARA: Okay. Then I have another  
11 question. This is Connie Nakahara again. Is there  
12 any authorization of using encryption software to send  
13 email or electronic documents to someone who is  
14 allowed to receive safeguard documents, being our  
15 experts?

16 MS. LYONS-BURKE: This is Kathy Lyons-  
17 Burke. Yes, the safeguards can be, as long as it's  
18 encrypted on a standalone machine and then transferred  
19 to the networked machine in an encryption form and  
20 that encryption is FIPS 140 compliant, validated  
21 actually, as the encryption tool appears on the FIPS  
22 140 validation that's on the NIST website, it can be  
23 sent.

24 MR. TURK: Kathy, I'm sorry. Someone was  
25 rustling papers. I didn't hear the beginning of your

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1 comment. Could you say it again?

2 MS. LYONS-BURKE: Sure. The safeguards  
3 information must be encrypted on a standalone machine  
4 and then transferred to the network machine. The  
5 encryption itself, the tool that's used to perform the  
6 encryption, must be a validated tool validated to  
7 Federal Information Processing Standard 140 and the  
8 list of validated products is on the NIST or National  
9 Institute of Standards and Technology website and it  
10 must appear on that list to, in fact, be validated  
11 regardless of what the vendors say. That product can  
12 be used to encrypt safeguards.

13 That information then transferred to a  
14 networked computer can be emailed as an encrypted  
15 attachment to somebody who is qualified to receive  
16 safeguards. That person would then take that  
17 attachment in its encrypted form, put it on some  
18 transportable media, move it to a standalone machine  
19 to decrypt it.

20 MS. NAKAHARA: And would the 6140 -- This  
21 is Connie Nakahara again. Sorry. Would the 6140  
22 validation or validated encryption software  
23 appropriate for encrypting the data on a laptop that  
24 you travel with?

25 MS. LYONS-BURKE: The FIPS 140 encryption,

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1 yes, that is the same encryption technology that's  
2 used to encrypt an entire hard drive.

3 MS. NAKAHARA: And then speaking of  
4 traveling - this is Connie Nakahara again - are there  
5 any approved procedures in which we can check  
6 safeguard documents with our luggage if we have them  
7 double-enveloped and follow the packaging process?

8 MS. HARBAUGH: We would prefer that it you  
9 would forwardly advance the approved transmission.  
10 This is Cindy Harbaugh. It can be traveled with, but  
11 as you indicated, it's certainly not the desirable  
12 means for transport.

13 JUDGE FARRAR: Well, now assume they're  
14 all boxed up and wrapped properly, you're saying you'd  
15 prefer --

16 MS. HARBAUGH: That they be transmitted by  
17 the approval mail channels.

18 JUDGE FARRAR: Rather than checked as  
19 luggage.

20 MS. HARBAUGH: Yes.

21 JUDGE FARRAR: Okay. Is that something  
22 that you prefer or is that something required?

23 MS. HARBAUGH: It would be preferred.  
24 There is no provisions against travel. However, there  
25 are certain requirements, and again I'm speaking in

1 terms of our internal procedures and I'm looking at 10  
2 CFR requirements. Again it does not address the  
3 notion that you cannot travel with it, however, in  
4 route, it cannot be opened and used.

5 For example, if you're checking it as  
6 luggage, there is no prohibition against it. It would  
7 have to double wrapped just as if you were mailing it,  
8 but again, I would much prefer, and I underline the  
9 word "prefer" because there is not a provision against  
10 doing this, that it would forwarded in advance by  
11 approved mail channel media. Again it flies in the  
12 face of having it under control to check it as  
13 luggage.

14 MR. TURK: Cindy, which is preferable, to  
15 check it in as luggage or to carry it onboard?

16 MS. HARBAUGH: Carry it onboard because it  
17 would be in your possession.

18 MR. TURK: And I take it the reason is  
19 that luggage has been known to be searched by people  
20 looking to steal valuables.

21 MS. HARBAUGH: And/or just plain searched  
22 in general these days.

23 MR. TURK: Okay.

24 MS. HARBAUGH: And the fact that even  
25 though it is double wrapped, if opened, it causes me

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1 a great deal of grief though like I said, I cannot  
2 quote reliable verse of any irregularities that would  
3 preclude you from doing that.

4 JUDGE FARRAR: Cindy, so you're not  
5 worried about it being in the belly of a plane, the  
6 same as FEDEX would have.

7 MS. HARBAUGH: Exactly.

8 JUDGE FARRAR: It's that if it's luggage,  
9 it's subject to more possible examination than FEDEX  
10 would have it in their airplanes.

11 MS. HARBAUGH: Exactly.

12 JUDGE FARRAR: Okay.

13 MS. NAKAHARA: This is Connie Nakahara  
14 again. If I could ask, I think, one more question.  
15 I understand Ms. Lyons-Burke's email which we very  
16 much appreciate where it says we cannot use pen drives  
17 and other portable mass storage devices, but I just  
18 want to clarify that we could use them in the same  
19 sense that we would use a diskette, not to store the  
20 data on but possibly to transfer data between two  
21 different lawyers or to transfer the data to different  
22 laptops.

23 MS. LYONS-BURKE: As long as that device  
24 is controlled as safeguards, yes, you can.

25 MS. NAKAHARA: Okay. Thank you.

1 JUDGE FARRAR: Any more questions? This  
2 is the time.

3 MR. GAUKLER: I have some questions, Your  
4 Honor, but a little bit different topic going back to  
5 the --

6 MS. NAKAHARA: Your Honor, I have one  
7 quick question. In Ms. Lyons-Burke's email which was  
8 very informative, she has an acronym in there, AIS.  
9 Could you tell us what that stands for?

10 JUDGE FARRAR: No, I can't, but she can.

11 MS. NAKAHARA: Thank you.

12 MS. LYONS-BURKE: Automated Information  
13 System.

14 MS. NAKAHARA: Okay. Thank you.

15 MS. HARBAUGH: I would like to also - this  
16 is Cindy - address the issue of working with the  
17 safeguards information once you're in D.C.

18 JUDGE FARRAR: Yeah, we're going to do  
19 that.

20 MR. GAUKLER: May I, before we get to that  
21 topic?

22 JUDGE FARRAR: We're going to do that in  
23 a minute. We're dealing now with just the AIS stuff.

24 MS. HARBAUGH: And may I backup for one  
25 other issue. If you are, in fact, going to check the

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1 safeguards information, again I would request that you  
2 send an advanced notice to the fact that you're going  
3 to be doing that rather than transmitting it by  
4 approved mail media.

5 MR. TURK: Cindy, I'm not sure I  
6 understood that. This is Sherwin Turk. Could you say  
7 it again?

8 MS. HARBAUGH: If, in fact, you decide to  
9 check the safeguards information in a travel mode  
10 rather than forwarding it by approved mail channels,  
11 we would like written notification that you intend to  
12 do that.

13 JUDGE FARRAR: And is that something that  
14 you would then just want in your files or something  
15 you would have to approve or disapprove.

16 MS. HARBAUGH: The director of Security  
17 should really approve that, though again there are no  
18 10 CFR regulations that would ask him to levy that  
19 requirement upon you all. However, it would be  
20 appreciated.

21 JUDGE FARRAR: Well, there's a difference  
22 between notification and seeking permission.

23 MS. HARBAUGH: That would be true and this  
24 would be notification for them. In our case, for  
25 internal staff, it would be approval.

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1 JUDGE FARRAR: Right. Okay. Ms.  
2 Nakahara, are you finished with your endless series of  
3 questions here?

4 MS. NAKAHARA: Your Honor, thank you very  
5 much.

6 JUDGE FARRAR: No. Thank you for asking  
7 them. It's important that we get all this  
8 straightened out. Mr. Gaukler, you had some questions  
9 in the same area.

10 MR. GAUKLER: In fact, it refers to some  
11 discussion we had previously and that discussion  
12 differs from my understanding that we had talked about  
13 previously in earlier Board conferences. That was  
14 with respect to documents that were marked  
15 "safeguards."

16 I can see what the Staff is saying. We  
17 can't take a couple of pages of those and fax them  
18 around, etc., but I always thought we could talk about  
19 documents that were marked "safeguards" and summarize  
20 them without disclosing safeguards information. Yet  
21 now they are saying that we even discuss those  
22 documents. That is a major change in how we've  
23 operated and how we understood we were supposed to  
24 operate.

25 JUDGE FARRAR: Well, the way I thought you

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1 were operating was if you send something, a document,  
2 to your expert in the proper fashion, the expert has  
3 it in front of them, you can say "Let's all turn to  
4 page five and tell me what you think of the fourth  
5 sentence. Is that a good sentence or a bad sentence?"  
6 And you can talk about it on the phone in that fashion  
7 as long as in your phone conversation you don't have  
8 the substance of the information being spoken. Cindy,  
9 do I have a correct understanding there?

10 MS. HARBAUGH: You do, but you're living  
11 in a risky world that way.

12 JUDGE FARRAR: Mr. Gaukler, is that --

13 MS. HARBAUGH: Talk around and talk around  
14 is not necessarily an ideal way, but it is a manner by  
15 which to accomplish what you have to accomplish.

16 JUDGE FARRAR: All right. And Mr.  
17 Gaukler, with that, is that the way you've been  
18 operating?

19 MR. GAUKLER: In large part, yes. In  
20 other parts, in certain information, like, for  
21 example, we believe that we understand clearly angles  
22 or speeds are safeguards. Discussion of the potential  
23 vulnerability of the casks are safeguards, but there  
24 are many other things in these documents that are not  
25 safeguards that they talk about even in relationship

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1 to the specific documents or totally divorced from the  
2 documents.

3 JUDGE FARRAR: So let me dream up an  
4 example. So if you're saying let's look at crash  
5 number 10 which happened on landing at Hill Air Force  
6 Base, you're saying you can make your own judgment  
7 that the fact that that crash happened at Hill is not  
8 safeguards and you can talk about it.

9 MR. GAUKLER: That, basically, yes. But  
10 that isn't really applicable here because I think the  
11 NRC has said that historical crashes are not  
12 safeguards.

13 MR. TURK: And, Paul, let me add. This  
14 is Sherwin Turk again. Angles and speeds are not  
15 treated as safeguards except if, in your report,  
16 you're using certain angles and speeds.

17 MR. GAUKLER: Yes, angles and speeds in  
18 which you've analyzed or talk about vulnerabilities of  
19 the casks in relation to that.

20 MR. TURK: If they are tied into your  
21 crash analyses, your consequence analyses, then we  
22 wouldn't be talking about that because that was the  
23 SGI.

24 MR. GAUKLER: That's our understanding,  
25 yes.

1 MR. TURK: Yes. But if you don't tie it  
2 to a discussion of aircraft crash consequences or  
3 vulnerabilities, there is no problem talking about  
4 aircraft crash events that have occurred.

5 JUDGE FARRAR: All right. Let me ask then  
6 --

7 MR. GAUKLER: And I restate the general  
8 point. If general discussion doesn't tie into  
9 vulnerability, that we can discuss that information.  
10 It's not safeguards. And now to say that because it  
11 appears in some safeguards document we can't discuss  
12 it does not seem to be correct to me.

13 MR. TURK: Paul, when you say  
14 vulnerability, the problem is that you may have  
15 analogy that say there are no vulnerabilities. Does  
16 that suddenly become something that can be talked  
17 about and only if you find a vulnerability not talk  
18 about it? We look at it differently. The approach  
19 that we've been following is that either it talks  
20 about vulnerabilities or it talks about the  
21 methodology used in the analysis to determine  
22 vulnerabilities, we would treat all of that as SGI.

23 MR. BARNETT: Paul, this is Sean Barnett.  
24 I understand vulnerability, so the question though  
25 whether there is or is not a vulnerability would be

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1 safeguards information if you're talking about some  
2 analysis that you've done that shows a result with a  
3 respective vulnerability. But with respect to the  
4 methodology for conducting analysis that's not tied to  
5 any particular evaluation of a vulnerability, we've  
6 been considering that not to be safeguards. If you're  
7 talking about how to, for example, model an airplane  
8 or model a cask or model a jet-fuel fire, we have not  
9 considered that to be safeguards based on the previous  
10 discussions we've had with the Staff.

11 MR. TURK: That's not an analysis of crash  
12 consequences. That's just a modeling technique which  
13 may be totally unrelated to the fact that you're  
14 looking now at the consequences of a crash into this  
15 facility or into the particular cask. In other words,  
16 the modeling of casks goes on all the time. It's only  
17 when you link it to an analysis of the consequences at  
18 this site that it would become something that we would  
19 treat as SGI.

20 MR. BARNETT: I think --

21 MR. TURK: I'm not making any kind of a  
22 ruling here. I'm forwarding you the information as I  
23 understand it that I received in talking with Bern  
24 Stapleton and his group.

25 MR. BARNETT: Well, I think that's a way

1 we've been -- I think we're both on the same page  
2 there. I think that we understand if you're talking  
3 about specific evaluation or specific results that it  
4 fits in the safeguards. When you are just talking  
5 about a modeling technique or a modeling approach,  
6 that it does not.

7 MR. TURK: If anyone has any concerns  
8 about a particular kind of discussion, whether it's  
9 SGI or not, I think the proper person to contact would  
10 be someone in our NFRI group such as Bern Stapleton or  
11 his review chain.

12 MR. BARNETT: Okay.

13 JUDGE FARRAR: All right. Does that take  
14 care of all the questions about information?

15 (No response.)

16 JUDGE FARRAR: Good. Then we'll, as we've  
17 attempted a few minutes ago, thank Kathy, Andy and Jim  
18 for helping us out and ask for their continued help  
19 over the next few months. Thanks, folks.

20 Let's then shift gears only slightly to  
21 talk about physical requirements once we get here.  
22 What we had in mind is the hearing will be in our  
23 hearing room. You're each familiar with the three --  
24 You each had a conference room. We will provide you  
25 an approved safe or equip the conference room with a

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1 safe just like it will have a table and everything  
2 else.

3 The question though is after hours where  
4 can you work. I notice, Mr. Gaukler, you had once  
5 indicated, I think, it was at transcript 14777  
6 whichever day that was, that you might have an office  
7 set up outside NRC in a hotel or some other building.  
8 I know hotel makes Cindy very nervous because it  
9 doesn't fit the definition of secured space or secured  
10 building.

11 So when I heard that from her, I wanted to  
12 make sure that we all arrive now or soon on an  
13 agreement on what kinds of facilities you all will try  
14 to be operating out of here and discuss what services  
15 we might need to provide in terms of making your  
16 conference room here available after office hours.  
17 Mr. Gaukler, why don't you start by saying what you,  
18 if you had your druthers, what you would do as a war  
19 room or whatever you want to call it? Mr. Gaukler,  
20 are you there?

21 MR. GAUKLER: Yes. As we told you the  
22 last time, Your Honor, last time we had a big  
23 conference room in the hotel which we would be able to  
24 use as a war room where we had all our files and copy  
25 machines, etc. That's where we operated from. That

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1 was out in Rockville just down Rockville Pike from the  
2 NRC's offices.

3 JUDGE FARRAR: Same deal you had at the  
4 Sheraton.

5 MR. GAUKLER: Yes, exactly right, Your  
6 Honor.

7 JUDGE FARRAR: In Salt Lake.

8 MR. GAUKLER: And that's not controlled  
9 access, so for storage, I presume we have to get a  
10 safe as opposed to a GSA approved file cabinet with a  
11 GSA approved lock. Now we have not looked into that.  
12 We've bought a safe for Dr. Cornell because he needed  
13 to have safeguards documents and he operates out of  
14 his home, therefore, it was not controlled access so  
15 therefore we needed to have a safe and we got modified  
16 the protective order to allow that. But we had a very  
17 difficult time to find a safe because it was my  
18 understanding since 9/11, they've become very valuable  
19 and hard to come by. If we could get a safe at a  
20 reasonable price, that's probably what we would do.  
21 We would probably get a safe for a hotel conference  
22 room.

23 MS. HARBAUGH: The director -- This is  
24 Cindy. The Director of Division of Facilities and  
25 Security for NRC, Tom Martin, in a conference



1 yesterday with him had a great deal of problem with  
2 that and would not approve it from our perspective.  
3 Again, in looking at the Regulations, it would not  
4 meet the criteria for a controlled access building  
5 with additional controlled access into the area, the  
6 intent of 73-21.

7 What we would prefer and would approve and  
8 feel a comfort factor with is making the necessary  
9 arrangements for headquarters. In fact, I will go  
10 back, if you recall, the first protective order. It  
11 was very specific to three locations; the party, the  
12 Private Fuel Storage Offices in D.C., the approval of  
13 the Office of the State in Utah and NRC headquarters.  
14 Looking at that, again, we would like to make all the  
15 necessary arrangements for comfort factor for you and  
16 providing necessary space and approved storage at our  
17 headquarters facility and would take the necessary  
18 measures to provide the access for you to that  
19 facility and storage.

20 JUDGE FARRAR: Cindy, let me ask you a  
21 question. Are --

22 MS. HARBAUGH: A hotel would not meet the  
23 criteria of an approved site.

24 MR. GAUKLER: But it's not a controlled  
25 access building. I agree with you. But I thought

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1 that a safe and to store with a GSA approved lock, you  
2 need to have a controlled access building. My  
3 understanding is if you have a safe as defined in the  
4 Regulations that you do not need to have it in a  
5 controlled access building. So I'm talking about a  
6 safe that would not be limited to a controlled access  
7 building.

8 MS. HARBAUGH: Again, I quote Tom Martin  
9 in saying that - and particularly in this situation  
10 when we look at the regulations, there are, for  
11 temporary storage, approval for such things as a safe  
12 even a safety deposit box, et cetera, for temporary  
13 storage. I think these proceedings will go beyond  
14 what would normally be considered that temporary  
15 storage. Again, we would like to proceed with the  
16 premise of making accommodations for you at  
17 headquarters.

18 MR. GAUKLER: I guess we made a change in  
19 the protective order and an undisclosed affidavit  
20 specifically. I was talking with Sherwin Turk. My  
21 understanding from Ms. Marco is that the change in the  
22 protective order authorized us to use a safe for the  
23 storage of safeguards material. We're using that for  
24 Dr. Pernell's (PH) home because he is not in a  
25 controlled access building.

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1                   We're using the safe per the Regulations.  
2           I went through the Regulations and satisfied myself  
3           that a safe met the NRC's requirements. I talked to  
4           Ms. Marco and Mr. Turk. They confirmed to Mr.  
5           Stapleton my understanding. Now, this is a different  
6           understanding I am getting and it's contrary to what  
7           we have been operating under since an undisclosed  
8           affidavit, since the protective order was modified  
9           specifically last summer.

10                   JUDGE FARRAR: Cindy, before you answer  
11           that, let me make sure I understand what we're talking  
12           about. Mr. Gaukler, you are talking about the August  
13           20 amendment which amended Paragraph 5A of the  
14           affidavit which added an "or" clause.

15                   MR. GAUKLER: I believe that's correct.

16                   JUDGE FARRAR: So it was controlled access  
17           building that is either attended around the clock or  
18           locked at night or - and here's the additional  
19           language - as otherwise specified in 10 CFR 73.2  
20           security storage containers. So you are saying your  
21           understanding of what you were trying to accomplish  
22           with that amendment was to say a safe is sufficient  
23           even if it's not in a controlled access building.

24                   MR. GAUKLER: A controlled access  
25           building.

1 JUDGE FARRAR: Cindy, I just wanted to  
2 make sure we were all on the same page here.

3 MS. HARBAUGH: That's fine. I'm looking.  
4 I have a copy of the August 20 order. I'm looking for  
5 where you are referring to. Let me advise you on one  
6 thing here. Because of the reorganization within the  
7 NRC, you have two aspects of security reporting to two  
8 different organizations.

9 Bern Stapleton happens to be in our Office  
10 of Nuclear Security, Incident Response Office. I  
11 represent the Office of Administration. We primarily  
12 have responsibility for physical security. They have  
13 the responsibility for policies with respect to these  
14 areas. I'm still looking in the protective order.

15 JUDGE FARRAR: It's Paragraph 5A on page  
16 3 of the affidavit attached to the August 20 order.

17 MS. HARBAUGH: I see Paragraph A. I had  
18 not seen that. I would like to readdress that with  
19 the Director of Security so that there is a joint  
20 understanding between the two offices within the Staff  
21 of NRC and get back with you on that.

22 JUDGE FARRAR: All right. Let me lay out  
23 the State, and the Company can correct this  
24 understanding if they have a different one. They  
25 have, really I would think in terms of what we've been

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1 talking about here, three options.

2 They could use the conference room off our  
3 hearing room with the NRC as a whole providing escorts  
4 and so forth so they could have the ability to use as  
5 a war room the conference room off our hearing room.  
6 Everything would be there. Then when they go back to  
7 the hotel, they have essentially no documents with  
8 them. That would be one possibility.

9 The second and third possibilities is they  
10 could have a war room in a nearby office building that  
11 would be in your terms, Cindy, controlled access.  
12 They could go there whenever they could arrange access  
13 to the building. Or I think what I'm hearing from Mr.  
14 Gaukler, just the way things happened, the more  
15 convenient thing for the non-Staff parties is to have  
16 a war room in their hotel because even though a hotel  
17 as such is not a controlled access building, if they  
18 have a war room in their hotel with an appropriate  
19 safe, that's the most convenient way for them to  
20 prepare for and do whatever they have to do during the  
21 hearings. Let me just ask Mr. Gaukler and Ms.  
22 Nakahara if I stated your preferences correctly.

23 MR. GAUKLER: I believe that's correct,  
24 Your Honor, yes.

25 MR. TURK: Your Honor, this is Sherwin

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1 Turk. We also had a war room in the hotel in Salt  
2 Lake City. The nice thing about our room - and PFS  
3 had one there and I have seen PFS's room across from  
4 our building in Rockville - is it offers a lot more  
5 space so that when you are working with many  
6 witnesses, there's room for people to sit, move their  
7 chairs, get up, put a little coffee machine. I think  
8 it offers a lot more space than and conference rooms  
9 off of the hearing room would offer. So I can  
10 understand why that would be a preferred option both  
11 for the State and PFS while they are working here in  
12 Rockville.

13 JUDGE FARRAR: Thank you, Mr. Turk. Let  
14 me ask them. It's better for you all if you are in a  
15 hotel not because the hotel facility is any better for  
16 a war room but because your sleeping room is near the  
17 war room and it's just more convenient for you, is  
18 that correct?

19 MR. GAUKLER: That's correct, Your Honor.  
20 Just being able to have access at night is the other  
21 key factor.

22 MS. NAKAHARA: Your Honor, this is Connie  
23 Nakahara. I would agree with Mr. Gaukler and Mr.  
24 Turk's impressions only I'll probably be more  
25 difficult. We would prefer option one and in the

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1 hotel room because we found it very useful to have the  
2 conference room during the course of the hearing. Mr.  
3 Turk is correct that the conference room that you  
4 provide, although we felt it was essential and we  
5 appreciated it, we could not work very well with  
6 multiple experts in that small room. The other  
7 question we have is, what type of access would we have  
8 after hours? Would it go until midnight or 10:00?

9 MS. HARBAUGH: This is Cindy. We would  
10 make arrangements with the Office of ASLBP to have  
11 Staff available to escort you to permit basically 24  
12 hour access though it would have to be under escort at  
13 all times.

14 JUDGE FARRAR: Cindy, you might refer that  
15 to our people. But I think what we would do would be,  
16 if the service has to be provided - and it may have to  
17 be - that we would go to some of the Commission HR  
18 people and say to have 24 hour access, it can't be  
19 just our Staff. We would have to draw on people  
20 throughout the Commission just like you would do in  
21 any other kind of crisis situation to pitch in. They  
22 wouldn't be volunteers.

23 MS. HARBAUGH: That's correct.

24 JUDGE FARRAR: They would be getting paid  
25 overtime or comp time to serve as escorts. So that's

1 something we need to look into.

2 MS. HARBAUGH: From a logistics  
3 perspective.

4 JUDGE FARRAR: I'll leave that to you and  
5 Jack to get that conversation started now. What will  
6 the Commission provide? I suppose the answer is, if  
7 the Commission will provide nothing and you can't work  
8 at night, then we have much shorter hearings during  
9 the day and you do your work during the latter part of  
10 the day. So I think the Commission as a whole would  
11 have a great interest in making sure you have access,  
12 if not 24 hours a day, maybe until midnight or after  
13 midnight on request or so forth. So we will look into  
14 that.

15 But now the question becomes, if I am  
16 hearing correctly, the State and the Company want to  
17 have their war room in their hotel. Cindy, can your  
18 superiors start looking at the question, what would  
19 you need to convert that hotel space into the kind of  
20 controlled access? Is that a guard, a watchman? For  
21 example, I suppose Mr. Gaukler's office downtown would  
22 qualify as controlled access.

23 MS. HARBAUGH: Yes, it would.

24 JUDGE FARRAR: But the reason it's  
25 controlled access is, if I try to walk in there at



1 night, there's a guard there who stops me. The  
2 building isn't necessarily controlled access. There's  
3 someone sitting there who says, "Buddy, what are you  
4 doing here?" If I don't have a good reason, I don't  
5 get it. So can't we use some kind of analogy in terms  
6 of guards at a hotel, not guards that we would hire?

7 MS. HARBAUGH: Again, both the Staff from  
8 NSIR and from Admin.. jointly with our management need  
9 to convene and discuss this and come back with a  
10 jointed answer to you.

11 JUDGE FARRAR: All right. I think the two  
12 parties would very much appreciate that as would we.  
13 As you have those discussions, would you include Jack  
14 from our office?

15 MS. HARBAUGH: Certainly.

16 MR. TURK: Cindy, in pursuing this matter,  
17 could I also ask you to consider that the rooms at the  
18 hotel might be accessible only by persons with an  
19 actual key rather than a key card? I don't know what  
20 the answer to this is, but perhaps that would make  
21 that into a secured access.

22 MS. HARBAUGH: When we have looked at this  
23 issue before - and again, Admin. actually has the  
24 final say on this issue with input from NSIR - some  
25 considerations were taken into account with respect to

1 cleaning staff, master key of the building, and so  
2 forth. We have addressed this in temporary situations  
3 and approved such, truly in travel temporary  
4 situations.

5 The circumstances for this hearing are  
6 somewhat different. As I said, I consulted with the  
7 Director yesterday. He confirmed my opinion as I  
8 indicated. But given you have gotten different  
9 guidance from NSIR and I had not picked up on the  
10 change here and this protective order is dated August  
11 20, we will readdress this and get back with you. And  
12 yes, we will take those things into consideration, Mr.  
13 Turk.

14 JUDGE FARRAR: Cindy, we thank you. We  
15 certainly appreciate that. Unlike the situation with  
16 the court reporters where we only have next week to  
17 get it straightened out, this is a longer-term issue.  
18 We want it resolved sooner rather than later, but it's  
19 not until our hearing starts on the weekend before  
20 August 9 that we have to resolve it.

21 MS. NAKAHARA: Your Honor, this is Connie  
22 Nakahara. We actually have to make a decision  
23 relatively soon. Jean Braxton has been checking in  
24 the availability of safes, Class 5 and 6 safes. We  
25 basically have to order them in the next week or so if

1 we want delivery guaranteed by hearing date.

2 MS. HARBAUGH: This is Cindy. I recognize  
3 that from our own lead time for ordering safes. So  
4 we'll promptly address this issue for you.

5 JUDGE FARRAR: Cindy, I know you are  
6 supposed to be on vacation this week. You work very  
7 hard when you are here. Is there someone other than  
8 you we can deal with?

9 MS. HARBAUGH: I'll coordinate it within  
10 the Staff and get back with you.

11 JUDGE FARRAR: Okay, great. All right.  
12 I think if that doesn't resolve the issue, it gets us  
13 on a path to resolution. I'm sorry to have taken an  
14 hour and 20 minutes, but I thought both of these  
15 issues were important. If we didn't get them resolved  
16 now, we were going to run into logistical problems  
17 down the road that would threaten to make everyone  
18 inefficient and delay the proceeding. So I thank  
19 everyone for their input on this. Any further  
20 questions on the matter of physical security that we  
21 want Cindy and her team to be thinking about?

22 MR. TURK: I have one question, Your  
23 Honor. This is Sherwin Turk. In our planning to  
24 travel to Salt Lake City for depositions, if we want  
25 to send materials to our hotel to be held for our

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1 arrival, is there any problem with that as long as  
2 we're double wrapping everything and sending it to our  
3 personal attention at the hotel?

4 MS. HARBAUGH: Actually, no. There is a  
5 however there. Again, if I may get back with you at  
6 the Staff level on that, I would appreciate it.

7 MR. TURK: Okay, I'm sure other people  
8 would have the same issue. PFS is going to be  
9 traveling to Utah. The State will be traveling here.

10 MS. HARBAUGH: Yes, there are some changes  
11 in internal policy that are pending. I would like to  
12 get back with you on that.

13 MR. TURK: That's in terms of Staff  
14 procedures rather than all parties.

15 MS. HARBAUGH: Staff procedure, not all  
16 parties.

17 MR. TURK: Okay, thank you.

18 JUDGE FARRAR: All right. Let's move on.  
19 Let's take just a minute break here. Off the record.

20 (Whereupon, the foregoing matter went off  
21 the record at 2:40 p.m. and went back on  
22 the record at 2:41 p.m.)

23 JUDGE FARRAR: We're back on the record.  
24 Mr. Turk, let me ask you a question. In terms of the  
25 reporting contract, are you taking anybody's

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1 deposition? Let me put it this way. Is the Staff the  
2 prime mover in taking somebody's deposition, or are  
3 you just along for the ride in terms of the State  
4 deposes the Applicant's witnesses and you go along  
5 with it and the Applicant deposes the State witnesses  
6 and you go along with it and they both depose your  
7 witnesses? Are there any depositions that you have  
8 noticed and are organizing yourself that have to be  
9 under the Neal Gross contract?

10 MR. TURK: We are not noticing any  
11 depositions, but we expect to ask questions at each of  
12 the depositions that are taken.

13 JUDGE FARRAR: All right. That's helpful.  
14 Give us another minute here. Off the record.

15 (Whereupon, the foregoing matter went off  
16 the record at 2:42 p.m. and went back on  
17 the record at 2:44 p.m.)

18 JUDGE FARRAR: We're back on the record.  
19 That took care of the second item in the email. Let's  
20 go to the first item which gets into the organization  
21 of the issues, number of witnesses, and cross  
22 examination time allotments. You all were going to  
23 talk after our last call about the organization of  
24 issues. Have you all had a chance to do anything  
25 about that, Mr. Gaukler?

1 MR. GAUKLER: Not extensively, no, we have  
2 not. We have talked some about potential  
3 stipulations. I think the organization of issues is  
4 pretty much the same as we talked about before. But  
5 we have not talked about that and finalized that in  
6 our minds.

7 JUDGE FARRAR: All right. We talked last  
8 time about different ways of organizing the issues.  
9 But as I recall, we were going to leave it to you all  
10 to come up with a final recommendation. So I take it  
11 there would be no purpose today by us trying to make  
12 any more progress. Rather, we should let you all work  
13 on it, Mr. Gaukler.

14 MR. GAUKLER: I think we're relatively  
15 close. I would feel comfortable talking about  
16 organization of issues if the other parties want to  
17 talk about it because I think we are relatively closer  
18 than before. There's only a couple of issues that I  
19 see that we didn't really resolve before.

20 JUDGE FARRAR: Ms. Nakahara, Mr. Turk,  
21 should we then try to make some progress today?

22 MR. TURK: Your Honor, speaking for the  
23 Staff, I think the parties are better off addressing  
24 it between themselves.

25 MS. CHANCELLOR: Your Honor, this is

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1 Denise Chancellor. Whatever is the pleasure of the  
2 board. We can do it either way.

3 MR. TURK: I have two reasons to say let's  
4 defer and let the parties talk first, Your Honor. One  
5 is, it is a little complex because first it's on the  
6 ordinance. Some of the parties are addressing it or  
7 their witnesses will be addressing potential  
8 consequences. Whereas, it may also be addressed in  
9 terms of angles and speeds. So that's one issue that  
10 I think we should hammer out among ourselves first to  
11 get a common understanding of how to proceed on that.

12 The CTB is another case where the Staff  
13 has combined its discussion of the CTB with its  
14 discussion of casks in the report by Byork and  
15 Shewmaker. PFS has broken them out separately with  
16 different witnesses. The State has not put witnesses  
17 on the CTB issue. So we need to address the best way  
18 to address CTB whether it's a separate issue or do it  
19 as part of casks or with the cask discussion. So I  
20 really think the parties should talk first before  
21 taking up the board's time on this.

22 JUDGE FARRAR: All right. Give me a  
23 minute here. Off the record.

24 (Whereupon, the foregoing matter went off  
25 the record at 2:47 p.m. and went back on

1 the record at 2:48 p.m.)

2 JUDGE FARRAR: We're back on the record.  
3 Judge Lam and I have consulted. Let's see if we can't  
4 make some progress on this today. Even if we don't  
5 come to any decisions, it may help the parties'  
6 discussions. Mr. Gaukler, since that's the course you  
7 wanted to follow, why don't you see where you can take  
8 us with that?

9 MS. CHANCELLOR: If Mr. Gaukler isn't  
10 prepared, I could.

11 MR. GAUKLER: I'm sorry. I would proceed  
12 taking up this speed and angles issue first followed  
13 by the ordinance issue such that --

14 JUDGE FARRAR: Mr. Gaukler, we missed  
15 that. We got some static there. Speeds and angles  
16 first.

17 MR. GAUKLER: Followed by ordinance such  
18 that I know the State wants to put Horstman and  
19 McDonald together. I think by doing that, it allows  
20 the State to put Horstman and McDonald together at the  
21 end of the speeds and angles. Then we would pick up  
22 with Lancaster on the ordinance on our aspect. Staff  
23 has Shewmaker which has a separate report on ordinance  
24 which I presume he would testify at that point in  
25 time.



1 JUDGE FARRAR: So you are saying we would  
2 get the most efficient use of the witnesses by doing  
3 those two first.

4 MR. GAUKLER: Those two first, yes.

5 JUDGE FARRAR: All right. That seems to  
6 make sense. Does anybody have an objection to that?

7 MS. CHANCELLOR: No, but I think I would  
8 combine them all such that PFS put on all of its  
9 witnesses and then Staff and then the State so that  
10 you do speed, angles, and ordinance as a unit rather  
11 than two subunits because otherwise our ordinance  
12 person would be testifying before PFS's ordinance  
13 witness.

14 MR. GAUKLER: I don't think I have any  
15 problem with that, Your Honor.

16 JUDGE FARRAR: All right. So this then is  
17 about how things fall, if I can lump those two  
18 together. That's the common thread.

19 MR. GAUKLER: Right, so the way we would  
20 proceed under what Ms. Chancellor just suggested is we  
21 would have Fry (PH) and Jefferson testifying for PFS  
22 on speeds and angles. We would have Lancaster  
23 covering both speeds and angles and penetration  
24 insofar as ordinance was concerned. We then would  
25 have our key Staff witnesses on speeds and angles and

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1 ordinance.

2 MR. TURK: I am okay with the general  
3 concept, Your Honor, for the Staff except that the  
4 Shewmaker report on the ordinance is different from  
5 the approach that PFS and the State took. The  
6 Shewmaker report on ordinance looks at consequences.  
7 Whereas, PFS's and the State's reports look at the  
8 philosophy of the ordinance.

9 MR. GAUKLER: Our report looks at the  
10 consequences as well as philosophy.

11 MR. TURK: I apologize. It may be that I  
12 want to hold Shewmaker until later but if we could  
13 just leave that question open.

14 JUDGE FARRAR: Let me ask the State, as  
15 you see it, you would have Mr. Gaukler's people, Fry  
16 (PH) and Jefferson and Lancaster. Then you would  
17 have, let's assume for a moment, the Staff people.  
18 Then you would have whom?

19 MS. CHANCELLOR: As one panel, Horstman  
20 and McDonald.

21 JUDGE FARRAR: On both planes and  
22 ordinance.

23 MS. CHANCELLOR: Yes, they would testify  
24 as a single panel and speed and angle and ordinance.

25 JUDGE FARRAR: Subject to Mr. Turk's

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1 caveat, that seems like a sensible way to proceed. So  
2 we would encourage you to see if you can pursue that  
3 and nail that down. So keep talking on that. Would  
4 the next issue be the jet fuel fires or the  
5 structural?

6 MR. GAUKLER: Your Honor, because my jet  
7 fuel fire person would not be available the second  
8 week of those two weeks there, I would suggest we go  
9 to jet fuel fire next.

10 MS. CHANCELLOR: I think jet fuel fire  
11 could go anywhere in the proceedings so we wouldn't  
12 object.

13 JUDGE FARRAR: Wait a minute.

14 MS. CHANCELLOR: We don't think it would  
15 take any longer than half a day to get through all the  
16 witnesses.

17 MR. TURK: Our witness for the Staff,  
18 Christopher Bajwa, is out of town the week of August  
19 9. So we could not reach jet fuel fire that week.  
20 But perhaps we could settle this issue.

21 JUDGE FARRAR: Mr. Gaukler, I  
22 misunderstood something you said. You said your --

23 MR. GAUKLER: My witness is not available  
24 the week of August 16.

25 JUDGE FARRAR: Okay.

1 MR. GAUKLER: That's why I was suggesting  
2 at the end of the first week.

3 JUDGE FARRAR: The end of the first week.

4 MR. GAUKLER: But the Staff's witness is  
5 not available.

6 JUDGE FARRAR: Mr. Turk, besides Mr.  
7 Shewmaker, who would you have on speeds and angles?

8 MR. GAUKLER: Are we talking jet fuel  
9 fire, Your Honor?

10 JUDGE FARRAR: No, I didn't ask Mr. Turk  
11 who he had on speeds and angles.

12 MR. TURK: Mr. Shewmaker is not speeds and  
13 angles. Actually, he has two reports. One is  
14 ordinance. One is structural consequences. On speeds  
15 and angles, we'll have Dr. Gauche and Dr. Campe.

16 JUDGE FARRAR: Right, now the reason I'm  
17 asking that is we now have five panels. Just a minute  
18 here. Bear with us a moment. Off the record.

19 (Whereupon, the foregoing matter went off  
20 the record at 2:54 p.m. and went back on  
21 the record at 2:55 p.m.)

22 JUDGE FARRAR: We're back on the record.  
23 Do we see doing those five panels in that first week?

24 MR. GAUKLER: Your Honor, Paul Gaukler  
25 here. I would think so. I think those five panels

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1 would be smaller sets of testimony. We have proposed  
2 some stipulations to the State on areas we think can  
3 be stipulated. Just to give you some examples, I  
4 think we can stipulate angles and speeds of ordinance.  
5 We're willing to accept the State's angles and speeds  
6 which because they are very close to ours, it makes no  
7 difference to our calculations. So there's no need,  
8 as far as we see it, for angles and speeds of  
9 ordinance.

10 With respect to speeds and angles of  
11 aircraft crashes, the State looks to a different body  
12 or group of accidents than we do. They claim that the  
13 population they look at is less than what PFS and the  
14 Staff have looked at. I don't think they take issue  
15 with any of the particular speeds that we have  
16 calculated and things of that type.

17 So our goal would be on those issues that  
18 there really is no dispute. So get them stipulated  
19 beforehand so the parties don't need to spend time  
20 preparing their witnesses on those issues. It cuts  
21 down cross examination obviously and focus on the  
22 areas where there is an actual dispute between the  
23 parties. Even if we don't do that, I think we would  
24 get through all those five panels the first week  
25 because they are going to be relatively smaller than

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1 the panels on structural.

2 MS. CHANCELLOR: Your Honor, this is  
3 Denise Chancellor. We received the stipulations from  
4 Mr. Gaukler late last night. We haven't had a chance  
5 to look at it in depth. But we believe we would need  
6 to wait until after the depositions before we entered  
7 into any stipulations.

8 In any event, I think there would need to  
9 be testimony on speeds and angles and ordinance, that  
10 we wouldn't be able to stipulate all of the issues.  
11 I agree with Mr. Gaukler that speed, angle, ordinance  
12 and jet fuel fires could be done in a week.

13 MR. TURK: Your Honor, let me mention on  
14 jet fuel fires, the Staff has two different subpanels  
15 of witnesses. We would put them on as a single panel.  
16 One is Mr. Bajwa who is not available the first week.  
17 Then we also have two people from Sandia National  
18 Laboratory. They have prepared their own report which  
19 you may have noticed.

20 They would also be testifying on our  
21 behalf on jet fuel fire. They would be available the  
22 first week as far as I know. But I wouldn't put them  
23 on separately from Mr. Bajwa. They really make up a  
24 combined panel.

25 JUDGE FARRAR: Wait, so they all three

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1 have to be here at once.

2 MR. TURK: Yes, which we could do if we do  
3 it the second week, at least the Staff's testimony.  
4 Perhaps we take the Staff's testimony on this issue  
5 last.

6 JUDGE FARRAR: Our goal then would be at  
7 least get the Applicant's witness on because he's not  
8 available the next week. Mr. Turk, is your position  
9 on jet fuel fires supportive of the Company's or of  
10 the State?

11 MR. TURK: It's supportive of the Company.  
12 The Staff has gone further. We have looked at an  
13 issue that to my knowledge - and perhaps I'm wrong -  
14 that PFS did not look at. That's one of the things  
15 that the Sandia witnesses would be talking about. But  
16 I have no problem in having the PFS witness go first  
17 and having the Staff coming the following week.

18 JUDGE FARRAR: All right. Ms. Chancellor,  
19 who are your witnesses on that?

20 MS. CHANCELLOR: We have no witnesses,  
21 Your Honor. We would make our case through cross.

22 JUDGE FARRAR: Okay, then let's see if we  
23 can't get the Applicant in at the end of the week and  
24 start the next week with the Staff. So that would get  
25 us through, say, six days.

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1 MR. GAUKLER: Your Honor, I would think  
2 that that would not take six days total.

3 MR. TURK: I would agree, Your Honor. I  
4 think we can be done with all of those issues in  
5 three.

6 MS. CHANCELLOR: I agree too, Your Honor.

7 JUDGE LAM: This is Judge Lam. I haven't  
8 had optimism. Now, I do. I think we are dealing with  
9 five panel witnesses and everybody is thinking about  
10 three days only.

11 MS. CHANCELLOR: Judge Lam, a lot of these  
12 issues came up in the previous hearing. So this is  
13 not where the main issues lie. The main issues lie in  
14 the structural and probability in this part of the  
15 hearing.

16 JUDGE LAM: So this is just the appetizer  
17 before the main courses, right?

18 MS. CHANCELLOR: Absolutely, yes.

19 JUDGE FARRAR: All right. I'm going to  
20 ask the court reporter to put a special mark on this  
21 page because I'm going to come back to it and waive it  
22 at you on Thursday or Friday if we're still going.

23 MR. TURK: Your Honor, I think I was  
24 misquoted.

25 (Laughter.)

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1 JUDGE FARRAR: Well, the court reporter  
2 has it down. That is certainly good news. So then  
3 what you are envisioning is that we would start  
4 structural as early as Thursday of the first week.

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

6 MS. CHANCELLOR: Your Honor, a lot depends  
7 on whether there's a motion *in limine* and whether that  
8 takes up a good chunk of the day on Monday.

9 JUDGE FARRAR: Well, that's a good point,  
10 Ms. Chancellor.

11 MR. GAUKLER: Your Honor, based on the  
12 actual reports, we have identified one motion in  
13 *limine*. We already told the State in that email last  
14 night - and they haven't had time to look at it in  
15 depth - what that issue is. We'll be discussing it.  
16 If we don't reach resolution, which probably would be  
17 likely, we will be filing a motion relatively shortly  
18 on that issue.

19 JUDGE FARRAR: Okay, so this is not an  
20 entire witness. This is just something that a witness  
21 says.

22 MR. GAUKLER: Yes, it's in the ordinance  
23 and in McDonald's testimony.

24 JUDGE FARRAR: So if you and the State  
25 don't agree, then that's something you could bring to

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1 our attention now.

2 MR. GAUKLER: Yes, we'll bring it to your  
3 attention. It will be something I think that we could  
4 do so by - right now we are dividing our labor - Mr.  
5 Barnett could put that together the first week in  
6 June.

7 JUDGE FARRAR: So we wouldn't have to wait  
8 until the testimony is filed.

9 MR. GAUKLER: It would get resolved right  
10 away.

11 JUDGE FARRAR: It would get resolved right  
12 away whether this material in the report is properly  
13 the subject of testimony or not.

14 MR. GAUKLER: Correct.

15 JUDGE FARRAR: Excellent.

16 MR. GAUKLER: And that's the only issue  
17 that we have identified so far based on the State's  
18 report.

19 JUDGE FARRAR: Excellent. That's good  
20 news. The other thing is, Ms. Chancellor, you and  
21 perhaps the other parties had once talked about moving  
22 in on Saturday or Sunday before the hearing. I think  
23 Mr. Turk said that of course would be a problem with  
24 access to the building.

25 Following up on the conversation we had

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1 earlier today, it's our intention to make sure that  
2 the building is open for you on Saturday and Sunday so  
3 that you can get in here at your leisure. It may not  
4 be leisure but at least you will be in old clothes  
5 setting up your conference rooms and so forth so that  
6 first thing on Monday morning we're starting rather  
7 than you all being under extraordinary pressure to get  
8 everything organized and then show up and start  
9 examining witnesses. So I think we're looking at a  
10 smart start on Monday with everyone having come in and  
11 set up on Sunday.

12 MS. CHANCELLOR: Thank you, Your Honor.  
13 That would be fine with us.

14 JUDGE FARRAR: All right. So we're  
15 looking at starting structural maybe on Thursday and  
16 Friday. With the exception of a little bit of Staff  
17 jet fuel fire, say, on Monday, in effect, you have  
18 seven days to do structural. I think at one point  
19 there was a Company estimate of nine days. Somebody  
20 else estimated 11 days for structural. How are those  
21 holding up?

22 MR. GAUKLER: I think that we'll know much  
23 better after the depositions. Based on the reports I  
24 have seen so far, my estimate would go down. But our  
25 experts are still looking at the State's reports and

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1 the Staff's reports. On large part, it would depend  
2 on the depositions. Right now, my estimate would be  
3 that we could probably get the structural done in  
4 seven days. That would be dependent upon depositions.

5 JUDGE FARRAR: All right. That would be  
6 a huge plus because then that would leave us with what  
7 you all told us was two and a half days for  
8 probability. We could do the two and a half days  
9 Labor Day week. We didn't have a full week then for  
10 a couple of reasons. But it seems that that would let  
11 us finish Labor Day week.

12 MR. GAUKLER: And get done before the  
13 Jewish holidays.

14 JUDGE FARRAR: And get done before we run  
15 into more difficulties the following week. Good.  
16 This is progress. I'm glad we went ahead to talk  
17 about this. Well, let's see then if by stipulations  
18 and by other discussions if we could finish structural  
19 by that second week. That would be a tremendous plus  
20 in terms of being able to work in what's remaining  
21 during one of those short weeks. Anything else on the  
22 organization of the issues that we need to talk about?

23 MR. GAUKLER: Nothing else here, Your  
24 Honor.

25 JUDGE FARRAR: Okay, on structural, let's

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1 talk a little bit about structural. Mr. Gaukler, last  
2 time we talked, you had two panels; one on casks and  
3 one on CTB.

4 MR. GAUKLER: Yes, and I'm flexible on how  
5 I would do that. I have Mr. Ebbison just on the CTB.  
6 My thought would be to try to limit his time in the  
7 hearings when he would be there to testify on the  
8 CTB,.

9 JUDGE FARRAR: Staff would do it how?

10 MR. TURK: We have CTB addressed as part  
11 of our report by Byork and Shewmaker. We also have an  
12 analysis by Arrow Mail (PH) of Oak Ridge. I'm not  
13 sure yet how to break that out. My thought right now  
14 is just to have it all combined in a single panel.  
15 But I was wondering if CTB might be an issue that we  
16 resolve by stipulation.

17 JUDGE FARRAR: Well, not to pin you down,  
18 in your judgement so far, how does the risk at the CTB  
19 compare with the risk of the 4,000 casks  
20 proportionately, Mr. Gaukler?

21 MR. GAUKLER: The CTB number that we have  
22 is roughly one-third of the total.

23 JUDGE FARRAR: One-third of the total. So  
24 casks are two-thirds.

25 MR. GAUKLER: Casks and other stuff are

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1 two-thirds. CTB is roughly two times ten to the minus  
2 seven. We're roughly at somewhere between six and  
3 seven times ten to the minus seven. With respect to  
4 the State, I would agree and echo Mr. Turk's statement  
5 that this certainly is an area of potential  
6 stipulation.

7 It's one of the areas we identified to the  
8 State for future discussion given that the State has  
9 used the same number that we used. They have the same  
10 number in their UEP analysis that we have in ours with  
11 respect to the CTB. So at this point in time, we see  
12 no dispute there. And that could be subject to  
13 stipulation.

14 JUDGE FARRAR: So you could stipulate what  
15 the level of risk is.

16 MR. GAUKLER: That's what we're going to  
17 recommend to the State.

18 JUDGE FARRAR: From CTB.

19 MR. GAUKLER: Ms. Chancellor said they  
20 have not had time to look at it closely because they  
21 did get it late last night.

22 JUDGE FARRAR: All right. Well, that  
23 would be good. So then we would be focusing just on  
24 the casks.

25 MS. CHANCELLOR: Your Honor, if we didn't

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1 stipulate the testimony, our cross examination of PFS  
2 and Staff witnesses would be very short.

3 JUDGE FARRAR: All right. But what are  
4 you going to have witnesses on, Ms. Chancellor?

5 MS. CHANCELLOR: We have the Purdue panel,  
6 the three witnesses, who will give their report on  
7 casks. We would make our case on cross for the CTB.

8 JUDGE FARRAR: Okay.

9 MS. CHANCELLOR: I don't believe we have  
10 any direct witnesses. We would have to wait until  
11 after the depositions. But I don't believe we will  
12 have any direct witnesses on CTB.

13 JUDGE FARRAR: All right. Well, there's  
14 another avenue to shorten this and keep our focus on  
15 the most important aspects.

16 MR. GAUKLER: And given what Ms.  
17 Chancellor just said, then I think it would make sense  
18 if we could combine, if the Staff could break out its  
19 CTB witnesses separately if we do have hearing on  
20 that. So we're going to Mr. Ebbison there just for  
21 his testimony and the Staff's testimony. Then he can  
22 go home.

23 JUDGE FARRAR: Yes, let's try to do that.  
24 All right. So maybe we do get to everything but  
25 probability in those first two weeks. All right.

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1 Good. Has anything changed or are there any major  
2 developments on probability? Are you still each  
3 looking at one panel of witnesses?

4 MR. GAUKLER: I believe everything is  
5 unchanged. Each of us has one witness on probability.

6 JUDGE FARRAR: All right. Then let's hold  
7 probability. As you get farther along, we'll try to  
8 come up when we would schedule that. There are a  
9 couple of possibilities. This is good progress. I  
10 take it then that it's still too early to talk more  
11 about our overall time allotment on cross examination.  
12 Is that something to hold for a future meeting?

13 MR. GAUKLER: I think so, Your Honor. We  
14 have not had a chance to talk about that at all. I  
15 have started putting out different options for  
16 allocating time. But it's something that we need to  
17 talk about amongst ourselves first.

18 JUDGE FARRAR: Okay, let's do that. Now,  
19 Mr. Gaukler, you said earlier that you are going to  
20 finish the depositions now basically a week later than  
21 we had originally planned.

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

23 JUDGE FARRAR: But because there will be  
24 a break in there, the parties will still be doing  
25 their pre-file direct on Monday, July 12.

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

2 JUDGE FARRAR: Excellent. All right.

3 That being the case, remember with your pre-file  
4 direct, for each witness or panel of witnesses, we  
5 want to have what we called the preface last time  
6 which is just a short cover statement of whatever  
7 length you want that tells us what you are attempting  
8 to prove through that witness.

9 That's just a reader's guide that helps us  
10 as we read through that to make sure we know what  
11 we're looking for. The same form we used last time  
12 would be fine. So at this point then, it appears as  
13 though we are on target with the schedule we adopted  
14 last time.

15 MS. CHANCELLOR: Your Honor, just one  
16 thing on this preface.

17 JUDGE FARRAR: Yes.

18 MS. CHANCELLOR: This is different from  
19 the key determinations, right?

20 JUDGE FARRAR: Right, the preface says,  
21 "Here is this witness. If you believe him, here's  
22 what this witness is trying to establish." Whatever  
23 you all did last time we found very helpful. That's  
24 really for the parties' benefit because that helps us  
25 as we read your testimony you worked so hard on.

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1                   That tells us, "Here's why you are reading  
2                   it" and what you are trying to establish. The key  
3                   determinations are more the theory of your entire  
4                   case. That's the document that Judge Abramson thought  
5                   was such a good idea, as did we, last time.

6                   JUDGE LAM: This is Judge Lam. But  
7                   assuming there will be indexes and cross references to  
8                   key determinations requested.

9                   JUDGE FARRAR: But not yet.

10                   (Laughter.)

11                   JUDGE FARRAR: Is there anything else we  
12                   can usefully discuss today? Good. You will be in  
13                   depositions starting next week. When would it be  
14                   useful to have another conference call? Mr. Gaukler,  
15                   you said you would be off the week of the seventh.

16                   MR. GAUKLER: The week of the seventh and  
17                   the fourteenth we don't have depositions.

18                   JUDGE FARRAR: Should we have a call that  
19                   week?

20                   MR. GAUKLER: Maybe a call towards the end  
21                   of that week. That way, we might be able to decide  
22                   before then whether we have stipulations on the topics  
23                   that we have covered in depositions at least.

24                   JUDGE FARRAR: Excellent. Then to give  
25                   you as much time as possible for those discussions,

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1       why don't we shoot for maybe Thursday, June 17.

2               MR. GAUKLER: Let me take a look at my  
3       calendar. I would suggest either at the end of the  
4       first week, like the tenth or the eleventh, or the  
5       beginning of the next week, fourteenth or fifteenth,  
6       because all the parties will be focusing at the end of  
7       the week on preparing for depositions that last week.

8               JUDGE FARRAR: Then why don't we do  
9       Tuesday the fifteenth? That will give you a full week  
10      to work on all of these things. I would like to give  
11      you the maximum amount of time unless you think  
12      sometimes maybe giving you a short amount of time  
13      makes you work better and faster, either way.

14              MR. GAUKLER: The fifteenth sounds like a  
15      good compromise to me, Your Honor.

16              JUDGE FARRAR: Okay, does the work for  
17      everybody?

18              MS. CHANCELLOR: Yes, Your Honor, it works  
19      for the State.

20              MR. TURK: That works for us, the Staff.

21              JUDGE FARRAR: All right. Then we'll have  
22      another conference call on Tuesday, June 15. We will  
23      take up then any open matters on this physical  
24      security thing. We should have all of our  
25      arrangements in place by then, make sure everything is

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1 approved. Then we'll go into this matter of the  
2 organization of the issue and what can be stipulated.  
3 Maybe at that time, depending on how much progress you  
4 have made on the stipulations, we would be able to set  
5 a time for the wrap up probability hearing so you  
6 could start organizing and trying to get your  
7 witnesses lined up for whatever partial week we would  
8 devote to that. All right. Thank you for all the  
9 work you all have put into this and again the  
10 cooperative spirit. Anything else we need to take up?

11 MR. GAUKLER: The time for the Tuesday,  
12 June 15.

13 JUDGE FARRAR: The usual 1:30 p.m.

14 MR. GAUKLER: Okay.

15 MR. TURK: Your Honor, this is Sherwin  
16 Turk. Just so I'm clear on that first week of  
17 hearings, are you looking at doing the CTB during that  
18 week?

19 JUDGE FARRAR: I don't think so. You are  
20 thinking if we really do speeds and angles and  
21 ordinance in three days.

22 MR. TURK: Or even four days.

23 JUDGE FARRAR: And we would have the  
24 Applicant's jet fuel fire. Yes, I guess that would be  
25 a good time to do CTB if that's not settled.

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1 Otherwise, if it is settled, you would start the  
2 casks. But if CTB is not settled, right, you could  
3 start CTB on, say, that Thursday.

4 MR. GAUKLER: Sounds good to me, Your  
5 Honor.

6 JUDGE FARRAR: Good. All right. But  
7 again, as long as we keep this order of things, as  
8 long as we don't get out of order like we did in Salt  
9 Lake with seismic, the way we're talking now, we can  
10 accommodate you all.

11 MR. TURK: Then we would probably put the  
12 Staff on jet fuel at the beginning of the following  
13 week.

14 JUDGE FARRAR: Right, in any event, I'm  
15 thinking that Staff on jet fuel would be the beginning  
16 of the following week.

17 MR. TURK: Okay.

18 JUDGE FARRAR: Yes, we'll leave you to  
19 juggle those two, how we do the split on the jet fuel  
20 and the CTB and/or the casks. All right. Good. Then  
21 we will talk to you again in a little less than a  
22 month. As usual, if anything comes up that you need  
23 us to help resolve, get a hold of us and we'll have an  
24 emergency call. Anything else?

25 MR. GAUKLER: Nothing else here, Your

1 Honor.

2 JUDGE FARRAR: Ms. Chancellor.

3 MS. CHANCELLOR: No, nothing, Your Honor.

4 JUDGE FARRAR: Mr. Turk.

5 MR. TURK: No, Your Honor.

6 JUDGE FARRAR: Okay, thank you all very  
7 much. We will adjourn now. Off the record.

8 (Whereupon, the above-entitled matter  
9 concluded at 3:20 p.m.)

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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

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Eric Mollen  
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