

RAS 8094

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

Title: Private Fuel Storage

July 6, 2004 (10:29AM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Docket Number: 72-22-ISFSI

Location: (telephone conference)

Date: Thursday, July 1, 2004

Work Order No.: NRC-1571

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1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

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4 ATOMIC SAFETY AND LICENSING BOARD PANEL

5 PRE-HEARING CONFERENCE CALL

6 \* \* \* \* \*

7  
8 IN THE MATTER OF:

9 PRIVATE FUEL STORAGE, L.L.C Docket No. 72-22-ISFSI

10 (Independent Spent Fuel

11 Storage Installation)  
12

13 Tuesday, June 15, 2004

14 Teleconference  
15  
16

17 The above-entitled matter came on for  
18 hearing, pursuant to notice, at 1:30 p.m.  
19

20 BEFORE:

21 MICHAEL C. FARRAR Chairman

22 PETER S. LAM Administrative Judge  
23  
24  
25

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OTHER NRC SECURITY STAFF PRESENT:

KATHY LYONS-BURKE

CINDY HARBAUGH

BERN STAPLETON

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

(11:30 a.m.)

CHAIRMAN FARRAR: All right. Let's go on the record.

This is another in our series of PFS prehearing conference calls. This is Mike Farrar, the Chairman of the PFS Board. I'm here at NRC Headquarters. The Court Reporter, John, is here with us. Judge Lam is with me. Judge Abramson -- again, I know it seems like an amazing coincidence that he had another hearing up in Millstone, so he is necessarily absent.

I also have with us Amy Roma, our law clerk; Sharon Marks Perini, our chief administrative person; Cindy Harbaugh from Physical Security is here, at least for the beginning of the call. And, again, we have our newest Judge, Alex Karlin, who is here as an observer.

Ms. Chancellor, who is there with you?

MS. CHANCELLOR: Myself and Connie Nakahara, Your Honor.

CHAIRMAN FARRAR: All right. Thank you.

Mr. Gaukler?

MR. GAUKLER: Myself and Mr. Barnett.

CHAIRMAN FARRAR: All right. And Mr.

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1 Turk?

2 MR. TURK: Myself and Laura Zaccari.  
3 Incidentally, we had expected Bern Stapleton to be  
4 joining us here. He is not in the room yet. I have  
5 asked Ms. Zaccari to call him to see if he's on his  
6 way to our room or not.

7 CHAIRMAN FARRAR: All right. We may -- it  
8 may turn out we can do without him. Let's see, let's  
9 start with Cindy, who has a report on her work so far,  
10 trying to obtain safes for you for your war rooms.

11 MS. HARBAUGH: I have -- this is Cindy  
12 Harbaugh. I have confirmed that we do have two safes,  
13 five drawers each, that we can make available to the  
14 State and to Private Fuel Storage for your use during  
15 the duration of the hearing, which I think you'll find  
16 to be good news.

17 CHAIRMAN FARRAR: Very good.

18 MS. HARBAUGH: As we discussed briefly  
19 last time, I am in the process of preparing basically  
20 a release form that will have the necessary internal  
21 agency approvals that will be provided to Judge Farrar  
22 to transmit to you for your signature, which basically  
23 states that you will be responsible for the transport  
24 of those security containers from our NRC warehouse.

25 And I'll give you the address of that now,

1 so that -- you might want to start doing some  
2 preliminary inquiries as far as moving firms. That  
3 address for our warehouse is at 5000 Boiling Brook  
4 Parkway in Rockville, 20852, which is only  
5 approximately two blocks from the NRC Headquarters  
6 Building.

7 MR. GAUKLER: Is that Rolling Brook  
8 Parkway?

9 MS. HARBAUGH: Boiling, just like water  
10 boils.

11 MR. GAUKLER: Boiling.

12 MS. HARBAUGH: That release will then also  
13 state, of course, that you'd be responsible for any  
14 repairs that might be necessary as a result of your  
15 having used the container. It would further state  
16 that the containers would be provided to you without  
17 a fee to the NRC, and that you would, of course, use  
18 those containers for the protection of information in  
19 association with these proceedings.

20 I don't have that release form prepared  
21 quite yet. I've done the necessary groundwork to get  
22 it in place, and I would expect to get that through to  
23 Judge Farrar within the next two weeks.

24 MR. GAUKLER: For our information in terms  
25 of transporting, do you know the approximate size and

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1 weight of the safes?

2 MS. HARBAUGH: The safe is a five-drawer  
3 safe. I can give you the actual dimensions later.

4 MR. GAUKLER: Okay.

5 MS. HARBAUGH: But the weight is 800  
6 pounds empty.

7 MS. CHANCELLOR: Cindy, could you tell us  
8 what dates we have these for?

9 MS. HARBAUGH: I can make them available  
10 to you the week prior to the proceedings beginning and  
11 through to a week following the proceedings.

12 MR. GAUKLER: Are we talking August 2nd  
13 through --

14 MS. CHANCELLOR: Through what date?

15 (Laughter.)

16 MS. HARBAUGH: Well, as long as we can get  
17 them back into inventory the second week in September.

18 CHAIRMAN FARRAR: You said, Cindy, the  
19 second week in September?

20 MS. HARBAUGH: The second week in  
21 September.

22 CHAIRMAN FARRAR: Because it's  
23 conceivable, depending on whether we get good news or  
24 bad news today from our people on the phone here, that  
25 we could go as late as Wednesday, September 15th,

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1 which is the start of the Jewish holidays.

2 MS. HARBAUGH: We'll work around that. In  
3 other words, I can't go into October kind of  
4 timeframe, but we'll work around that.

5 CHAIRMAN FARRAR: We're fine, then.

6 MS. HARBAUGH: We'll be fine.

7 JUDGE LAM: And Cindy will charge you if  
8 you put your lunches in the safe.

9 (Laughter.)

10 MS. HARBAUGH: The other thing that I --  
11 we will do in advance -- and no Christmas decorations  
12 either, Peter.

13 (Laughter.)

14 I will provide -- we will set the  
15 combinations on those containers for you. They will  
16 be set by our staff who is responsible for setting all  
17 container combinations within the Agency. We will not  
18 maintain that combination, and we will provide it to  
19 you via mail in advance. And if you need onsite  
20 assistance in getting into the container, of course  
21 we'll help you with that.

22 CHAIRMAN FARRAR: Cindy, let me ask you.  
23 This will be a five-drawer, 8-1/2 by 11 safe?

24 MS. HARBAUGH: Legal.

25 CHAIRMAN FARRAR: Legal size.

1 MS. HARBAUGH: Legal.

2 CHAIRMAN FARRAR: Sharon, what we're going  
3 to provide them in their conference room is the five-  
4 drawer lateral file?

5 MS. PERINI: Five cabinets, a locking bar.

6 CHAIRMAN FARRAR: With a locking bar, so  
7 that --

8 MS. HARBAUGH: Right.

9 CHAIRMAN FARRAR: -- what they'll have in  
10 the conference room is bigger, it will have a bigger  
11 capacity than the safe?

12 MS. HARBAUGH: Not necessarily, but it's  
13 pretty much close to the same.

14 CHAIRMAN FARRAR: Okay. So when the  
15 drawers pull out -- okay.

16 MS. HARBAUGH: It's just vertical versus  
17 lateral.

18 CHAIRMAN FARRAR: Okay.

19 MS. HARBAUGH: I know that NRC Staff had  
20 also asked about storage capacity here rather than  
21 having to drag their materials back to their office  
22 location. And I believe that the Panel has provided  
23 storage.

24 MS. PERINI: Yes. We will have a locking  
25 bar cabinet in that room also.

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1 CHAIRMAN FARRAR: Okay.

2 MS. HARBAUGH: So there will be some  
3 onsite availability I think for all parties as well.  
4 I just wanted to confirm that on the record, right?

5 CHAIRMAN FARRAR: Right.

6 MR. GAUKLER: Thank you very much, Cindy,  
7 and Your Honor. I appreciate your accommodation.

8 CHAIRMAN FARRAR: Okay. My e-mail  
9 yesterday -- oh, and I encourage you if there are any  
10 problems on this you don't have to work through us.  
11 Just work through Cindy on the logistics of it.

12 MS. HARBAUGH: Which, if I might add,  
13 then, I will give you -- my e-mail address is  
14 cgh1@nrc.gov.

15 CHAIRMAN FARRAR: cgh1. My e-mail to you  
16 of June 29th asked if there were any safeguards  
17 problems. Nobody responded. So none of the other  
18 safeguards people showed up. I had one --

19 MR. GAUKLER: I do have one safeguards  
20 matter to report to the Board. Okay?

21 CHAIRMAN FARRAR: Okay. Let me, Mr.  
22 Gaukler, mention one thing with Cindy. She and I will  
23 be working on your entry into the building, to see if  
24 we can't do it in a more expedited fashion. I know a  
25 couple of times we had to delay the start of the

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1 trial, because you got behind a bus load of visitors  
2 or something. So we'll see if we can't find a way  
3 that you can be assured easy entrance.

4 Go ahead, Mr. Gaukler.

5 MR. GAUKLER: Yes. I need to report to  
6 the Board that I have misplaced the July 8th or July  
7 2003 report by Stone & Webster on the canister  
8 transfer building -- not the calculations, the report  
9 itself.

10 The last time I had the report was in the  
11 deposition of Mr. Ebbeson. Ms. Nakahara referred to  
12 the report in the deposition, did not introduce it as  
13 an exhibit. I gave Mr. Ebbeson my copy, and at some  
14 point during the deposition he was reading from the  
15 copy. I missed it sometime thereafter.

16 I confirmed it wasn't in my files. I have  
17 since then undertaken a due diligence search, checking  
18 with the Court Reporter, the State. So far they  
19 haven't -- neither of them have identified having it.  
20 And NRC Staff is now in the process of checking its  
21 various people.

22 The report was used in the deposition, and  
23 so the first thought I had was that the Court Reporter  
24 had taken it. But that turned out not to be case. So  
25 I'm in the process of doing a due diligence search to

1 try to locate the report.

2 CHAIRMAN FARRAR: All right. We  
3 appreciate that report. Keep up your due diligence.  
4 Let us -- did that have safeguards label on it, Mr.  
5 Gaukler?

6 MR. GAUKLER: Yes, it did.

7 CHAIRMAN FARRAR: Well, keep up your due  
8 diligence. Keep us posted. And this I guess just  
9 serves as a reminder to all of us that no matter how  
10 much care we take we can take some more. So I urge  
11 everybody sitting with me here, and everybody on the  
12 call, to make sure that at all times you're extra  
13 conscious of the need to protect these.

14 And, Mr. Gaukler, if you'll let us know if  
15 you do come up with the document or --

16 MR. GAUKLER: I will do that, Your Honor.

17 CHAIRMAN FARRAR: -- or as you eliminate  
18 other avenues, just let us know.

19 MR. GAUKLER: I will do that.

20 CHAIRMAN FARRAR: Let us go off the record  
21 here for a moment.

22 (Whereupon, the proceedings in the  
23 foregoing matter went off the record at  
24 11:40 a.m. and went back on the record at  
25 11:41 a.m.)

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1 CHAIRMAN FARRAR: Let's go back on the  
2 record.

3 Having had a conversation with Cindy and  
4 my colleague Judge Lam, Mr. Gaukler, again, we  
5 appreciate that you reported this. We'll keep tabs on  
6 it and at the appropriate time do whatever followup or  
7 reporting that we have to, but we appreciate your  
8 bringing this to our attention.

9 Are there any other safeguards matters we  
10 have to discuss?

11 All right. Then, Cindy, thank you again  
12 for your help. And on behalf of the parties who have  
13 already expressed it, express your appreciation for  
14 helping us with the logistics. Having that safe and  
15 what it does in terms of letting them secure the space  
16 that's convenient to them, rather than inconvenient  
17 space, will make a big difference in their preparation  
18 for, and participation in, the hearing. So thank you.

19 MS. HARBAUGH: You're welcome. And I'll  
20 be in touch.

21 MR. TURK: Your Honor, Mr. Stapleton has  
22 been with us. Is he free to go at this point, then?

23 CHAIRMAN FARRAR: Yes.

24 MR. TURK: Okay, good. Thank you.

25 CHAIRMAN FARRAR: Thank you.

1 Before we get into the substance of the  
2 agenda, let me ask you, did -- I think it was last  
3 Friday or Saturday you were supposed to finish your  
4 depositions. Did those conclude appropriately?

5 MR. GAUKLER: Yes, they did, Your Honor.

6 CHAIRMAN FARRAR: Okay. Thank you. Have  
7 you had time since then to talk about possible  
8 stipulations and time allotments?

9 MR. GAUKLER: We did talk about that  
10 yesterday -- the State, the Staff, and us.

11 CHAIRMAN FARRAR: I don't need a report  
12 now. I just wanted -- but you will be able to report  
13 to us on that, then.

14 MR. GAUKLER: Where we stand now. We have  
15 not reached any final resolution, but we can report  
16 where we stand, yes.

17 CHAIRMAN FARRAR: Okay. Before we get to  
18 that, let's talk a little bit about the motions in  
19 limine that have come up, and where we had reserved  
20 two weeks from now, Thursday, July 15th, at 11:30 for  
21 a conference phone oral argument.

22 Just to make sure we have the right  
23 documents in front of us, I have a June 9th motion in  
24 limine from the Applicant against the State's use of  
25 some material dealing with ordnance. We have replies

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1 from the Staff supporting the motion. Is that  
2 correct, Mr. Turk?

3 MR. TURK: Yes, Your Honor.

4 CHAIRMAN FARRAR: And we have a response  
5 from the State opposing the motion and containing what  
6 looks like to me the elements of a cross-motion. Is  
7 that correct, Ms. Chancellor?

8 MS. CHANCELLOR: Correct, Your Honor.

9 CHAIRMAN FARRAR: Mr. Gaukler, did you  
10 want the opportunity to respond to that cross-motion?

11 MR. GAUKLER: Yes, I do.

12 CHAIRMAN FARRAR: All right. Have you --  
13 had you already been planning to do that, or do you  
14 want your time to -- how much time will you need to do  
15 that?

16 MR. GAUKLER: I had not been planning on  
17 doing that, but I had been planning on addressing the  
18 issue in Dr. Cornell's testimony raised by the State.  
19 So I would suggest that we make that reply due the  
20 same time we file a reply on the motion in limine that  
21 the State filed Monday.

22 MS. CHANCELLOR: Your Honor, could I  
23 clarify that the response will just be to the cross-  
24 motion and it won't be a reply to -- oh, that's okay.  
25 He gets to reply to the motion anyway. Never mind.

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1 CHAIRMAN FARRAR: No, no. Under our rules  
2 there is no reply brief unless we authorize it.

3 MS. CHANCELLOR: Oh, that's right. So, in  
4 other words, he shouldn't have the opportunity to  
5 reply to the substance of our response, only to the  
6 cross-motion.

7 CHAIRMAN FARRAR: Right. No, it's --

8 MR. GAUKLER: That's correct. That's my  
9 understanding.

10 CHAIRMAN FARRAR: He would be filing --  
11 then, Mr. Gaukler, whatever -- however the times would  
12 work out, let's make sure we get them in -- well, I  
13 suppose if you send them --

14 MR. GAUKLER: If they're safeguards, if we  
15 sent them Monday, you would get them Tuesday. If they  
16 weren't safeguards, which I -- they might be able to  
17 be non-safeguards, we could file them Tuesday. You  
18 would have them Tuesday.

19 MS. CHANCELLOR: I filed it as safeguards.

20 CHAIRMAN FARRAR: Tuesday, the 13th?

21 MR. GAUKLER: Yes.

22 CHAIRMAN FARRAR: Okay. Just so we --  
23 let's -- then, we would -- if you file them Tuesday,  
24 the 13th, we'd have them by Federal Express Wednesday,  
25 the 14th, which would give us time to read them and

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1 prepare for the argument?

2 MR. GAUKLER: If they were filed as  
3 safeguards, yes.

4 CHAIRMAN FARRAR: All right.

5 MR. GAUKLER: If they weren't filed as  
6 safeguards, you would have them Tuesday evening.

7 CHAIRMAN FARRAR: All right. Then let's  
8 have that as your date.

9 MR. TURK: Your Honor, in that regard, I  
10 don't know that we'd be filing a response to the  
11 cross-motion, but we'll need to look at it. If we do,  
12 our reply, then, would be due the same date, the 13th?

13 CHAIRMAN FARRAR: Right. And, I mean, I  
14 -- and there are two aspects of this. One, is the  
15 motion well taken? And, two, is the State correct  
16 that the same ruling would -- the principles that  
17 govern one ruling would govern the other ruling, or  
18 that -- in other words, if the Applicant is correct  
19 about the State's testimony, then is the State  
20 necessarily correct about Dr. Cornell's testimony? Or  
21 is that an independent question? So you can -- both  
22 Mr. Gaukler and the Staff should address that.

23 The second motion we have is one by the  
24 State, June 15th, against the Staff. And let's all be  
25 careful how we talk about this. To avoid any

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1 safeguards problems, let's use the word "change,"  
2 "pre-change," and "post-change," as opposed to the  
3 other word that we don't use.

4 The State says that the Staff is pursuing  
5 an analysis of the Applicant's pre-change proposal and  
6 says they thought that had gone by the Board. The  
7 Staff reply is due today?

8 MR. TURK: Yes, Your Honor.

9 MR. GAUKLER: We'll be filing a short  
10 reply also, Your Honor.

11 CHAIRMAN FARRAR: All right. The State --  
12 I assume you'll address the point that the State says  
13 if we were to say this is relevant, and deny their  
14 motion in limine, then they would need to address the  
15 Staff's analysis of the pre-change situation. They're  
16 claiming I guess some degree of surprise on that and  
17 saying that, if they have to address that, the  
18 August 9th hearing is off. Do we want to talk about  
19 that now, or shall I wait for your briefs?

20 MR. TURK: I can address this very  
21 briefly, Your Honor.

22 CHAIRMAN FARRAR: Okay.

23 MR. TURK: The first thing you should  
24 understand is the historic context. The Staff's  
25 analysis commenced when we had the PFS pre-change

1 version of the cask. That analysis was nearing  
2 completion when the change was announced, and we then  
3 instructed Sandia to develop a post-change analysis.  
4 That was disclosed during the deposition of the Sandia  
5 witnesses.

6 The State also assessed the pre-change  
7 cask. The State's September 2003 report looks only at  
8 the pre-change cask. In fact, it mistakenly looked at  
9 a different version of the pre-change cask. It looked  
10 at Revision 1 of the pre-change cask.

11 MS. CHANCELLOR: Your Honor, if I may  
12 interrupt, I didn't realize we were having arguments  
13 on the motion in limine today.

14 MR. TURK: This is not argument. I'm  
15 responding to Judge Farrar's question in terms of, is  
16 there a surprise? Is there something that could  
17 affect the hearing schedule? But this is not  
18 argument. This just goes -- this will go to that  
19 point.

20 CHAIRMAN FARRAR: Ms. Chancellor, I would  
21 say, although I'd get in trouble for saying it, you  
22 shouldn't interrupt me when I'm arguing your side of  
23 the case. But I would get in trouble if I said that.

24 MR. TURK: In brief response, Your Honor,  
25 both we and the State assessed the pre-change cask.

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1 The Sandia analysis, which involves a model that was  
2 built, was the pre-cask -- the pre-change cask as its  
3 centerpiece -- was then revised only slightly to put  
4 the change in.

5 All of the inputs that applied to the pre-  
6 change cask continue to be the same with the second  
7 analysis done on the post-change cask. So the first  
8 analysis is relevant to understanding what the  
9 analysis is that Sandia did on the post-change cask.  
10 That's the first point.

11 The second point is there was no surprise,  
12 because there was no limitation on the scope of what  
13 the analyses should examine.

14 CHAIRMAN FARRAR: Well, let me interrupt  
15 you. Ms. Chancellor, you're correct. We're not going  
16 to argue this today. I thought maybe we could dispose  
17 of it simply today, which is -- but before the  
18 Applicant and the Staff file this document, let's be  
19 very, very clear that Judge Lam and I are concerned  
20 that if this analysis -- the pre-change analysis is  
21 presented for the substance of what it shows, then we  
22 -- we'd have to address the question -- well, let me  
23 -- let me interrupt myself.

24 Mr. Gaukler, your application right now is  
25 for approval of a cask with the changes. Is that

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1 correct?

2 MR. GAUKLER: Yes, that's correct.

3 CHAIRMAN FARRAR: And you have reserved  
4 the right in your agreement with the State on their  
5 contention -- is that TT?

6 MR. GAUKLER: Yes.

7 CHAIRMAN FARRAR: You have reserved the  
8 right at a later time to ask for approval of the cask  
9 pre-change.

10 MR. GAUKLER: Or another cask, or whatever  
11 the case may be. Yes, Your Honor.

12 CHAIRMAN FARRAR: And if you did that,  
13 we'd go -- that would start at ground zero, and we'd  
14 start with a whole new staff approval process and a  
15 notice of opportunity for hearing, and so forth.  
16 Correct?

17 MR. GAUKLER: Well, it would depend upon  
18 the precise way we went about doing it, and precisely  
19 how we determined to go about doing it, Your Honor.

20 CHAIRMAN FARRAR: Okay. Mr. Turk, you  
21 said there is no surprise, but I -- speaking for  
22 myself, and I think for Judge Lam, we were a bit  
23 surprised to hear that this kind of analysis might be  
24 still in the case. I understand what you're saying,  
25 that it was close to what you did before, and you

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1 might have built on what you did before.

2 But we thought that pre-change situation  
3 was out of the case. Sandia can do its work any way  
4 they want to, but we thought that pre-change situation  
5 was out of the case and the reason -- Ms. Chancellor  
6 is correct. We're not having argument today. But if  
7 that pre-change situation is not out of the case, then  
8 we have a serious question about going forward with  
9 the August 9th hearing date.

10 And that's what we want to address at this  
11 time, whether we need to reevaluate that date or  
12 whether this is just historical information, which  
13 might be interesting but has no bearing on the matters  
14 in front of us.

15 MR. TURK: The answer to that question is  
16 very I think simple, Your Honor. PFS has indicated  
17 that they are asking for approval of the post-change  
18 cask. That's the decision that you are called upon to  
19 render. It matters not whether there is evidence in  
20 the proceedings concerning an earlier version of that  
21 cask, because that will not be something that you have  
22 to rule upon.

23 Whether Sandia did the analysis of a pre-  
24 change cask or not should not affect your decision as  
25 to whether the post-change cask should be licensed.

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1 And, therefore, there is no prejudice to the State,  
2 because it's not a central issue for you to decide.  
3 In fact, you don't have to decide anything about the  
4 adequacy of the pre-change cask. That's not before  
5 you.

6 The information is relevant to describe  
7 what Sandia did in its work. The inputs are the same  
8 for both. It may be useful for your decision to -- to  
9 note that the pre-change cask had been evaluated, but  
10 that's not something that you are asked to render any  
11 substantive finding on. And we will not ask you to  
12 render any substantive finding on the adequacy of the  
13 pre-change cask. Therefore, there is no prejudice to  
14 the State.

15 I would note that if you were to determine  
16 that the -- any information concerning the pre-cask --  
17 I'm sorry, the pre-change cask is irrelevant and  
18 should be excluded, then that would affect also the  
19 State's evidence and testimony concerning their work  
20 on the pre-change cask. And you'll see that you start  
21 -- when you start excluding evidence you're going to  
22 be having to sift through everything that has been  
23 done.

24 So I think the key is not to exclude  
25 evidence, but to understand that it's not something

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1 that you're being asked to rule upon. It's  
2 essentially something that cannot result in prejudice  
3 to any party, because it is not something that you  
4 will be deciding.

5 JUDGE LAM: Mr. Turk, this is Judge Lam.  
6 I certainly agree with what you are saying about the  
7 analysis on the pre-change cask is of historical  
8 value, and it may not be relevant to the application  
9 on the post-change cask.

10 But I also remember you were saying a  
11 couple of conferences before that if the material is  
12 unnecessary for us to rule upon, or has no impact on  
13 our proceeding, don't bring it on.

14 MR. GAUKLER: If I could mention  
15 something, Your Honor -- Paul Gaukler here. We  
16 believe that the analysis is relevant -- and we'll be  
17 laying this out in our response -- in that it shows  
18 the conservatism in our change design.

19 CHAIRMAN FARRAR: Let's do this. Ms.  
20 Chancellor is correct, we don't want to argue the case  
21 today. I think we have -- well, we have enough  
22 information to know that we're not going to -- there  
23 will be no need to put off the hearing.

24 Ms. Chancellor, I want to give you a  
25 chance to speak. But I think one thing we will do --

1 those replies are due today. You would not have a  
2 right to respond. But given what has been said here,  
3 we will give you until that same July 13th to file a  
4 short reply to whatever the Staff and the Applicant  
5 file today. But go ahead and tell us anything you  
6 think we ought to know right now.

7 MS. CHANCELLOR: Your Honor, anything that  
8 we have to say we'll say in the short reply.

9 CHAIRMAN FARRAR: All right. And we just  
10 want you to be aware the reason for bringing this up  
11 was not to be -- not to be arguing the matter. But  
12 when we saw the notation in your brief that handling  
13 this in a particular way could create prejudice to  
14 you, which could only be alleviated by giving you a  
15 chance to do your own analysis and postponing the  
16 hearing, we thought that suggestion certainly on its  
17 face had some merit. And we wanted to explore it on  
18 your behalf here, even though none of you had any  
19 particular notice that we were going to do that.

20 So, Ms. Chancellor, is this -- is the  
21 resolution today, which I guess is simply we will  
22 proceed to plan the hearing, we will give you the  
23 chance to reply, and we will assure that whatever our  
24 ruling is does not create the prejudice that your  
25 brief suggested it might. Is that a satisfactory

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1 resolution for now?

2 MS. CHANCELLOR: Yes, that is just fine.

3 Thank you, Your Honor.

4 CHAIRMAN FARRAR: Okay. Thank you.

5 The third motion was a June 28th motion by  
6 the State against the Applicant talking about some --  
7 the Skull Valley profiles of the flights, and there  
8 are a number of aspects to that.

9 And, Mr. Gaukler, that you would have a  
10 reply, and the Staff will have a reply on that, on  
11 July 13th?

12 MR. GAUKLER: Yes, Your Honor.

13 CHAIRMAN FARRAR: Okay.

14 MR. TURK: Your Honor, this is Sherwin  
15 Turk. May I inquire, do we -- are we required to file  
16 on the 12th if safeguards is involved?

17 CHAIRMAN FARRAR: No. You're required you  
18 file on the 13th, so that we -- well, what would the  
19 time limit be on that one?

20 MS. CHANCELLOR: Your Honor, it was  
21 originally supposed to be July 12th. And Mr. Gaukler  
22 asked for an extension to July 12th, so that he could  
23 file it concurrent with his testimony -- with Dr.  
24 Cornell's testimony, because Dr. Cornell was going to  
25 be out of town, so you'd receive it July 13th.

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1 CHAIRMAN FARRAR: All right. Yes, let's  
2 do that on this one.

3 One -- this one, might initial thought is  
4 we will need oral argument on this. Just to get you  
5 thinking along the right lines, one part of the  
6 State's motion has me a little concerned, the part  
7 about not including ejections below 2,000 feet,  
8 because I thought much of the basis of our holding  
9 March 10th a year ago was that pilots don't always  
10 observe the above 2,000 feet, and that that was a  
11 holding that, in essence, favored the State.

12 Ms. Chancellor, can you help us on that?

13 MS. CHANCELLOR: For purposes of  
14 regulatory analysis, though, you -- the opinion stated  
15 that you should adhere to the 2,000 feet ejection  
16 recommendation of the U.S. Air Force. And so as we  
17 said in our motion, that's the basis on which we think  
18 that the ejection should hold at 2,000 feet.

19 CHAIRMAN FARRAR: All right. Then we'll  
20 -- the Staff and Applicant can address that in their  
21 written papers. And, Ms. Chancellor, when we come to  
22 oral argument, this is a point that we'll want to  
23 explore in more detail I think.

24 JUDGE LAM: And for your information, Ms.  
25 Chancellor, in our earlier ruling we have gone on with

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1 the rationale that 2,000 feet may be what is required  
2 for the pilots to do. But under the circumstances,  
3 the pilot would have a lot of incentive to continue  
4 trying to restart the engine until he runs out of  
5 time. And at that point, more likely than not, the  
6 altitude will be way below 2,000 feet, as demonstrated  
7 in the accident report. So that was one rationale we  
8 came to the conclusion we had a year ago.

9 CHAIRMAN FARRAR: All right. Well, we'll  
10 let you all address that to the parties in writing,  
11 and then we will take that up at the oral argument.

12 All right. Are there any -- can we  
13 anticipate any other motions in limine coming in based  
14 on now you've completed the depositions?

15 MR. TURK: Your Honor, for the Staff,  
16 there are some little bits and pieces of the State's  
17 report on casks that appeared to me in deposition not  
18 to be well supported with proper experts. If the  
19 State files those reports unchanged, then we will  
20 probably move to exclude small portions of the  
21 reports.

22 CHAIRMAN FARRAR: Well, if their reports  
23 aren't supported with proper experts, why isn't that  
24 a matter that we could take up at the hearing? And  
25 someone will say they have no basis for saying that,

1 and we'll say that's right, or we'll --

2 MR. TURK: That's what I would have done  
3 with the motion in limine, Your Honor. But if you --  
4 I'm perfectly willing not to have to file any extra  
5 paper and just to bring it up at hearing.

6 CHAIRMAN FARRAR: Yes. I mean, our  
7 practice is -- I mean, I think we look with disfavor  
8 on motion in limine. I think we indicated that  
9 before, that they have -- they have to be very well  
10 taken.

11 And if it's a matter of the weight or not,  
12 it -- we view motions in limine as dealing with things  
13 that are outside the scope of the proceeding or the  
14 issues or the contention, or however you want to  
15 phrase it, not -- and not as going to whether evidence  
16 that's legitimately to be considered with us, by us,  
17 in fact lacks weight and gravitas. That that's  
18 something for the hearing as opposed to prehearing  
19 motion.

20 So I'm not saying you can't file them, but  
21 the -- and particularly the later in the day it gets  
22 to be, the more likely we would get a motion and tell  
23 the parties, if we think that it is something that  
24 just goes to the weight of the evidence, we would tell  
25 the parties not to bother to reply.

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1 JUDGE LAM: Right. Furthermore, I think  
2 these motions had two potential disadvantages for us.  
3 One, it increases the Licensing Board's burden in  
4 deciding matters at this late stage. Secondly, I  
5 think it increases the chances that we would make  
6 errors in excluding evidence that later turns out to  
7 be valid.

8 CHAIRMAN FARRAR: All right. So are there  
9 any other motions besides the one -- the ones Mr. Turk  
10 just mentioned that might be anticipated?

11 MR. GAUKLER: Not at this point in time,  
12 Your Honor.

13 CHAIRMAN FARRAR: All right.

14 MR. GAUKLER: I have no -- I have not  
15 identified anything else I would file a motion on.

16 CHAIRMAN FARRAR: All right. Then, I'll  
17 ask all three parties then to bear in mind what I  
18 said, that if it goes to the weight of the evidence,  
19 have your expert tell us that it deserves no weight,  
20 because it's not backed up. And presumably if you  
21 make a good case on that, we -- you win.

22 All right. That takes care of the motions  
23 in limine. Mr. Gaukler, let's get back to the report  
24 you said you would have on the progress you've made on  
25 stipulations and time allotments.

1 MR. GAUKLER: In terms of stipulations,  
2 I've been pressing the State I think, to put it  
3 politely, to stipulate to jet fuel fires in the  
4 canister transfer building. But as of now, they have  
5 no reports on that. And as of the depositions, their  
6 experts do not have any particular positions on that.

7 They want to keep their options open to  
8 the filing of their prefiled testimony, and said they  
9 would reconsider it after that, whether or not they  
10 would stipulate to issues -- to those two issues. So  
11 that's where we stand on that, Your Honor.

12 CHAIRMAN FARRAR: All right. Anyone else  
13 want to add on to Mr. Gaukler's report in that regard?  
14 All right.

15 MR. GAUKLER: So what we will be doing at  
16 this point in time will be filing basically a very  
17 short summary testimony, putting our reports in,  
18 because we have nothing else to address in it, other  
19 than what we've done before. And we'll see if the  
20 State does anything.

21 CHAIRMAN FARRAR: Okay. How long do you  
22 think it will -- oh, well, you said that would be  
23 after the testimony.

24 MR. GAUKLER: Yes. So I would think that  
25 we should -- it certainly should be a topic that we



1 would take up at the July 15th conference.

2 CHAIRMAN FARRAR: Okay.

3 MR. GAUKLER: Because it does affect the  
4 duration of the hearing. We have estimates of I think  
5 one day, one plus day, for issues.

6 CHAIRMAN FARRAR: All right. So on the  
7 15th, we would have not only the oral argument on the  
8 motions in limine but also further discussion of the  
9 stipulations.

10 MR. GAUKLER: Yes.

11 CHAIRMAN FARRAR: All right, then. What  
12 progress, then, have you made on the time allotment  
13 question?

14 MR. GAUKLER: What we've done there -- Mr.  
15 Turk went through and kind of marked up what I had.  
16 He discussed -- he came up with -- I had a 50 -- I had  
17 a 30-25-45 percent allocation, with 45 percent to the  
18 State, 30 for PFS, and approximately 25 for the Staff.

19 And he marked it up based on what he  
20 thought were times that different parties would use.  
21 He came up with, excluding the time for the Board,  
22 with roughly 46 percent of the State, 30 percent for  
23 PFS, and 24 percent for the Staff, rounded off to the  
24 nearest whole number.

25 We would discuss it with the State. The

1 State is not willing to -- ready to accept either our  
2 -- my proposal or the Staff's proposal.

3 CHAIRMAN FARRAR: Yours, again, Mr.  
4 Gaukler, was how much for the State?

5 MR. GAUKLER: In terms of just percentage,  
6 it was 45 percent. So Mr. Turk and I are off by one  
7 percent.

8 CHAIRMAN FARRAR: Okay.

9 MR. GAUKLER: And for purposes of  
10 discussion, I will adopt Mr. Turk's calculation. So,  
11 basically, I would say 50 -- 46 percent for the State,  
12 30 percent for the Staff, and 24 percent -- excuse me,  
13 30 percent for PFS, and 24 percent for the Staff.

14 In the discussions, the State has taken  
15 the position that they want 50 percent of the total  
16 time. I have taken the position that, albeit the  
17 Staff is certainly supporting us, the Staff does have  
18 a different mission, and at times it takes a different  
19 tact in questioning because of that different mission.

20 As you've heard Mr. Turk state at various  
21 points in time, I think in the previous hearing, that  
22 we are doing this to fully develop the record. So  
23 they do have a different mission than we do, even  
24 though their bottom line is the same. And also, we  
25 have the burden of proof, so I think that a 54 -- 46

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1 percent for the State is more than fair where I come  
2 down.

3 The State said they were going to look at  
4 the numbers themselves and come up with some  
5 calculations in terms of percentages. They were going  
6 to look at the specific numbers, both in terms of the  
7 amount of time and the percentages, and that's where  
8 we stand on that.

9 MR. TURK: Your Honor, this is Sherwin  
10 Turk. May I add?

11 CHAIRMAN FARRAR: Yes.

12 MR. TURK: When I looked at Mr. Gaukler's  
13 numbers, I did not have in mind any particular outcome  
14 in terms of what percentage should be allocated to  
15 which party. I simply looked at it in terms of how  
16 much time did I expect would be required for  
17 presentation of the direct and for the cross  
18 examination of each panel by each of the other  
19 parties.

20 Wherever there was cross examination, we  
21 recognize that there is probably going to be some  
22 redirect in order to correct any errors that may have  
23 come out during the oral cross examination. So where  
24 there's extensive cross examination, the redirect  
25 would be a little bit longer than it would have been

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1 if there was only a short period of cross examination.

2 We have invited the State to look at the  
3 numbers and to identify where they think the numbers  
4 -- the number of minutes allocated for each  
5 presentation of direct or cross examination need to be  
6 adjusted. So we haven't seen that from the State yet,  
7 but I'm hoping that we will.

8 And I think because the Staff and PFS  
9 together are putting on a large number of panels, the  
10 State will have an opportunity to conduct extensive  
11 cross examination, and then there would be redirect on  
12 that same cross examination.

13 MR. GAUKLER: In that respect, I'd like to  
14 point out that because the State will be cross  
15 examining more witnesses than PFS or the Staff, in  
16 terms of cross examination, if total cross time --

17 CHAIRMAN FARRAR: Mr. Gaukler, wait a  
18 minute. Go ahead.

19 MR. GAUKLER: I'm sorry about that. His  
20 total cross time is actually greater than the sum of  
21 the Staff and PFS's total cross time based on what Mr.  
22 Turk and I have put down. By the same token, because  
23 they are doing more cross than we are, our redirect is  
24 greater than the State's.

25 CHAIRMAN FARRAR: Let me be sure we're

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1 clear here. When you mention these percentages, that  
2 would -- that included direct and redirect, not just  
3 cross?

4 MR. GAUKLER: Yes. It includes everything  
5 -- putting the witness on initially, introducing the  
6 direct testimony, any surrebuttal to the rebuttal  
7 testimony that was prefiled, then the cross  
8 examination, and then redirect and any final rebuttal  
9 in the process. So it includes everything. It is  
10 intended to be all-encompassing.

11 CHAIRMAN FARRAR: So if I were to try to  
12 break this down into direct and redirect versus cross,  
13 the State would have a more substantial percentage of  
14 the cross and a less substantial percentage of the  
15 direct and redirect based essentially on the number of  
16 witnesses you each have presented.

17 MR. GAUKLER: That is correct, Your Honor.  
18 The State has I think more than 50 percent of the  
19 cross time, but then it -- because its overall  
20 percentage is 46, it has a commensurately less  
21 percentage of the direct/redirect time.

22 CHAIRMAN FARRAR: All right. With that  
23 understanding, Ms. Chancellor, would you elaborate or  
24 tell us what you think of this?

25 MS. CHANCELLOR: Yes, Your Honor. We have

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1 twice as many issues to address, because we have to  
2 respond to both PFS and the Staff. There are  
3 substantially more witnesses on the other side, and we  
4 can make our case through cross. And simply because  
5 there are a significant number of witnesses on the  
6 other side shouldn't skew the scale as to how much  
7 time is allocated to each party.

8 Unfortunately, we had a brief due  
9 yesterday, so I haven't had the opportunity to delve  
10 into this like I would. And I'll look at -- I want to  
11 look at, as Mr. Turk said, just how much time it will  
12 take to -- to get witnesses on and off.

13 Yesterday we talked about trying to  
14 expedite the direct examination where we may have, for  
15 example, a master table of exhibits, so time isn't  
16 eaten up reading exhibits into the record when we take  
17 direct testimony. So I think that there are -- there  
18 is still some legwork to be done here. But just at  
19 first cut we thought that -- our point was that PFS  
20 and the Staff could divide the time any way they  
21 wanted -- their 50 percent -- and that we would get  
22 the other 50 percent.

23 JUDGE LAM: Now, Ms. Chancellor, I think  
24 the Staff and the Company together had about three  
25 times more witnesses than the State of Utah.

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1 Therefore, the time you spend on direct and redirect  
2 of your own witnesses would be roughly about one-third  
3 of what they need. Is that a good calculation?

4 MS. CHANCELLOR: Not necessarily, because  
5 the redirect would have to be redirect on the -- well,  
6 let me back into it this way. The direct testimony  
7 would have to -- would address the three times as many  
8 witnesses that the other side has. And, therefore, it  
9 -- the redirect would be lengthy.

10 We've got fewer witnesses, but the  
11 workload basically is going to be the same as for the  
12 Staff and PFS, because our -- on the casks, for  
13 example, our witnesses would have to address a greater  
14 array of issues, whereas the Staff is spreading that  
15 out over many more witnesses.

16 MR. GAUKLER: I think what the State is  
17 referring to is that it may want more rebuttal time  
18 rather than redirect time. And I think that's  
19 something that we can look at in the actual numbers.  
20 And maybe if it's possible for the State to get back  
21 to -- PFS and the Staff, next week we can -- we can  
22 become a little more -- maybe reach agreement on the  
23 actual time required.

24 CHAIRMAN FARRAR: All right. Let me make  
25 one suggestion. Mr. Gaukler, I think it was you who

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1 mentioned the master list of exhibits. It seems to me  
2 I remember our -- maybe it was the first day of  
3 hearing in Salt Lake, it seemed to me we spent an  
4 awful lot of time juggling a lot of exhibits --

5 MR. GAUKLER: Yes, we did.

6 CHAIRMAN FARRAR: -- with the Court  
7 Reporter. And so anything we can do to get -- any  
8 suggestions you have of how we could get things  
9 premarked, even if we have to have the Court Reporter  
10 come out in advance of the start of the hearing and  
11 mark exhibits or work with us, and you to -- and the  
12 parties to do that, we can explore that, because it  
13 certainly would be good to save that time.

14 MR. GAUKLER: What we discussed yesterday  
15 was to have a master list of each side's prefiled  
16 exhibits. And maybe we could have the Court Reporter  
17 mark all those exhibits beforehand, and do what we  
18 talked about yesterday -- this was the State's idea --  
19 was to -- when you introduce a witness, just say, "I  
20 support Exhibits Numbers 1, 2, 3, on this master  
21 list," and then Your Honor would ask, "Does any party  
22 have an objection to any of these exhibits?"

23 The parties would identify the specific  
24 exhibits, if there are any they had an objection to,  
25 as opposed to going through each exhibit name by name,

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1 etcetera. Because we would have a master list already  
2 that could be made part of the record that everybody  
3 then could refer to.

4 CHAIRMAN FARRAR: That would be very  
5 helpful, any of these, so keep working on that. And  
6 any of these ideas I think -- we want to do this  
7 hearing efficiently, but any innovative ideas we can  
8 come up with that might be useful to the Judges and  
9 the litigants in an even more complex proceeding which  
10 may come down the pike would be useful.

11 MS. CHANCELLOR: Your Honor, I have a  
12 procedural question.

13 CHAIRMAN FARRAR: Yes.

14 MS. CHANCELLOR: Have you given any  
15 thought to how you want us to number the exhibits?  
16 Because in our prefiled testimony we will start -- we  
17 will need to start numbering those. And are the  
18 number of copies that we need to supply for the  
19 hearing -- does that change given that these are  
20 safeguards documents?

21 CHAIRMAN FARRAR: Let's see. You used to  
22 file three official ones with the Court Reporter. Was  
23 that the --

24 MS. CHANCELLOR: Yes, I believe that's  
25 correct. And then one for each Judge, and then the

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1 parties -- the parties and the Board are served at the  
2 time of prefiled testimony. And sometimes we would  
3 hand out courtesy copies as well.

4 And I think, of course, Mr. Julian gets a  
5 copy of everything that we file.

6 CHAIRMAN FARRAR: I thought he got one  
7 from the Court Reporter.

8 MS. CHANCELLOR: Right. But not -- that's  
9 correct, but we prefile one with him also.

10 CHAIRMAN FARRAR: Oh, you've --

11 MS. CHANCELLOR: For our prefiled  
12 testimony. But I guess the question is -- the main  
13 question that we -- that has some time sensitivity is:  
14 what numbers should we use in our prefiled testimony  
15 when we're referring to exhibits? I mean, should we  
16 start over again with Utah 1, or do we want a  
17 designation of -- to pick up from the last number, or  
18 have some prefix to show that this is the second phase  
19 of the hearing?

20 CHAIRMAN FARRAR: We probably cannot start  
21 again, because if there is eventual Commission or  
22 judicial review of this, I assume it would be of the  
23 previous decision and of this decision. So you  
24 wouldn't want two different Exhibit 1's.

25 How did we end up? Did we get away from

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1 the double and triple and quadruple alphabetical  
2 designations?

3 MR. GAUKLER: After the triple  
4 alphabetical designation, we went to numbers.

5 CHAIRMAN FARRAR: All right. So you all  
6 -- so the last exhibit each of you filed in 2002 had  
7 a number on it?

8 MR. GAUKLER: I know it's true for PFS and  
9 the State. I can't recall for the Staff.

10 MR. TURK: I don't recall either. I think  
11 we went back to numbering, but I don't recall.

12 CHAIRMAN FARRAR: All right. Why don't  
13 you each check into that, send an e-mail, each of you  
14 -- separate e-mails to each other and to us saying  
15 what you have listed as your last exhibit, numbered or  
16 lettered, and we would -- if everyone agrees on that,  
17 we would go ahead and number sequentially starting  
18 with the next number. So you each would be using  
19 numerals and your party name as the identifier.

20 Hold on a second here while I go off the  
21 record.

22 (Whereupon, the proceedings in the  
23 foregoing matter went off the record at  
24 12:24 p.m. and went back on the record at  
25 12:25 p.m.)

1 CHAIRMAN FARRAR: Thank you for bringing  
2 that up, Ms. Chancellor. So we will do that. Just  
3 let us know what you think your last number was.  
4 We'll verify that here and get you back an e-mail that  
5 says, "All right. The first exhibit for each party  
6 will be as follows." And let's do that fairly  
7 quickly, so you can start with your numbering.

8 Number of copies -- you have to file three  
9 with the --

10 MS. CHANCELLOR: That's only at the time  
11 we get to hearing, Your Honor. In terms of what we  
12 need to file with our prefiled testimony, that won't  
13 change. We'll just file a copy of the testimony and  
14 the exhibits on everybody -- on the Board, PFS, the  
15 Staff, and one copy to Mr. Julian.

16 CHAIRMAN FARRAR: All right. And, Ms.  
17 Chancellor, do you anticipate that you would send us  
18 the exhibits separately, or that each one of them  
19 would end up being attached to one or another witness'  
20 testimony?

21 MS. CHANCELLOR: What we did in the past,  
22 Your Honor, was, as a complete package, we would have  
23 the prefiled testimony as well as the exhibits  
24 attached to that testimony.

25 CHAIRMAN FARRAR: To each --

1 MS. CHANCELLOR: In terms of a master list  
2 of exhibits, we would probably not do that until after  
3 we prefiled testimony, or maybe even after we filed  
4 the reply, in case there were exhibits there.

5 CHAIRMAN FARRAR: All right. And if you  
6 prefile an exhibit with Dr. Jones' testimony, and then  
7 Dr. Smith also refers to it, you would not attach it  
8 to Dr. Smith also. You would just have him refer to  
9 the exhibit attached to Dr. Jones?

10 MS. CHANCELLOR: That's correct, although  
11 we may attach a courtesy copy to -- I can't remember  
12 if it Jones or Smith -- to the other party's -- other  
13 person's testimony. But it would have the -- it would  
14 have the exhibit number for Mr. Smith. Mr. Smith and  
15 Mr. Jones would have the same exhibit number for the  
16 attachment.

17 MS. CHANCELLOR: And the only reason I am  
18 mentioning this about duplicate -- avoiding  
19 duplicative attachments or courtesy copies is with the  
20 safeguards problem, we all have a space problem with  
21 our container, whether they're safes or locking files.

22 MS. CHANCELLOR: Well, certainly, Your  
23 Honor, having sequential numbers will allow us to  
24 refer to past exhibits. And if it's your preference  
25 not to have a copy of that in the package, we could do

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1 that. Although if your safe is as difficult to open  
2 as ours is, it's nice to have it packaged together.

3 CHAIRMAN FARRAR: Hold on a second here.

4 (Whereupon, the proceedings in the  
5 foregoing matter went off the record at  
6 12:28 p.m. and went back on the record at  
7 12:31 p.m.)

8 CHAIRMAN FARRAR: I've been talking with  
9 my colleagues here about the most efficient way to get  
10 these exhibits. Are you all committed to having the  
11 exhibits attached to a particular -- as a matter of  
12 logistics, the exhibits attached to a particular  
13 witness' testimony, rather than send us testimony and  
14 then a binder of all the exhibits? And, of course,  
15 the testimony would refer to the exhibit but wouldn't  
16 be physically attached to it.

17 The reason I ask this question is later  
18 during -- even though a particular witness may sponsor  
19 an exhibit, later on in our work or during the trial  
20 someone else may refer to that exhibit. And isn't it  
21 easier to find it if it's in a binder full of numbered  
22 exhibits rather than attached to somebody's testimony?  
23 Anybody have any thought? Maybe I'm wrong, but --

24 MR. TURK: I think you're right, Your  
25 Honor. I think for ease of handling it's better for

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1 them to come in separately. Also, if they were  
2 attached to testimony, they would have to be bound  
3 into the record, into the transcript. That makes the  
4 transcript unnecessarily bulky.

5 So I think having the exhibits filed  
6 separately from the testimony is the preferred way to  
7 go, other than statements of professional  
8 qualifications, which would be attached to testimony.

9 CHAIRMAN FARRAR: Mr. Gaukler, what's your  
10 thought on that?

11 MR. GAUKLER: I haven't -- first of all,  
12 I agree with Mr. Turk that in terms of the record the  
13 practice has been that we only attach to the testimony  
14 the resume or a statement of professional  
15 qualifications. The exhibits are not bound into the  
16 record. So either way we will -- would not be binding  
17 the exhibits into the record. I haven't given a  
18 thought to which way I would prefer.

19 CHAIRMAN FARRAR: Ms. Chancellor, do you  
20 have any thoughts on that?

21 MS. CHANCELLOR: Whatever makes the most  
22 sense to you, Your Honor. If it's easier for you to  
23 use a binder with exhibits, we'd be happy to do that.

24 CHAIRMAN FARRAR: Yes, I -- let's do it  
25 that way. So when you prefile your testimony, we'll

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1 get the testimony, which will have attached to it, as  
2 you all just mentioned, the statement of  
3 qualifications or the resume, whatever that is.

4 But then -- and that within the testimony  
5 it would refer to and perhaps sponsor different  
6 exhibits. But the exhibits themselves physically  
7 would come in separately rather than physically  
8 attached to the sponsoring testimony. And that way  
9 we'd have easier access to them.

10 Now, if we do that, and given the  
11 safeguards problem, then we may not want to have  
12 courtesy copies of the exhibits given to us at the  
13 hearing. We don't have to decide that question today.  
14 But if we -- if the exhibit is as you sent it to us,  
15 maybe there's no need when you introduce the exhibit  
16 to give us each another copy that we already have  
17 three of.

18 MR. GAUKLER: I think that's a good idea,  
19 Your Honor, because I think, at least in terms of  
20 volume, the greatest volume of the exhibits are going  
21 to be the expert reports, because we're not going to  
22 repeat all of the information in the expert report.  
23 The expert reports are going to be an exhibit to their  
24 testimony, and the testimony will summarize generally  
25 the expert reports.

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1 CHAIRMAN FARRAR: Right. And --

2 JUDGE LAM: But the accident reports are  
3 not safeguards information. We had them already.

4 MR. GAUKLER: The accident reports I don't  
5 think we need to introduce as new exhibits, because  
6 they already have the old exhibit numbers. On that  
7 one I guess we would -- if they're not safeguards, I  
8 would say we would -- to the extent we would refer to  
9 them in testimony, we would probably hand out courtesy  
10 copies to the Board.

11 CHAIRMAN FARRAR: Yes. Those we would --  
12 yes, any old exhibits we would want -- that you're  
13 using we would want courtesy copies of. Any new  
14 exhibits, if they are the same, if you introduce at  
15 the trial the same that you give us with your prefiled  
16 testimony, we do not want courtesy copies.

17 MS. CHANCELLOR: Your Honor, to the extent  
18 that we can, would you prefer us to double side --  
19 copy double-sided the exhibits, so that you have less  
20 volume?

21 CHAIRMAN FARRAR: Yes.

22 MS. CHANCELLOR: Okay.

23 CHAIRMAN FARRAR: I have to remember, Ms.  
24 Chancellor, that I am no longer with the pulp and  
25 paper industry. We --

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1 (Laughter.)

2 -- preferred single-sided.

3 MS. CHANCELLOR: I'm glad you have moved,  
4 Your Honor. But seriously, I do prefer single-sided  
5 for ease of reading. But I think given the volume we  
6 have here, and the fact that we're dealing with  
7 safeguards and locked containers, that double-sided  
8 would be appropriate. But not with the testimony.

9 MR. TURK: Your Honor, I would ask you to  
10 go with a single side for exhibits for several  
11 reasons. One, it's much easier for us to use during  
12 the proceeding. Pages don't get misplaced or somehow  
13 out of order. It's much easier to avoid reproduction  
14 problems with the copy machines. If we ever have to  
15 make copies of an exhibit, sometimes it acts up when  
16 you're copying double-sided.

17 I don't know of any benefit other than  
18 trying to keep down the bulk. But we're only talking  
19 about two or three inches total of reports maybe,  
20 something on that order. So I really would prefer  
21 single-sided for everyone's ease of use.

22 MR. GAUKLER: I would echo that, Your  
23 Honor.

24 JUDGE LAM: I change my vote.

25 (Laughter.)

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1 CHAIRMAN FARRAR: Ms. Chancellor, would  
2 you have any objection to that?

3 MS. CHANCELLOR: No, none, Your Honor.

4 CHAIRMAN FARRAR: Okay. Then let's -- I  
5 think those points are well taken, that the space we  
6 would save is outweighed by the loss of convenience  
7 and the copying problems that we've all run into. So  
8 we will do everything single-sided.

9 All right, then. Is there -- well, I  
10 guess one thing we could help you with is this  
11 allotment of time. I understand how you have to  
12 balance the direct and redirect versus the cross, and  
13 we had originally talked about just the cross.

14 I guess the -- to help you all reach an  
15 agreement, one thing we could usefully discuss now is  
16 whether the Staff -- and recognizing that part of this  
17 is driven by the number of witnesses you each have --  
18 but are the Staff and Applicant one side, or is Mr.  
19 Turk and Mr. Gaukler correct that the Staff has a  
20 somewhat different mission in life, and so, therefore,  
21 it's not a 50/50 proposition with the split between  
22 the State and its opponents?

23 Ms. Chancellor, why don't you address that  
24 first?

25 MS. CHANCELLOR: Well, I think it came out

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1 in the depositions, Your Honor, that the Staff and PFS  
2 were definitely aligned. And as we have to take on  
3 two adversaries, and we're doing it as efficient --  
4 maybe more efficiently than some by having less  
5 witnesses, we shouldn't be penalized for that.

6 So our feeling is that it has taken us a  
7 long time to get here, and that it's two against one.

8 CHAIRMAN FARRAR: Mr. Gaukler?

9 MR. GAUKLER: I think that my -- while we  
10 may be the same on bottom line, the Staff does have a  
11 different function, and that does reflect itself in  
12 questions that are asked at various points in time  
13 during the hearing. I think you can go back in the  
14 record of the previous hearing and pull out instances  
15 where the Staff is specifically saying, "We're doing  
16 this to -- to fulfill our obligation to fully develop  
17 the record."

18 And on top of that as well, Your Honor,  
19 the Applicant does have the burden of proof. And,  
20 therefore, I believe it is appropriate in these  
21 circumstances that the percentages we derived not --  
22 need not and should not be 50/50 between PFS and the  
23 Staff and the State.

24 CHAIRMAN FARRAR: Let me ask you this, Mr.  
25 Gaukler. I think if you asked Judge Lam and I for the

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1 best example of where the Staff had a different view  
2 from the Applicant, we would probably both think  
3 initially of Dr. Luk's report on the seismic, where  
4 the Staff took a different -- a very different  
5 approach, which ended up confirmatory of the  
6 Applicant's result.

7 Having said that, I'm not sure that in  
8 this case -- or this issue in front of us, that the  
9 Staff and the Applicant aren't really in close  
10 lockstep. The Staff asked several sets of RAIs of the  
11 Applicant. The Applicant answered them.

12 If the analyses that both are presenting  
13 are not significantly different at this point -- and,  
14 again, I know the Staff has been criticized at  
15 hearings by the public for appearing to be marching in  
16 lockstep with the Applicant, and we have always tried  
17 to explain that that comes about after a long, painful  
18 process where the Staff may not be in agreement with  
19 the Applicant until it gets all of its questions  
20 answered.

21 But once that process is done, there is  
22 nothing wrong with the two parties being in  
23 essentially the same position. And why does Ms.  
24 Chancellor not have a point that if you treat them as  
25 separate parties, then it's two to one in terms of

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1 time?

2 Mr. Turk, why don't you address that.

3 MR. TURK: Thank you, Your Honor. I  
4 cannot think of a case in which Ms. Chancellor's  
5 assertion that we're definitely aligned with the  
6 Applicant here is less applicable than in this case.

7 Contrary to Ms. Chancellor's  
8 representation, the Staff has developed independent  
9 analyses throughout its assessment of the aircraft  
10 crash consequence issue.

11 I begin with the Campe/Ghosh study of  
12 aircraft angles and speeds. Rather than simply accept  
13 and bless what PFS did, the Staff witnesses went out  
14 and conducted their own assessment of the applicable  
15 angles and speeds.

16 They went to Kirtland Air Force Base.  
17 They gathered their own information. They did their  
18 own regression analysis. And what they came out with  
19 -- and, incidentally, they went to Lockheed Martin,  
20 the manufacturer of the airplane, to assist in their  
21 assessment of those crashes in which sufficient data  
22 was not available.

23 At the end of that exhaustive process,  
24 they came out with numbers which are very similar to  
25 the numbers that PFS developed independently from the

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1 Staff. So we have a report to present on angles and  
2 speeds which may come out with the same conclusions or  
3 similar conclusions to what PFS provided, but it's  
4 based on an entirely independent assessment.

5 I move on to the assessment of  
6 consequences to the casks. The Staff here, just as we  
7 did with seismic issues, went to Sandia National  
8 Laboratory and commissioned them to perform an  
9 entirely independent analysis of the consequences of  
10 an F-16 crash into a Histrom 100 cask. That analysis  
11 is totally different from what PFS has done and from  
12 the State has done.

13 We also provided an independent assessment  
14 of what the State has done in its LSI analyses by  
15 going to an LSI expert at Oak Ridge National  
16 Laboratory, who took the State's model, went into the  
17 inputs and outputs, took it apart, saw what the flaws  
18 were, and presented a totally independent assessment  
19 of what the State had done.

20 He then corrected the State's model in  
21 ways that are explicitly laid out in his report, and  
22 shows that if the State had done its assessment  
23 correctly they would not have found any problem with  
24 the cask.

25 All of that is -- let me go on --

1 probability. The State went to one of the --

2 CHAIRMAN FARRAR: We've got the idea.

3 MR. TURK: Well, then, let me summarize by  
4 simply saying it's not that we're in lockstep with the  
5 Applicant. We've done our own assessment. We reached  
6 similar conclusions. We are not simply here saying,  
7 "Me, too" to the Applicant's analyses.

8 And let me also say that this case is not  
9 different from other cases in which the Staff reaches  
10 a position that's similar to an Applicant's position.  
11 The State is in no different position here than an  
12 intervenor is in any other case in which the Staff's  
13 conclusions come out to be the same as those of the  
14 Applicant.

15 And there's no reason for you to adopt a  
16 policy position in favor of the State saying they're  
17 entitled to more time simply because it's one against  
18 two, in this case versus any other case in which an  
19 intervenor appears.

20 CHAIRMAN FARRAR: Ms. Chancellor?

21 MS. CHANCELLOR: I would just note that  
22 three of the Staff's reports called confirmatory  
23 analysis -- one of the CTB, one of thermal, and one of  
24 the casks.

25 While the Staff in some instances may have

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1 gotten to the end result by a different route than the  
2 Applicant, they certainly have confirmed the  
3 Applicant's analysis. They haven't been critical of  
4 the -- of PFS's analysis like they have with the  
5 Staff's analysis. For example -- State's analysis,  
6 for example, the way in which they analyzed ordnance.

7 So I think that we have the Staff being  
8 supportive of PFS and being critical of the State's  
9 analysis, and that's the structure of the way in which  
10 they will proceed in the hearings.

11 Maybe there's a couple of missteps there,  
12 but they are pretty much in lockstep with the  
13 Applicant.

14 CHAIRMAN FARRAR: Mr. Gaukler?

15 MR. GAUKLER: I would say that Mr. Turk is  
16 exactly right. This is a case where the Staff has  
17 done a lot of independent assessment, and some of the  
18 reports are labeled confirmatory. For example, I  
19 believe the Sandia report used an entirely different  
20 approach to monitor the F-16 impact into a cask. It's  
21 labeled confirmatory. But the analysis that Sandia  
22 did is entirely different, and, therefore, it's used  
23 by PFS.

24 So the fact that they may have labeled a  
25 report confirmatory does not mean that they just

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1 reviewed PFS's report without any new analysis.  
2 There's about two or three of their reports where they  
3 did that, but those are relatively minor. The great  
4 majority of those Staff reports have new analyses --  
5 for the canister transfer building, for the casks,  
6 angles and speeds, etcetera.

7 So I think that it is very much like Dr.  
8 Luk where the Staff presents a different analysis that  
9 was supportive of the PFS's conclusions. And just  
10 having reviewed those conclusions independently --  
11 and, thus, I believe that there is no reason for it to  
12 be 50/50.

13 Also, I believe just in terms of -- I  
14 would reiterate what Mr. Turk said. I don't think  
15 there's any policy basis for saying that the State and  
16 the Applicant gets 50 percent of the time, and the  
17 Staff gets 50 percent of the time. I just don't think  
18 there is any basis for that in the NRC precedent or in  
19 terms of fairness. The burden of proof remains with  
20 the Applicant.

21 JUDGE LAM: Now, aren't the differences  
22 very small, Mr. Gaukler? Ms. Chancellor is arguing  
23 for 50/50. Your proposal -- you're talking about 45  
24 percent.

25 MR. GAUKLER: right.

1 JUDGE LAM: What's the difference between  
2 45 and 50 percent? It's real little, isn't it?

3 MR. GAUKLER: Well, we could always ask  
4 Ms. Chancellor to look at the times and see where she  
5 actually comes out when she looks at what people --  
6 what she needs compared to what we and the Staff have  
7 identified.

8 CHAIRMAN FARRAR: All right. Give us a  
9 couple of minutes here to talk about this.

10 MR. TURK: May I say also that I believe  
11 Judge Lam's question is a very good one. When we laid  
12 out how much cross examination time each party should  
13 be entitled to, we recognized that the State had to  
14 take on the reports of both PFS and the Staff, and  
15 that's why both Mr. Gaukler's and my assessment of how  
16 much time should be allotted for parties -- we looked  
17 at the number of reports, the amount of cross that the  
18 State requires, and they came out getting twice as  
19 much cross examination time as PFS or the Staff,  
20 because that's fair for the State.

21 CHAIRMAN FARRAR: All right. Well, let  
22 us --

23 MR. TURK: If you're going to come up with  
24 a policy position that says it's two on one,  
25 therefore, make it 50/50 --

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1 CHAIRMAN FARRAR: Let us go off the record  
2 here.

3 (Whereupon, the proceedings in the  
4 foregoing matter went off the record at  
5 12:50 p.m. and went back on the record at  
6 12:53 p.m.)

7 CHAIRMAN FARRAR: Back on the record.

8 Rather than enunciate any global principle  
9 here, let's just encourage you all to continue with  
10 your discussions.

11 Now let's go back to the beginning. We  
12 first raised the question of -- in terms of predicting  
13 the -- or setting the length of the hearing we needed  
14 to know how much time you all needed for cross  
15 examination. That was a kind of simply-stated but  
16 complex matter.

17 And we wanted you all to focus on cross  
18 examination time, and we wanted each party to be able  
19 to make its own allocation that you wanted to spend a  
20 lot of time cross examining Dr. Smith and not a lot of  
21 time Dr. Jones, but we wanted to know -- give each  
22 party an overall cross examination time.

23 Obviously, the way this works out, with  
24 the different number of witnesses and direct and  
25 redirect, we've given you a more complex task than was

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1 stated at the beginning.

2 As you continue to work through this, do  
3 you envision, assuming you reach agreement, that you  
4 would present us at some point a little table that  
5 says, okay, here is Dr. Smith, it's the Applicant's  
6 witness, and we think a fair allocation -- and we've  
7 all agreed on it -- is that it'll take this long for  
8 direct and redirect, and it will take -- and for the  
9 Staff to ask its question, and it'll take a certain  
10 amount of time for the State to cross examine?

11 Do you anticipate we would get some kind  
12 of table like that, so that you would predict for us  
13 how long each witness would take and how that time  
14 would be divided? Or do you envision giving us  
15 something else?

16 Mr. Gaukler, I'll let you address that  
17 first, since you were the first one to report on this.

18 MR. GAUKLER: The intent was not to give  
19 Your Honors a table. The table was kind of like a  
20 working tool. The table was a working tool to help us  
21 develop numbers that we then would give to the Board,  
22 both in terms of total hours that we came up with and  
23 then percentages for each of the parties. And the  
24 parties would remain -- would retain the freedom to  
25 use those hours as they saw fit as the hearing

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1 developed.

2 CHAIRMAN FARRAR: So we would get a table  
3 that says you -- for example, the Applicant's total  
4 time is 50 hours, and it will use that to present its  
5 witnesses, redirect its witnesses, and cross examine  
6 the State's witnesses.

7 MR. GAUKLER: Yes. That's what we would  
8 envision, Your Honor. We would also envision in terms  
9 of -- I think estimates in terms of what we thought  
10 each group of witnesses generally would take -- so  
11 many days for structural, so many days for -- like we  
12 have already done.

13 CHAIRMAN FARRAR: For each set of  
14 witnesses.

15 MR. GAUKLER: Right.

16 CHAIRMAN FARRAR: All right. But if you  
17 give us each -- all right. Now, so I'm sitting here  
18 with my colleagues, and we're presiding at the case.  
19 We won't know -- when Dr. Jones takes the stand, we  
20 won't know that that's the guy that you intend to  
21 expend a lot of your cross examination time on, or a  
22 little of your cross examination time on.

23 And if that's the case, how do we then  
24 manage the matter any more effectively than we've been  
25 able to manage it in the past? In other words, we

1 then don't have a standard to hold you up against.  
2 You know, Mr. Gaukler told us this would be 90 minutes  
3 of cross, and he's 60 minutes into it, and, you know,  
4 we've got to get moving, or, boy, he is really doing  
5 well, maybe he can bank some time for the next  
6 witness.

7 In other words, how do we convert your  
8 discussions and your predictions into a better  
9 management tool for us so that we are in a position to  
10 hold you to what you've promised?

11 MR. GAUKLER: Well, I think that we would  
12 still give predictions when we started out with each  
13 witness, what we thought the time would take. And  
14 that would be a decision that we would make based upon  
15 our review of the testimony and rebuttal testimony,  
16 and it would be -- based upon the information that we  
17 have, we would give the estimate at the time that we  
18 started with the witness.

19 So you'll have that to bank on. I guess  
20 what the -- well, all of the parties expressed a  
21 little bit of concern that we have a table at this  
22 point in time which we are developing to give us a  
23 handle on the total number of hours, and we're doing  
24 this before any of the testimony -- any of the  
25 prefiled testimony has been done, or before any of the

1 rebuttal testimony has been filed.

2 So, obviously, the exact allocation that  
3 we're going to have for the different witnesses will  
4 vary, depending upon what we see in the testimony and  
5 the rebuttal testimony.

6 MR. TURK: Your Honor, I don't see a  
7 problem with providing the table to the Board, as long  
8 as the parties are not held strictly to follow it. I  
9 think it's a good planning tool. And I think if Your  
10 Honors are willing to allow us a little flexibility  
11 during cross examination, it will at least give you a  
12 sense of how much time is going to be spent with each  
13 panel. And I think that would be useful for you in  
14 terms of your own understanding of the progress of the  
15 proceeding.

16 But I would request, and probably the  
17 other parties would join in this, that because we  
18 can't predict the ebb and flow of questions and  
19 answers, that it may be that we have to vary this as  
20 we go.

21 CHAIRMAN FARRAR: Yes. We have no problem  
22 with the flexibility. It's just, you know, what is  
23 the nature of the tool that you -- that you give us at  
24 the outset? And when is the outset? It's obviously  
25 not today. It's obviously not the day the hearing

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1 starts. It may be that it's sometime after your  
2 prefiled testimony.

3 MR. TURK: I would suggest that after the  
4 State has had an opportunity to look at the numbers  
5 and provide their specific input that we give you the  
6 first draft, which would reflect all of the three  
7 parties' views. Once prefiled testimony is filed, we  
8 would then be able to modify that draft, and then  
9 present our second draft to you. And that one at  
10 least would have the knowledge of what the direct  
11 testimony looks like, so we can adjust our cross  
12 examination estimates.

13 MS. CHANCELLOR: Your Honor, if I may, I  
14 think we have to be very careful not to introduce bias  
15 into the system under the guise of a management tool.  
16 If we told you we were going to take 30 minutes to  
17 cross examine a witness, and we took five minutes, you  
18 might be going, "Well, this person didn't have much to  
19 add." I mean, it may affect the way in which you view  
20 our case.

21 As for getting various drafts of the table  
22 to you, I think we're all busy trying to put testimony  
23 together. I'm very willing to work with PFS and the  
24 Staff on trying to put something together that talks  
25 about overall time allocation.

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1           If you know that PFS has 50 hours, for  
2           example, and we get halfway through the hearing and  
3           they have used 40 hours, or they've only used two  
4           hours, then you can ask PFS or the State, whoever it  
5           is, whether they're on track, whether they're keeping  
6           track of time. I think there's a way in which you can  
7           eyeball this during the proceeding.

8           And there is one thing that we haven't  
9           talked about yet that I hope we can get to later. We  
10          are having some problems with witness availability,  
11          and we may have -- we're talking about, with your  
12          permission, restructuring the way in which we present  
13          the order of witnesses. And the -- under discussion  
14          at the moment is to start off with casks, which is the  
15          crux of the matter, which is where we all want to  
16          focus our time. And if we eat up all our time on  
17          casks, it -- the other issues could be dealt with  
18          fairly expeditiously.

19          So I just -- I just worry about  
20          introducing bias into the system in your effort to  
21          manage the case efficiently.

22                 CHAIRMAN FARRAR: Well, remember, the  
23          original reason for doing this was -- and I hate to  
24          keep resurrecting and beating this poor horse to  
25          death, but the representation that the earlier hearing

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1 could be done in five weeks or three weeks, whenever  
2 it was, and it took nine weeks, and, you know,  
3 attempting to come up with a realistic expectation of  
4 how long this case should take that we all could agree  
5 on.

6 So I understand your point, Ms.  
7 Chancellor. We don't want to take it too far. On the  
8 other hand, we do have a more complex proceeding  
9 coming along in which there will be several boards on  
10 the Yucca Mountain case, and they will have a  
11 courtroom assigned to them for a specific length of  
12 time. And they're going to have to get that -- you  
13 know, that issue done in that length of time.

14 And if we can't do -- if we can't figure  
15 out a way to do that here in a case where we've all  
16 been focused for so long on just one issue, that would  
17 be a bad -- bad sign for our ability to manage an even  
18 more complex piece of litigation.

19 So it's important to us that we do this  
20 one properly. Again, we don't want to be rigid. We  
21 understand the ebb and flow concept, but we need to  
22 come to grips with this management effort.

23 Why don't we do this? You all continue to  
24 work, come up with what you come up with, get  
25 something to us before the 15th, and we will have a

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1 further discussion then. So we'll do the in limine  
2 arguments, and discuss this as well, and the other  
3 matter we talked about on the 15th.

4 MR. GAUKLER: Are you talking about the  
5 table that we're working on, or are you talking about  
6 something more general?

7 CHAIRMAN FARRAR: Push the table you're  
8 working on as far as you can.

9 MR. GAUKLER: Okay.

10 CHAIRMAN FARRAR: If you can make it a  
11 little more elaborate, fine. But we'll -- you know,  
12 I sense you've made good progress so far, but we want  
13 to push that as far as we can without being  
14 unnecessarily rigid.

15 MS. CHANCELLOR: Could we just give you  
16 overall times for each subject matter per side?

17 CHAIRMAN FARRAR: That would be a start.  
18 That would be more than we have now. So start with  
19 that and -- but please consider all of the things  
20 we've talked about. And if you can do -- if you can  
21 improve on that, fine.

22 So we will take up on the 15th the  
23 in limine motions, the possibility of stipulations,  
24 which then ties into the time allotments.

25 What's the situation on witness

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1 availability for what we called the 12-day hearing,  
2 where we do the last two days that next week in  
3 August?

4 MS. CHANCELLOR: Your Honor, if I may, we  
5 found out that Lt. Col. Horstman is not available the  
6 first week of hearing. And that is -- that's one  
7 reason why we're trying to switch the order of the  
8 witnesses.

9 The second issue is Dr. Hoffman. He is  
10 undergoing a very rigorous regime of experimental  
11 chemotherapy, and it looks like he -- the possibility  
12 is that he will not be available for the hearing, in  
13 which case our other two witnesses would adopt his  
14 testimony.

15 We think that if we start with casks that  
16 will give us a feel for how long the hearing is going  
17 to take. But my understanding from Mr. Gaukler is  
18 that Dr. Cornell is not available the 24th through the  
19 26th of August, and we don't believe that we will get  
20 through the hearing in two weeks.

21 So we think that we'll need to reserve  
22 some time in September. I need to talk with Mr.  
23 Gaukler and Mr. Turk about probability of witnesses'  
24 availability. But there is a slight possibility that  
25 Dr. Hoffman could be available the first week of the

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1 hearing, so that's why we'd like to do casks first.

2 But as I said, I think you need -- I think  
3 we can scrub the 24th through the 26th of August.

4 CHAIRMAN FARRAR: All right. That was the  
5 question we needed to decide today. So we'll leave it  
6 to you to --

7 MR. GAUKLER: Dr. Cornell has a long-  
8 scheduled conference that he is not just a  
9 participant, he's one of the organizers for, with  
10 respect to Yucca Mountain. And it's something that  
11 has been planned for many months for that last week in  
12 August. So he just is unavailable that week. We  
13 would like to go that week.

14 CHAIRMAN FARRAR: Again, Mr. Gaukler,  
15 please keep closer to the phone. The Court Reporter  
16 missed what you -- I think you were saying --

17 MR. GAUKLER: Dr. Cornell has a long-  
18 scheduled conference the last week in August with  
19 respect to Yucca Mountain that he is not just a  
20 participant but he is one of one or two major  
21 organizers for the conference -- and a conference that  
22 has been scheduled for many months. And just there is  
23 no way he can miss that. So as much as we would like  
24 to proceed that last week in August, we just can't do  
25 so with Dr. Cornell.

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1 CHAIRMAN FARRAR: All right. We  
2 appreciate that. And I think given what we've heard  
3 today, it doesn't look like we're dealing with a 12-  
4 day hearing anyhow. So let's -- we'll let you all  
5 rearrange, as best you can, the weeks of the 9th and  
6 16th of August.

7 We will then plan on resuming the Tuesday  
8 noon after Labor Day, and go until Friday noon. That  
9 would be three days that week, unless there is a  
10 reason to continue later, and then, Mr. Turk, you  
11 would be able to entrust the afternoon of Friday to  
12 Ms. Zaccari.

13 MS. CHANCELLOR: Your Honor, I need to  
14 give you a heads up. Dr. Thorne, our probability  
15 witness, has a conflict on the 7th through the 10th of  
16 September. And at that stage we will be -- we will  
17 probably be at probability. He's available the 13th  
18 through the 15th. That's what I needed to discuss  
19 with -- I just found this out this morning. That's  
20 what I need to discuss with Paul and Sean.

21 CHAIRMAN FARRAR: All right. Well, let me  
22 just -- just reiterate for the record the days we had  
23 assigned in September. That was Tuesday noon, the  
24 7th, to Friday noon, the 10th, recognizing the  
25 afternoon of the 10th one of counsel's commitments.

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1 And then we would continue the 13th -- Monday, the  
2 13th, through the 15th, Wednesday, the 15th, which  
3 begins the Jewish holidays that evening.

4 So you've got three days Labor Day week  
5 and three days the next week, along with the 10 days  
6 in August. Is there any reason to suspect now that  
7 we've got either more than a 16-day hearing or too  
8 many conflicts of witness availability to make that  
9 work?

10 MR. GAUKLER: I don't think we have more  
11 than a 16-day hearing. And at the risk of sounding  
12 the same horn again, I still think there is a  
13 possibility to get done in two weeks.

14 I think I would agree with the State that  
15 we should do structure first, because that is the  
16 focus of the case, and we will certainly know by the  
17 end of the first week whether two weeks would be  
18 feasible or not. And, therefore, I would encourage  
19 all of the parties to try to make their -- all of  
20 their witnesses available those two weeks.

21 But I would agree with -- I would favor  
22 starting structural first, because that is the focus  
23 of the case. And that, as it turns out, we will be  
24 submitting some joint testimony of Colonel Fly,  
25 General Jefferson, and Dr. Cornell that addresses this

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1 issue raised by the State, since the appendix to Dr.  
2 Cornell's report on that topic is really a joint  
3 appendix between them. And so overall we think it  
4 would be most efficient to proceed that way.

5 And, you know, previously -- I don't know  
6 where we stand in terms of total time, but we should  
7 certainly know whether or not -- as everybody says, I  
8 am being totally optimistic -- or realistic,  
9 hopefully, this time -- but we should certainly know  
10 that fact by the end of the first week.

11 And, obviously, we shouldn't need to plan  
12 for continuing with this afterwards into September  
13 maybe.

14 JUDGE LAM: Now, Ms. Chancellor, did I  
15 hear you saying September 7th to September 10th one of  
16 your witnesses is not available?

17 MS. CHANCELLOR: That's correct, Your  
18 Honor.

19 JUDGE LAM: Thank you.

20 MR. TURK: And I understand that's Dr.  
21 Thorne on probability.

22 MS. CHANCELLOR: That's correct, Mr.  
23 Turk.

24 MR. TURK: And that would have been the  
25 week that we addressed probability under our previous

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1 thinking.

2 MS. CHANCELLOR: Right. I just found out  
3 about this this morning. After we talked yesterday,  
4 we sent e-mails out to our experts again. It's very  
5 difficult for these experts to keep three-, four-,  
6 five-week blocks of time open when they have other  
7 commitments.

8 And Dr. Thorne has a commitment in Ireland  
9 that week, and maybe what we could do is -- if we  
10 needed the 7th to the 10th to finish up anything  
11 before we get to probability, we could do that. And  
12 if we're -- if all we've got left is probability, and  
13 the other witnesses are available, maybe we could do  
14 that the 13th through the 15th, and not do anything  
15 the 7th through the 10th.

16 CHAIRMAN FARRAR: Why don't we leave to  
17 you all to continue working on this.

18 MR. GAUKLER: I mean, just one other  
19 option that we -- I will be raising with the State and  
20 the Staff, just so that the Board is aware of this  
21 based upon the latest information. My proposal would  
22 be to do probability within the first two weeks. And  
23 maybe if we have some other issues like jet fuel fire  
24 issues left on ordnance or speeds and angles, we do  
25 that those two days in August that Your Honors had

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1 identified, because my problem is not just with Dr.  
2 Cornell for that week. My assumption was that  
3 probability is going to be at the end.

4 But now there is also a problem with Dr.  
5 Thorne the following week, and I really -- you know,  
6 we keep on pushing it back, so --

7 CHAIRMAN FARRAR: All right. Well, then,  
8 we'll take -- we will hold open the two days of that  
9 -- immediately following or -- I think we had said  
10 Tuesday noon to Thursday noon the week after the two  
11 weeks.

12 MR. GAUKLER: That would just maximize the  
13 options the parties can discuss in trying to reach a  
14 satisfactory --

15 CHAIRMAN FARRAR: Right.

16 MR. GAUKLER: -- conclusion.

17 MR. TURK: Can I just note my request that  
18 we all keep the week of September 20th as a possible  
19 backup? Because if we can't do probability the week  
20 of September 7th, and we're forced to go to hearings  
21 the following week to address that, we may not have  
22 enough time to finish everything, whereas the week of  
23 September 20th would give us a full week of hearing  
24 time.

25 MS. CHANCELLOR: Dr. Thorne has another

1 conflict that week. He is the lead for an  
2 international meeting in Finland.

3 CHAIRMAN FARRAR: I don't think -- I think  
4 we need to all be committed to wrapping this up before  
5 those Jewish holidays start. And so I don't want to  
6 hold open the week of the 20th, because then everyone  
7 will say, "Well, yes, we've got that," and it'll take  
8 some of the pressure off. Let's keep our eye on  
9 finishing no later than September 15th and possibly as  
10 early as that last week in August.

11 And that's getting back to my facetious  
12 remark earlier, Ms. Chancellor, about cutting you off  
13 because I was arguing your case. What I was arguing,  
14 of course, was not your case but the need to keep our  
15 eye on that August 9th date, and the fear that,  
16 depending on how your motion was addressed, we would  
17 have to be giving you more time for more analyses.

18 And it was that point in your brief that  
19 -- about the need for delay that I wanted to make sure  
20 that we got straightened out, and I think we -- we  
21 did. And so at least we've preserved the start date.  
22 We've -- I like the way, again, you all have come  
23 together to say, all right, if a witness is  
24 unavailable, let's do something else first.

25 And it may make -- may prove very

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1 beneficial to do the tasks first, because given the  
2 importance of that it may make us all realize that  
3 less time rather than more has to be spent on the  
4 other issues, or maybe on some of the minor issues, or  
5 that they can be stipulated. So that is a good way to  
6 start.

7 We've been at this an hour and three  
8 quarters. Is there anything else anybody needs to  
9 bring up?

10 I think we've covered everything on the  
11 Board's agenda. As usual, call on us if we -- if you  
12 need our help.

13 Hold on. The Court Reporter has a  
14 question for me.

15 THE COURT REPORTER: I will have questions  
16 for counsel once we go off the record, so they  
17 shouldn't hang up.

18 CHAIRMAN FARRAR: Okay. After we finish  
19 the call, if you all would stay on just for a couple  
20 of minutes, and the Court Reporter will ask you to  
21 help with some of the words.

22 As I mentioned, Amy is -- Amy Roma is here  
23 as our law clerk. If you ever get a -- if you're  
24 trying to reach me on a conference call, and you can't  
25 get her -- or can't get me, try her also. She may be

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1 able to reach me, or she may be able to help you with  
2 -- with your problem in another way. Her number is  
3 (301) 415-7456, and feel free, if you can't get me, to  
4 call her. Or -- and she can let you know if Judge  
5 Abramson or Judge Lam are here, and maybe they would  
6 also be able to help you.

7 I know that we're getting close. There  
8 has been a lot of work put into it. That work is  
9 going to intensify in terms of the scheduling. We're  
10 going to have to push, and I encourage you to maintain  
11 the good relationships with each other that you have  
12 shown.

13 And I can assure you that when I talk to  
14 my colleagues about the case, and even talk to  
15 outsiders -- not about the merits, of course, but just  
16 I always mention what a joy it is to have counsel like  
17 yourself involved in a case of this importance. You  
18 do credit to your clients, and you do credit to the  
19 legal profession by the way you conduct yourselves.  
20 And it's -- let's keep that in mind as we push even  
21 harder to get to August 9th.

22 Anything else you need from the Board?

23 MR. GAUKLER: Nothing here, Your Honor.

24 CHAIRMAN FARRAR: All right. Ms.  
25 Chancellor? Mr. Turk?

1 MS. CHANCELLOR: No, nothing here, Your  
2 Honor.

3 CHAIRMAN FARRAR: Mr. Turk?

4 MR. TURK: No, Your Honor.

5 CHAIRMAN FARRAR: Okay. Then, if you all  
6 -- the Board will sign off, and if you'll stay on to  
7 help the Court Reporter for a couple minutes. But  
8 other than that, the conference is at an end.

9 Thank you all.

10 (Whereupon, at 1:20 p.m., the proceedings  
11 in the foregoing matter went off the  
12 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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