

# Official Transcript of Proceedings

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4 MARISSA BAILEY, Deputy Director, Division of Fuel

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6 KEVIN MORISSEY, MOX Project Manager

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9 LARRY L. CAMPBELL, Chief, Mixed Oxide and

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

(10:33:45 a.m.)

JUDGE FARRAR: Let's go on the record.

We're here on a conference call in the MOX case. This is Mike Farrar, Chairman of the Board. My colleagues, Larry McDade and Nick Trikouros, are on. The reason for the slight delay in getting started is we're on a triple bridge. We're all in different locations, so we hope that holds up. Nick is at headquarters with our two law clerks, Shelbie Lewman and Josh Kerstein.

The Applicant is on. Who's there?

MR. SILVERMAN: Yes, this is Don Silverman, and I'm here with Anna Jones and Dealis Flynn is with us today from the Company.

JUDGE FARRAR: All right, thank you. Welcome. From the Intervenor?

MS. CURRAN: This is Diane Curran. Good morning. And I am by myself.

JUDGE FARRAR: Okay. From the Staff?

MR. KLUKIN: Your Honor, this is Brent Klukin from the Office of General Counsel. I also have with me Christopher Hare from the Office of General Counsel. And then I'm going to have the Staff go around and state their name and position.

JUDGE FARRAR: All right.

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1 MR. CAMPBELL: Larry Campbell. I'm the  
2 Chief of the Mixed Oxide and Deconversion Branch.

3 JUDGE FARRAR: All right.

4 MR. PHAM: I am Tom Pham, Senior Staff in  
5 the Material Control and Accounting Branch, NRC.

6 MR. MORRISSEY: Kevin Morrissey, and I'm a  
7 MOX PM and reviewer.

8 MR. TATINSKY: Dave Tatinsky, the MOX PM.

9 MR. BRYCE: Tom Bryce, Acting Branch Chief.

10 JUDGE FARRAR: We're losing you there. You  
11 have to get closer to the phone.

12 MR. KLUKIN: We'll start again, Your Honor,  
13 with the last two.

14 MR. BRYCE: Tom Bryce, Acting Branch Chief  
15 with Material Control and Accounting Branch.

16 MR. HANDELMAN: Jim Handelman, Chem Safety  
17 Reviewer, MOX Branch.

18 MS. BAILEY: Theresa Bailey, Deputy  
19 Director, Division of Fuel Cycle Safety and  
20 Safeguards.

21 MR. KLUKIN: And that's it, Your Honor.  
22 Thank you.

23 JUDGE FARRAR: Thank all the Staff people  
24 for coming, and counsel. And we're happy to have all  
25 of you on the call. Let me give the usual warning

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1 because there's some information that may be discussed  
2 here that cannot be disclosed.

3 Let me ask if there's anyone else who has  
4 gotten the pass code and gotten on the line, and warn  
5 that if you are and you are not authorized to hear  
6 this information, it will be a violation of law for  
7 you to stay on. So, is there anyone else on the call?

8 (No response.)

9 JUDGE FARRAR: All right. Hearing none,  
10 we'll proceed.

11 We're here this morning pursuant to an  
12 email that Shelbie sent you all on Thursday, November  
13 3<sup>rd</sup> at 11:52 a.m. Since that's not in the formal  
14 record, let me just briefly recap it.

15 We said -- we suggested the conference  
16 call yesterday or today, and asked you all to let us  
17 know what was a good time. We said, and this is our  
18 key item of business today, that we'd like to be  
19 prepared to discuss the availability for an  
20 evidentiary hearing during two different weeks in  
21 February.

22 We noted that the Intervenor's response to  
23 the Applicant's motion was due on November 10<sup>th</sup>, and  
24 we asked the Intervenor to deal with a particular  
25 question raised by that. And then we said that the

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1 pendency of all this -- with the time table that we  
2 issued on September 9<sup>th</sup>, put the time table on hold  
3 pending our ruling. So, that's where we are.

4 Let me -- and the Board has some items we  
5 want to discuss with you, but counsel are welcome to  
6 bring up any matters that would help us move this  
7 proceeding along.

8 First thing was there was a little mishap  
9 about some documents that were inadvertently  
10 disclosed. Has that all been taken care of, or does  
11 anyone need the Board to take any action? Ms. Jones?

12 MS. JONES: Yes, Your Honor, that has been  
13 resolved.

14 JUDGE FARRAR: Okay. So, there's nothing  
15 for us to do.

16 MS. JONES: No. Thank you.

17 JUDGE FARRAR: Okay, thank you. On that  
18 same type of question, Ms. Curran filed her  
19 substantive response possibly containing UCNI  
20 information, and I can understand -- we can understand  
21 why she does that, because she cannot afford to make  
22 a mistake of under-classifying on that.

23 Unfortunately, when you call something  
24 possibly UCNI, and Mr. Reporter, that's Unclassified  
25 Controlled Nuclear Information, acronym.

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1 Unfortunately, when you file something like that, the  
2 handling and management of it for the Board,  
3 particularly when you sometimes -- and in my case,  
4 most of the time have to work offsite, becomes a  
5 problem.

6 Ms. Jones, Mr. Silverman, would it be  
7 possible for you to ask your client -- and this is  
8 really -- well, the whole nation benefits by not  
9 having wrong information disclosed, it's really your  
10 client's information that's at stake. Is there any way  
11 you could ask your client to read over Ms. Curran's  
12 filing and tell us whether or not they would deem that  
13 as containing UCNI. If they say it has UCNI, that's  
14 not ultimately binding on us, I suppose, but we would  
15 treat it as UCNI. If, on the other hand, they say oh,  
16 no, this is fine. She was overly concerned. It  
17 doesn't need to be classified as UCNI, and they would  
18 give her permission to downgrade it, and then we could  
19 handle it better. Is there any way you could get your  
20 client to do that?

21 MR. SILVERMAN: Your Honor, Don Silverman.  
22 Just let me make sure I understand. You're referring  
23 to Intervenor's initial Statement of Position on  
24 Contentions 9, 10, and 11, and the direct testimony of  
25 Dr. Lyman. Right?

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1 JUDGE FARRAR: Yes, sir, exactly.

2 MR. SILVERMAN: Can you bear with me one --  
3 - just a second?

4 JUDGE FARRAR: Yes.

5 MR. SILVERMAN: Thank you. Judge Farrar?

6 JUDGE FARRAR: Yes, sir?

7 MR. SILVERMAN: We'd be happy to do that.  
8 We're able to do that. And we think that we can  
9 probably get that determination made within a week,  
10 maybe less.

11 JUDGE FARRAR: Terrific. That would be a  
12 real help to the Board. So, why don't you all  
13 undertake to do that, get back to Ms. Curran. Well,  
14 let her and us know the result of that. And then I  
15 guess, Ms. Curran, maybe you could refile it, or I  
16 guess we could just strike the markings.

17 MS. CURRAN: Okay.

18 JUDGE FARRAR: Well, we'll worry about that  
19 later. Let us know how it comes out. And if it's --  
20 if we're able to treat it differently, we'll figure  
21 out the logistics for how to do that later.

22 MS. CURRAN: Judge Farrar, I also wanted to  
23 let you know, I just -- while we were waiting for the  
24 Board, we had a conversation about the next round of  
25 rebuttal, which would be due after you rule on the

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1 Motions to Strike and Dismiss. And I'm going to do my  
2 best to figure it out before we file that. I mean,  
3 you're perfectly right, that we don't want -- we want  
4 to -- if we're going to make a mistake, we want to  
5 make a mistake on the side of over-classifying  
6 something. But I'm getting a little more comfortable  
7 with it now, so I'm hoping that we can kind of resolve  
8 it ahead of time. And I'm predicting that probably  
9 what we file won't have UCNI in it, and it might make  
10 it simpler. But, again, I'll just -- I just want to  
11 let you know we're working on that.

12 JUDGE FARRAR: Okay.

13 COURT REPORTER: If you could please  
14 identify yourself.

15 MS. CURRAN: Oh, I'm sorry. This is Diane  
16 Curran.

17 JUDGE FARRAR: Unless you have someone to  
18 talk to within the Government, it's very difficult for  
19 you to say well, I'm 100 percent sure of this.

20 MS. CURRAN: Yes.

21 JUDGE FARRAR: This may be unprecedented,  
22 but could Mr. Silverman, do you think the same person  
23 who looks at the previous filing could look at Ms.  
24 Curran's next filing; obviously, not on the merits,  
25 but just to do that service for her and us? And if we

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1 needed a little more time to make that filing, we  
2 could grant it.

3 MR. SILVERMAN: Yes, Your Honor. I presume  
4 that Ms. Curran is going to want to file the document  
5 first, though. I don't think she's going to be  
6 interested in giving us a preliminary copy.

7 (Laughter.)

8 JUDGE FARRAR: Okay. Well, let's do that.

9 MR. SILVERMAN: Although, we'd be happy to  
10 have one.

11 JUDGE FARRAR: File it as UCNI again, and  
12 then we'll go through the same process, which ought to  
13 be even easier the second time --

14 MR. SILVERMAN: I think so.

15 JUDGE FARRAR: -- than it will be the  
16 first. Well, thank you all for your cooperation on  
17 that. That would make our lives much easier in the  
18 months ahead as we have to constantly refer to these  
19 documents and have them handy.

20 JUDGE McDADE: This is Judge McDade. Mr.  
21 Silverman, one thing I would request, when you have  
22 the DOE review as to whether or not it's UCNI, if it  
23 could be done not just simply as a one on or off  
24 switch, but if, for example, they could review it and  
25 determine that perhaps pages X-Y contained UCNI, but

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1 the rest didn't, that would allow us to put as much as  
2 possible into the public record, if it was only a  
3 limited portion. So, it would be most helpful if it  
4 wasn't just simply this submission does contain UCNI,  
5 but rather if the conclusion is that there is some  
6 UCNI in there, if it could be identified as on pages  
7 X-Y, so that the rest of this could be put into the  
8 public record. Does that pose a problem?

9 MR. SILVERMAN: Judge McDade, that's --  
10 we'd be happy to do that if we're permitted to do  
11 that. In the back of my head, and I don't have the --  
12 I'm not positive. I think there may -- that may not  
13 be permissible under the UCNI Rule, sort of portion  
14 marking and identification like that. If I'm wrong,  
15 we'd be happy to do it that way, but we will check  
16 that out. I think, though, that the UCNI Rules are  
17 different, and if there's any UCNI in it, the whole  
18 document is UCNI. But we'll double check.

19 JUDGE FARRAR: Okay. That's a good point  
20 Judge McDade made, so if you'll just bear that in mind  
21 and accommodate us, if the law permits. And, of  
22 course, you can -- yes, that's fine, so let's leave it  
23 at that.

24 Well, the important business, with that  
25 out of the way, number one item of business is looking

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1 at a possible hearing date. And for purposes of that,  
2 let's make the following assumptions.

3 That for Contentions -- we will have a  
4 ruling on the pending motions by the end of November.  
5 Now, let's look at Contentions 9, 10, and 11. We give  
6 you a ruling the end of November. There's,  
7 essentially, 60 days which would take us to the end of  
8 January for the next filing by the Intervenor and the  
9 Staff, the reply by the Applicant, and the filing of  
10 the parties' proposed questions. But if there were no  
11 -- if we get out decision out by November 30<sup>th</sup>, and if  
12 there were no further motion practice, we would be --  
13 the record would be ready for final analysis by the  
14 Board by the end of January.

15 Now, I mentioned Contentions 9, 10, and  
16 11. The Applicant has a motion on Contention 4, which  
17 could take that on a different path, but certainly  
18 would not be a longer path than the 9, 10, and 11  
19 path.

20 So, let's assume there were no further  
21 motion practice, and we were done with the prefiled  
22 stuff by the end of January, we had suggested two  
23 weeks in February, the week beginning the 13<sup>th</sup>, and  
24 the week beginning the 20<sup>th</sup>. And I understand, Mr.  
25 Silverman, you have a problem with one or both of

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1 those?

2 MR. SILVERMAN: I guess that's a question,  
3 Your Honor. Yes, thank you.

4 We, actually, have been trying to look at  
5 the calendar, too, and made exactly the same  
6 assumptions that you did, that perhaps the Board would  
7 rule by November 30<sup>th</sup>.

8 With respect to your proposed dates of the  
9 14<sup>th</sup> to the 17<sup>th</sup>, I have a preplanned trip out of the  
10 country that starts before that time and ends after  
11 that time. And I really cannot make that.

12 JUDGE FARRAR: Yes, that's -- this is --  
13 just allow me to interject. That's one reason we  
14 wanted to have this discussion now rather than later.  
15 We didn't want to get the record in, and then start  
16 asking people about conflicts, because we figured  
17 there'd be even more conflicts then.

18 MR. SILVERMAN: Right. So, that's my  
19 conflict as lead counsel from MOX Services. On the  
20 21<sup>st</sup> to 24<sup>th</sup>, as we looked at this, I think we're a  
21 little concerned about the ability to do that, to  
22 achieve that goal, and I'll tell you why. There's a  
23 couple of reasons.

24 If we break it down a little bit more, the  
25 Board rules on November 30<sup>th</sup> on the motion. Then 20

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1 days later the Intervenors and the Staff file their  
2 rebuttal testimony. That would be December 20<sup>th</sup>.

3 JUDGE FARRAR: Right.

4 MR. SILVERMAN: Our MOX reply testimony  
5 would be due on January 9<sup>th</sup>. Now, between December 20<sup>th</sup>  
6 and January 9<sup>th</sup> --

7 JUDGE FARRAR: That's not the time of year  
8 to be working.

9 MR. SILVERMAN: Well, it's not -- I mean,  
10 you know, we worked around the holidays, that would be  
11 fine. Our problem is that our client, MOX Services'  
12 offices are physically -- they are closed from  
13 December 26<sup>th</sup> through January 3<sup>rd</sup>. They just shut  
14 down.

15 JUDGE FARRAR: Okay. Well, we had  
16 anticipated, even if you hadn't said that, that we  
17 were -- at some point, we would have said to people if  
18 you can't proceed during that period, let us know.  
19 So, you're saying that's -- so, you're saying it's  
20 almost certain you would need more time, which pushes  
21 us not to the end of January, but a little bit into  
22 February. If everything else went perfectly, we --

23 MR. SILVERMAN: Well, I would actually -- I  
24 would say that rather than a January 9<sup>th</sup> filing date  
25 from MOX's reply testimony, I think if we got a date

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1 somewhere the week of January 23<sup>rd</sup>. January 23<sup>rd</sup> is a  
2 Monday.

3 JUDGE FARRAR: What was it, instead of the  
4 9<sup>th</sup>?

5 MR. SILVERMAN: Instead of the 9<sup>th</sup>, that  
6 would actually -- I think if my count is right, we  
7 would actually have a few less business days,  
8 otherwise.

9 JUDGE FARRAR: Okay.

10 MR. SILVERMAN: But we're proposing some  
11 time during the week of the 23<sup>rd</sup>.

12 JUDGE FARRAR: Then if you do that, you've  
13 got 20 days for all of the parties to file their  
14 questions, which means we --

15 MR. SILVERMAN: That would be February --  
16 that would be, let's just say, about February 13<sup>th</sup>.

17 JUDGE FARRAR: Yes.

18 MR. SILVERMAN: And then we just took a --  
19 even if you assume the Board only takes a week to  
20 study the questions from the 13<sup>th</sup> to the 20<sup>th</sup> of  
21 February, this is just for discussion purposes.

22 JUDGE FARRAR: Right.

23 MR. SILVERMAN: Then you have a final  
24 prehearing conference, which you'd probably want to  
25 have a few days later, maybe the 23<sup>rd</sup> or 24<sup>th</sup>. All of

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1 a sudden, you've overshot your 21<sup>st</sup> to 24<sup>th</sup> date. And  
2 I can tell you just to simplify it, that we have  
3 polled all our people, and any dates between March 2<sup>nd</sup>  
4 and March 12<sup>th</sup> would work very well for us. I don't  
5 know whether they work for the Board or the other  
6 parties, but I know that time would work.

7 JUDGE FARRAR: Okay. I appreciate your  
8 thoughtfulness in this. And given the key role that  
9 the Board assigns the -- that the Commission assigns  
10 the Board in these cases, where we do all the  
11 questioning, we certainly don't want to after all this  
12 effort sort of short change ourselves and the parties  
13 by limiting our time to be fully prepared.

14 The difficulty we have, Mr. Silverman, is  
15 if we don't make that date of February 20<sup>th</sup> or 21<sup>st</sup>,  
16 and you've made a compelling case not to, our law  
17 clerks are all off on a training session at the  
18 Chattanooga facility on, I guess, reactors and so  
19 forth the week of the 27<sup>th</sup>.

20 MR. SILVERMAN: Right. And we have  
21 restrictions in that week, also.

22 JUDGE FARRAR: Yes. I'm concerned about  
23 them getting back. Although, you're saying you'd get -  
24 - when would the questions be due on your new time  
25 frame?

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1 MR. SILVERMAN: Well, if our date was  
2 January 23<sup>rd</sup> for the filing of our testimony, which  
3 would be the final piece of testimony. Then if my  
4 calc is correct, it's 20 days later for the  
5 confidential questions. That would be February 13<sup>th</sup>.

6 JUDGE FARRAR: February 13<sup>th</sup>, so we would  
7 get a couple of weeks with ourselves and the law  
8 clerks before they go. We could even try to have a  
9 prehearing conference call before they go.

10 MR. SILVERMAN: Yes.

11 JUDGE FARRAR: Maybe the 22<sup>nd</sup> is -- no, the  
12 holiday is on the 20<sup>th</sup>, I would assume.

13 MR. SILVERMAN: President's Day is the  
14 20<sup>th</sup>.

15 JUDGE FARRAR: The 20<sup>th</sup>, okay. So, we could  
16 have a prehearing -- we could have a conference call  
17 on the -- and Nick and Larry, jump in, if I get off  
18 the reservation here. We could have a conference call  
19 on the 22<sup>nd</sup> and 23<sup>rd</sup>, let the law clerks get back and  
20 maybe have a hearing on the 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup>?

21 Mr. Silverman, that would meet -- so far  
22 it's just you who have been talking. That would meet  
23 your needs?

24 MR. SILVERMAN: It would, Your Honor.

25 JUDGE FARRAR: The 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup>? All

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1 right. Before I ask the other -- well, let me ask the  
2 Staff and Ms. Curran.

3 JUDGE McDADE: Well, before you do, this is  
4 Judge McDade.

5 JUDGE FARRAR: Okay.

6 JUDGE McDADE: Do we have what the dates  
7 for the RIC conference are? There may be conflicts  
8 with witnesses, as well.

9 JUDGE FARRAR: That's the next week,  
10 beginning the 12<sup>th</sup> is, for the record, the Regulatory  
11 Information Conference that the Commission puts on, in  
12 which anybody who's -- or a great many people who are  
13 interested in nuclear power, lawyers, technical people  
14 go over to the Marriott across the street from our  
15 headquarters. So, that's a bad week. But if we did  
16 the 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup>, that would avoid that.

17 Nick, is that all right with you?

18 JUDGE TRIKOUROS: All right, let me chime  
19 in. Mr. Silverman, Ms. Curran, how about the week of  
20 March 19<sup>th</sup>?

21 MR. SILVERMAN: Well, I did not check our  
22 people on that. I can, Your Honor. It works fine for  
23 me. I have no reason to believe it wouldn't work for  
24 our witnesses, but we have to check.

25 MS. CURRAN: Judge Trikouros, this is Diane

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1 Curran. I have only checked the February dates with  
2 Dr. Lyman, so I would need to get back with him.  
3 Those dates -- those two weeks work for me.

4 I also want to clarify, are you saying  
5 that -- I heard March 7<sup>th</sup> to 9<sup>th</sup> proposed, and that's  
6 a Wednesday through Friday. Is that Monday and Tuesday  
7 out, too?

8 JUDGE FARRAR: Well, we have our -- that  
9 was, Ms. Curran, because the law clerks would be in  
10 Chattanooga.

11 MS. CURRAN: Oh, okay. All right. And  
12 then the week of the 19<sup>th</sup>, are we talking about  
13 potentially any days of that week?

14 JUDGE FARRAR: Although, I suppose we could  
15 push it up to Tuesday, the 6<sup>th</sup>, if we had to.

16 MS. CURRAN: Well, why don't I check the  
17 6<sup>th</sup> through the 9<sup>th</sup>, and the 19<sup>th</sup> to the 23<sup>rd</sup> with Dr.  
18 Lyman.

19 JUDGE FARRAR: Yes. Well, first of all,  
20 let's hear from the Staff. Is that -- would that make  
21 sense for you?

22 MR. KLUKIN: Your Honor, I've polled the  
23 room, and it looks like we're generally available  
24 between -- in the middle of March, those weeks in the  
25 middle of March. The only -- the one issue that may

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1       come up is my co-counsel's wife, her due date is the  
2       17<sup>th</sup>, but barring that -- that would be his first  
3       child.     Barring that, I think we're generally  
4       available for the times that the Board has been  
5       talking about in the middle of March.

6                 JUDGE FARRAR: Judge Trikouros, I know you  
7       have some other cases and other commitments. Does that  
8       first week of March work for you, or should we stop  
9       thinking about it?

10                JUDGE TRIKOUROS: I think that I can  
11       accommodate -- and I'll verify this, the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>,  
12       9<sup>th</sup> time frame. And I know that I can accommodate the  
13       week of the 19<sup>th</sup>. So, if we can get everybody's  
14       concurrence that both of those two time periods are  
15       acceptable, then the Board could pick one.

16                JUDGE FARRAR: Okay, why don't we do that?  
17       Mr. Silverman, I think you said you needed to check  
18       with your people, so let's drop the weeks of the 13<sup>th</sup>  
19       and 20<sup>th</sup> for the reasons you have stated -- the weeks  
20       of the 13<sup>th</sup> and 20<sup>th</sup> of February, and let's look at the  
21       weeks beginning the 5<sup>th</sup> of March, actually Tuesday,  
22       the 6<sup>th</sup>, and the 19<sup>th</sup> of March. And if it was the 19<sup>th</sup>  
23       -- well, Tuesday, the 20<sup>th</sup>.

24                MR. SILVERMAN: Okay.

25                JUDGE FARRAR: Okay. So, why don't you all

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1 check that. Ms. Curran, you check that, and let's  
2 handle that informally. Send an email to Shelbie and  
3 to Josh, and we'll work through that.

4 MR. SILVERMAN: Your Honor, this is Don  
5 Silverman again. I don't think this is going to throw  
6 a monkey wrench in, but it does relate to scheduling,  
7 so there was one other thing we did want to raise.

8 JUDGE FARRAR: Okay, go ahead.

9 MR. SILVERMAN: We had in all honesty,  
10 previously -- there's been the issue that's come up  
11 several times about a site visit. And we've been  
12 asked on prior occasions whether we thought that would  
13 be worthwhile. And in all honesty, a Board-sponsored  
14 site visit earlier on, we did not think would add any  
15 value.

16 We've reconsidered that and, frankly, the  
17 primary reason is that once we finished our testimony,  
18 there was a significant amount of information there on  
19 physical protection procedures and controls, and  
20 access and all that. And we discussed it with our  
21 client, and we concluded that a Board-sponsored site  
22 visit would, in fact, be beneficial. And, of course,  
23 the Intervenor, and Staff, and everyone would be  
24 there in accordance with standard practice. But we're  
25 recommending that. And if people are interested in

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1 that, we -- I can't believe we can't work that in  
2 somehow in this schedule we're talking about.

3 JUDGE FARRAR: Okay. Ms. Curran, I think  
4 that was your initial request. Mr. Silverman, thank  
5 you for that offer. Ms. Curran, I think that was your  
6 initial request. Are you still interested?

7 MS. CURRAN: Yes.

8 JUDGE FARRAR: Okay. And Staff --

9 JUDGE McDADE: This is Judge McDade. Can  
10 you hear me?

11 JUDGE FARRAR: Yes.

12 JUDGE McDADE: My question is, Mr.  
13 Silverman, would you think it would be most helpful to  
14 have that site visit prior to the hearing, or  
15 subsequent to the hearing?

16 MR. SILVERMAN: Prior to the hearing  
17 typically is the way it's done. And I think that  
18 would be better.

19 JUDGE FARRAR: Okay.

20 JUDGE McDADE: So, would it be possible  
21 then to schedule a site visit during that week of the  
22 5<sup>th</sup> of March with the view of the hearing on the week  
23 of the 19<sup>th</sup>?

24 MR. SILVERMAN: We can look into that.

25 JUDGE McDADE: Could the parties check

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1 their availability as to that and get back to us on  
2 it?

3 MS. CURRAN: Yes.

4 MR. SILVERMAN: Yes.

5 MS. CURRAN: I have a question. This is  
6 Diane Curran. Is there -- does it make sense to hold  
7 the hearing in the --- near the plant, or is it -- are  
8 there security requirements that make that impossible?

9 JUDGE FARRAR: The Board's usual view on  
10 that is if security requirements -- the whole reason  
11 to go in the vicinity of the plant is so that the  
12 neighbors can come in, and citizens can come in watch.  
13 And if you can't do that in cases where you have to  
14 protect information, we usually see no purpose in  
15 going out, and a disservice in the sense of it makes  
16 it a lot harder to protect the documents than it does  
17 in our headquarters hearing room. So, we could talk  
18 about that, but I would say without even consulting  
19 with my colleagues that it's kind of like 10-1 against  
20 us wanting to do that.

21 MS. CURRAN: Okay.

22 JUDGE FARRAR: Now, if there were no  
23 information that could not be disclosed, we would  
24 certainly consider it. But I think unless something  
25 dramatically changes, remembering our CFS case out in

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1 Salt Lake City, we were in Salt Lake City for three  
2 months, and then when we got into safeguards  
3 information, there was just no way we could do it out  
4 there, so we did the rest of it at headquarters.

5 MS. CURRAN: Okay.

6 JUDGE FARRAR: Judge McDade, you're  
7 suggesting the site visit the week of the 6<sup>th</sup>, and the  
8 hearing the week of the 20<sup>th</sup> --

9 JUDGE McDADE: Correct.

10 JUDGE FARRAR: -- of March. Okay. Just so  
11 the record is clear, and I don't get into trouble, if  
12 we have the hearing the week of the 20<sup>th</sup>, it will not  
13 go past the 22<sup>nd</sup>, because my youngest daughter is  
14 getting married in San Diego on the 31<sup>st</sup>, and we will  
15 be out there a week ahead of then. And there's  
16 priorities, and there's priorities.

17 MR. SILVERMAN: And it won't go beyond the  
18 22<sup>nd</sup>. Okay.

19 JUDGE FARRAR: Yes, so I'd want to make  
20 sure we were done the 21<sup>st</sup> and 22<sup>nd</sup>. Personally, I like  
21 the notion of a site visit because if the Board is the  
22 one that has to ask questions, there are things we  
23 might see there that would aid our questioning at the  
24 hearing.

25 MS. CURRAN: Judge Farrar, this is Diane

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1 Curran. I haven't asked Dr. Lyman yet about his  
2 availability, but is it -- if he tells me the only  
3 week he could do a hearing is the week of the 6<sup>th</sup> to  
4 the 9<sup>th</sup>, should we talk now about the possibility of  
5 doing a site visit in February, or just that cross  
6 bridge if we get to it?

7 JUDGE FARRAR: Let's cross that bridge, but  
8 that would be rather than not have the site visit, I  
9 would prefer -- Mr. Silverman, looking back at those  
10 weeks in February where it was not possible for you as  
11 lead counsel to participate in the hearing, could we  
12 do a site visit in your absence?

13 MR. SILVERMAN: I'd really rather not do  
14 that, Your Honor. But there are days in February that  
15 would work.

16 JUDGE FARRAR: Okay. Well, then let's  
17 leave that all to you. And if we -- and I guess  
18 particularly focus on that week of the 20<sup>th</sup> of  
19 February. And let's all -- let's talk about that, see  
20 what your people's availability is, and we'll work on  
21 that in the next few weeks.

22 But in the first instance, we're looking  
23 at the week of the 6<sup>th</sup> for the site visit, the week of  
24 the 19<sup>th</sup> for the hearing. If there's a problem with  
25 availability, we will be notified by email promptly of

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1 that, with the possibility then of setting a date in  
2 February for the site visit.

3 And the parties should notify us of their  
4 availability for site visit in February if, in fact,  
5 there's a -- we're notified of a conflict the week of  
6 the 5<sup>th</sup> or the week of the 19<sup>th</sup>.

7 MR. SILVERMAN: Right.

8 JUDGE FARRAR: And it's still possible as  
9 part of all these negotiations that the site visit  
10 would be in February, and the hearing would be the  
11 week of March 6<sup>th</sup>.

12 MS. CURRAN: This is Diane Curran. And I  
13 just want to say that if we do run into any problems,  
14 I'll definitely consult with the other parties before  
15 writing back to the Board, so that we can perhaps make  
16 it a little smoother.

17 JUDGE FARRAR: Yes, right. This should be  
18 an informal process where we all have the same end in  
19 mind. Get the hearing scheduled for as soon as  
20 reasonably possible, but without disaccommodating  
21 counsel and witnesses so that any party or the Board  
22 is prejudiced. Okay. We'll leave that that way.

23 MS. CURRAN: Judge Farrar, this is Diane  
24 Curran again. I just wanted to add to the mix that I'd  
25 like to take a look at the schedule -- once we kind of

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1 figure out what the end date is, I'd just like to look  
2 back at the schedule and see if we would like to  
3 request an extension of the December 20<sup>th</sup> deadline for  
4 rebuttal testimony now that other deadlines are being  
5 pushed into the future a bit further.

6 JUDGE FARRAR: Right, that's fine. We were  
7 on kind of a rigid schedule, if we were going to the  
8 February dates, but with the March dates we've got a  
9 little more time. Although, remember, this assumes no  
10 further motion practice, and we don't want to  
11 discourage you if you feel there's a good reason for  
12 it. But then we'd have to rethink this whole thing,  
13 if at any of the next two stages there's further  
14 motion practice.

15 MS. CURRAN: Okay.

16 JUDGE FARRAR: As I said, our goal, the  
17 Board's goal is to get a decision out on the pending  
18 motions by the end of November. Mr. Silverman, let me  
19 ask you this.

20 The first part of your motion, the Motion  
21 to Dismiss Contention 4, you thought was unopposed.  
22 We asked the Intervenor to discuss what they were  
23 thinking and the lack of opposition. There was --  
24 it's unopposed but not quite. Would you like a chance  
25 to respond to their latest filing? I'm not saying you

1 have to, but if --

2 MR. SILVERMAN: Well --

3 JUDGE FARRAR: They went through the review  
4 of everything and how they had filed a memorandum with  
5 four concerns, and they kind of relisted that. And  
6 that fourth one kind of goes to the merits. Would you  
7 want to respond to that?

8 In motion practice, I guess our rules are  
9 there's a motion, then an answer. And you don't  
10 usually get a right to reply, but since this is kind  
11 of a peculiar situation, would you want to reply?

12 MR. SILVERMAN: Well, let me hold on the  
13 reply request for a second, Your Honor, because I'm a  
14 little confused. I mean, our view is the Intervenors  
15 have, in fact, chosen not to go forward on this  
16 contention.

17 JUDGE FARRAR: Right.

18 MR. SILVERMAN: They've made that clear now  
19 several times. They don't oppose the dismissal of the  
20 contention. They're not taking a position on the  
21 contention. We've put a lot of time and effort into  
22 this, three years of mandatory disclosures and lengthy  
23 testimony at considerable cost to the Applicant. And  
24 I'm just trying to figure out what procedural position  
25 we'd be in if we took your kind offer to respond

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1 further.

2 JUDGE FARRAR: But the procedural position  
3 of not waiving any rights you've already mentioned and  
4 repeated just now. Those are certainly --

5 MR. SILVERMAN: Yes. Bear with me just one  
6 second.

7 JUDGE FARRAR: I'm not suggesting they be  
8 abandoned.

9 MR. SILVERMAN: Okay. Bear with me just one  
10 second, please. Yes, Your Honor, I appreciate that.  
11 Thank you.

12 We won't waive our rights, and we  
13 appreciate you stating that. But, yes, if you're  
14 suggesting that we could be given the opportunity to  
15 respond to, I think it's basically three arguments, or  
16 concerns that the Intervenors have raised, we would be  
17 happy to file a reply to that.

18 JUDGE FARRAR: Yes, and it can -- on what  
19 you filed before. It may not be new material, but to  
20 say file something slightly different than a total  
21 lack of opposition, we wanted to make sure you had a  
22 chance to -- that you hadn't been put in a bad spot.

23 MR. SILVERMAN: Yes, no, we -- yes, we  
24 could -- we'd be happy. We appreciate that, to file  
25 a response to those items.

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1 JUDGE FARRAR: And can you do that by the  
2 end of the month?

3 JUDGE McDADE: And before you answer that,  
4 Mr. Silverman, this is Judge McDade. If are you going  
5 to respond, there's one thing that I would suggest  
6 that you address, as well.

7 A question arises -- the Board does not  
8 have authority in this kind of a hearing to conduct a  
9 sua sponte inquiry into an issue. We only have the  
10 authority to consider those matters put into  
11 controversy by the parties. A question is, if the  
12 Board were going to pursue it, would we need to refer  
13 it to the Commission to get authority for a sua sponte  
14 review, or in the alternative, given the fact that we  
15 have an admitted contention, would the Board be able  
16 to view this as a matter put in controversy by the  
17 parties.

18 And based on the submissions that have  
19 come in, your testimony and your documents, ask  
20 questions at the hearing without violating the  
21 prohibition on sua sponte review.

22 MR. SILVERMAN: We could speak to that, if  
23 that's your question, Your Honor. We could address  
24 those questions, yes.

25 JUDGE FARRAR: All right. Then, before I

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1 forget --

2 MR. SILVERMAN: Your Honor, if we respond  
3 by the end of the month, you're not going to be able  
4 to rule by the end of the month.

5 JUDGE FARRAR: Well, what we would do then,  
6 if -- since you did take up this offer, we would rule  
7 by the end of the month on your Motion to Strike on  
8 the other three contentions. And we would wait for  
9 your reply to rule on this.

10 But, as I said, this contention, there  
11 will be no more evidentiary -- I would guess that no  
12 matter how we rule, no more evidentiary phases of --  
13 on Contention 4. In other words, you put in your  
14 evidence, the Intervenors put in no evidence, so  
15 nothing more needs to be filed. By not ruling by  
16 November 30<sup>th</sup>, we would not jeopardize the schedule  
17 we've talked about earlier in this call.

18 MR. SILVERMAN: Your Honor, Don Silverman.  
19 I think what we can commit to do is to respond  
20 absolutely no later than the 30<sup>th</sup>, and if possible,  
21 sooner.

22 JUDGE FARRAR: Okay, that's fine.

23 All right. Let me ask, Mr. Silverman, and  
24 this may be obvious to everybody else on the call, but  
25 when you -- when in response to Contention 4 you redid

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1 your plans and commitments and so forth, whether or  
2 not Contention 4 goes forward, those new plans are  
3 part of your current application. Is that correct?

4 MR. SILVERMAN: My understanding is yes.

5 JUDGE FARRAR: So, that's not something  
6 that would be readily withdrawn if we say Contention  
7 4 is over. Your application stands as it now stands.  
8 Correct?

9 MR. SILVERMAN: Yes, it was incorporated  
10 into the revised version of the ISA summary, and the  
11 LA, and the license application.

12 JUDGE FARRAR: Right. Okay. And let me ask  
13 the Staff, when you came out with your final report  
14 blessing that, had that gone -- you recall the ACRS  
15 had had a problem long ago with this subject. Did they  
16 sign off at this latest stage?

17 MR. KLUKIN: The Staff is -- this is Brent  
18 Klukin, Your Honor. The Staff has indicated to me that  
19 the ACRS reviewed at the last, I think what was it,  
20 September -- the last meeting reviewed the entire  
21 application, and has found it acceptable.

22 I would also add that with regards to  
23 Contention 4, as indicated in Staff's testimony, and  
24 in Applicant's testimony, as well, that the buffer  
25 space limits are captured as IROFs, or as an IROF.

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1 And, also, there's an associated management measure,  
2 as well, regarding that buffer space.

3 JUDGE FARRAR: And is that by way of  
4 indicating that it's -- that they have -- that this is  
5 not just a promise by the Applicant, this is a formal  
6 commitment?

7 MR. SILVERMAN: Yes, Your Honor.

8 JUDGE FARRAR: Okay. All right. I think  
9 that's all the questions I had, and that I recall  
10 discussing with my colleagues. Nick and Larry, do you  
11 have anything else you wanted to ask?

12 JUDGE McDADE: This is Judge McDade. No.

13 JUDGE FARRAR: Okay, thank you.

14 JUDGE TRIKOUROS: This is Judge Trikourous.  
15 No.

16 JUDGE FARRAR: Okay. Ms. Curran, anything  
17 else you would like to bring up?

18 MS. CURRAN: Yes. I'd like to ask if this  
19 transcript of this conversation could be released  
20 publicly. It did not seem to me that it included any  
21 SUNSI or UCNI. And to the extent possible, we'd  
22 really like to get it on the public record.

23 JUDGE FARRAR: All right. At this point,  
24 the reporter will issue it in his usual fashion,  
25 whatever the disclaimer is on this. It may contain

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1       whatever, but then we will -- once we get that, we  
2       will promptly send it to our reviewers, security  
3       reviewers. Unless, Mr. Klukin, Mr. Hare, there's  
4       someone there now who could make that ruling?

5               MR. KLUKIN: Your Honor, this is Brent  
6       Klukin. I think the normal review should take place,  
7       as I can't specifically recall what I said regarding  
8       the buffer space. Not to say more and make this non-  
9       public. But I think that a review is necessary at this  
10      point, though. I mean --

11             JUDGE FARRAR: Okay, that's fine. Then  
12      we'll do a formal review of it, and with the attempt  
13      to reissue it as an open document.

14             MS. CURRAN: Thank you.

15             JUDGE FARRAR: Does that take care of your  
16      point, Ms. Curran?

17             MS. CURRAN: Yes, I appreciate it.

18             JUDGE FARRAR: Okay. Do you have anything  
19      else we need to discuss?

20             MR. SILVERMAN: No.

21             MS. CURRAN: No.

22             JUDGE FARRAR: All right. Then I think  
23      we're concluded. And I want to thank you all for your  
24      presence and your thoughtful contributions. And,  
25      again, your cooperative spirit in helping us move

1 along as quickly as possible. So, thank you very  
2 much.

3 MR. SILVERMAN: Thank you.

4 (Whereupon, the proceedings went off the  
5 record at 11:18:27 a.m.)

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