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**OFFICIAL TRANSCRIPT OF PROCEEDINGS
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

**Title: PRIVATE FUELS STORAGE, L.L.C.
CONFERENCE CALL**

Case No.: 77-22-ISFSI

Work Order No.: ASB-300-1112

LOCATION: Rockville, MD

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of: :
PRIVATE FUEL STORAGE, L.L.C. : Docket No. 72-22-ISFSI
(Independent Spent Fuel : ASLBP No. 97-732-02-ISFSI
Storage Installation) :

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U.S. Nuclear Regulatory Commission

Two White Flint

Room 3-B-51

Rockville, Maryland

Thursday, January 27, 2000

The above-entitled matter came on for telephone
conference, pursuant to notice, at 1:05 p.m.

BEFORE:

THE HONORABLE G. PAUL BOLLWERK, III,
Administrative Judge
Atomic Safety & Licensing Board Panel

DR. JERRY R. KLINE
Atomic Safety & Licensing Board Panel

DR. PETER S. LAM
Atomic Safety & Licensing Board Panel

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7 FOR OGD:

8 JORO WALKER, Esquire

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P R O C E E D I N G S

[1:05 p.m.]

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3 JUDGE BOLLWERK: This is Judge Bollwerk. We are
4 gathered this afternoon for a telephone conference on
5 scheduling and some other matters relating to the Private
6 Fuel Storage proceeding.

7 With me in the room here are Judge Kline and Judge
8 Lam. Also, Jack Whetstine, our chief of administrative
9 services is here, and also John Skoczlas from the Office of
10 Chief Information Officer, who wants to talk for a couple
11 minute about the electronic information exchange project
12 that the Commission has ongoing, and the pilot project.

13 I'm going to go ahead and let Mr. Skoczlas make
14 his presentation first, and then we will move to the
15 scheduling matter we have before the Board.

16 Before we do that, let's have the other parties go
17 ahead and identify themselves for the record. Why don't we
18 start with the State of Utah, please.

19 MS. CHANCELLOR: This is Denise Chancellor from
20 the State of Utah. I have with me Connie Nakahara, Laura
21 Lockhart, and our legal assistant Jean Braxton. Also, Diane
22 Curran is on another line.

23 JUDGE BOLLWERK: Are you there, Ms. Curran?

24 MS. CURRAN: Yes, I am.

25 JUDGE BOLLWERK: Is Mr. Quintana there yet?

1 Who just beeped in?

2 MR. QUINTANA: This is Danny Quintana.

3 JUDGE BOLLWERK: Mr. Quintana, we are just getting
4 started. Why don't you go ahead and identify yourself for
5 the record.

6 MR. QUINTANA: Danny Quintana, attorney for Skull
7 Valley Band of Goshutes.

8 JUDGE BOLLWERK: We haven't heard from Ms. Walker.
9 Did someone else beep in?

10 MS. WALKER: It's Joro.

11 JUDGE BOLLWERK: We are just getting started. Why
12 don't you identify yourself for the record, please.

13 MS. WALKER: Joro Walker on behalf of OGD.

14 JUDGE BOLLWERK: All right.

15 Did one more person beep in?

16 MR. BLAKE: Judge Bollwerk, this is Ernie Blake.
17 I apologize.

18 JUDGE BOLLWERK: No problem. We haven't gotten to
19 you yet. Hold on.

20 Mr. Kennedy was going to be a little late. I take
21 it he hasn't joined us yet.

22 Counsel for the applicant Private Fuel Storage,
23 please.

24 MR. BLAKE: Ernie Blake and Paul Gaukler,
25 representing PFS.

1 JUDGE BOLLWERK: For the NRC staff.

2 MR. TURK: This is Sherwin Turk. With me are
3 Catherine Marco and Mark Delligatti.

4 JUDGE BOLLWERK: Is there anybody I missed?

5 [No response.]

6 JUDGE BOLLWERK: Let me turn the speaker phone
7 over to Mr. Skoczlas for a couple minutes. He wants to talk
8 with you all about the EIE project.

9 MR. SKOCZLAS: This is John Skoczlas. First of
10 all, I would like to thank everyone for their participation
11 to this date. I would like to say that although the
12 participation has been limited, we certainly have learned a
13 lot and we have learned enough to take us to the next phase.
14 That is what I would like to inform you of.

15 We now have a contractor on board who is going to
16 be implementing our EIE system. Using some of the
17 information that we have gathered, we are going to
18 re-engineer and reissue the system, the way that we do the
19 business, and the instructions. Hopefully it will make it a
20 little clearer as to how to send things and what to send and
21 how it's going to be handled and who is going to sign
22 digitally, et cetera. That will be occurring within the
23 next 30 to 60 days.

24 Also, the next generation EIE system, as we are
25 designating it, will contain other features that will allow

1 you to start sending in proprietary type information and
2 receive proprietary type information. We are going to start
3 encrypting.

4 I just wanted to tell you that if you can hang in
5 a little longer, within the next 30 to 60 days we are going
6 to have the real working system. Based on the input that
7 many of you have given us, hopefully we will be able to make
8 it workable and it will kind of fit into your plans and our
9 plans for the electronic future.

10 Once we get implemented, the contractor will be
11 contacted each of you as participants. They will either be
12 visiting your site or contacting you for teleconferencing
13 and personal guidance as to how to use the system before we
14 are going to require it to be used. So you can expect also
15 that the contractor will be contacting you individually and
16 personally for either a site visit or a teleconference.

17 JUDGE BOLLWERK: From a couple of meetings we have
18 had on this subject we learned there were questions about
19 signatures and who signs, questions about the documents and
20 how they are in there and how they are gotten out, how they
21 are accessed. I think those are the things that are going
22 to be addressed as well.

23 One thing we need to also talk about a little bit
24 is proprietary information and also safeguards to the degree
25 that is involved as well. John has mentioned to me one of

1 the things we hope to do is a module to address the question
2 of proprietary information. Do you want to say anything
3 about that?

4 MR. SKOCZLAS: Yes. We are going to go ahead and
5 build in the capability of encrypting documents and also
6 limiting access to documents, so if something is sent in in
7 a proprietary mode, you know that it can only be opened by
8 the people it is addressed to. We haven't quite gotten to
9 the safeguards stage yet because we don't know exactly what
10 the agency requirements are going to be for encrypting at
11 that point. At least through the proprietary we can
12 guarantee that the next module will be able to handle it in
13 a safe and secure mode.

14 JUDGE BOLLWERK: All right. Does anybody have any
15 questions for Mr. Skoczlas about where we are at or items
16 that they would like him to think about or to bring to his
17 attention at this point?

18 [No response.]

19 JUDGE BOLLWERK: All right. Any comments anybody
20 wants to make?

21 MS. CHANCELLOR: Judge Bollwerk, when we have
22 tried to use the EIS site, it has been as slow as molasses.
23 It really has been very, very slow. The NRC site in general
24 just within the last six months or so. I don't know if you
25 have accessed the NRC Web site. It is slower than the other

1 sites that we use. I don't know if the new system will take
2 care of that.

3 JUDGE BOLLWERK: I don't know the answer to that.

4 MR. SKOCZLAS: We utilize the Web site. We aren't
5 actually in charge of the Web site. I don't know why it
6 would be slower, but I will certainly mention it to someone
7 and see if there could be a reason for it. We are limited
8 by our fire wall requirements, and even internally sometimes
9 it's pretty slow for the people using it, but that's a
10 characteristic of the Web.

11 JUDGE BOLLWERK: Any other questions or comments
12 at this point about the EIE project?

13 I understand a lot of people have been having
14 problems. I guess we have a problem with Explorer.

15 MR. SKOCZLAS: That has now been solved. If you
16 go to the Web page, there is information there on how to use
17 Internet Explorer. We have solved that one little problem,
18 which allows us to go to the next module.

19 JUDGE BOLLWERK: I think that was a problem for
20 Private Fuel Storage and you all because we use Internet
21 Explorer rather than Netscape; is that right?

22 MR. BLAKE: That's correct.

23 MR. SKOCZLAS: You'll now be able to use Internet
24 Explorer as opposed to having to download Netscape.

25 MR. BLAKE: Okay.

1 JUDGE BOLLWERK: On behalf of the Board, I want to
2 thank you all for your participation up to this point. I
3 recognize that a lot of you didn't get a chance to get in,
4 but as Mr. Skoczlas has indicated, we learned a lot from
5 that, simply the fact that it wasn't working properly, and
6 now we know some things we need to fix. I think the CIO's
7 office remains committed to working with you all in dealing
8 with the problems as they come up. This has been useful for
9 the agency as a whole. So again I would like to thank you
10 all of you for your participation?

11 Anything else for Mr. Skoczlas? If not, I'm going
12 to let him step out.

13 [No response.]

14 JUDGE BOLLWERK: All right. Thank you.

15 Let me raise a related issue before we go to the
16 scheduling discussion about proprietary information. I know
17 the state had raised some concerns about sending it over
18 e-mail and the delay and the cost in terms of using express
19 mail or some other overnight service. I understand that
20 between the state and Private Fuel that you all have sort of
21 worked things out. Private Fuel is not objecting, I take
22 it, to the use of e-mail to send that information.

23 MR. BLAKE: Judge Bollwerk, that's right. After
24 we had that last conference call, I went back to our
25 technical people and raised the question about how secure

1 the e-mail service was as we were using it even without
2 encryption.

3 The answer that I got generally was if you fax the
4 stuff, then you ought to feel comfortable with the system
5 that we have in place for e-mailing.

6 So I got back to Ms. Chancellor and said that's
7 where we are; if it's painful for you or more expensive for
8 you, let's use e-mail for proprietary and we'll take the
9 heat.

10 JUDGE BOLLWERK: One thing I should mention. We
11 had a discussion with our Office of Security about this as
12 well to try to understand the NRC's position. Apparently,
13 in terms of the way the agency deals with it, however it
14 comes into the agency is up to the person that has the
15 information. In other words, the applicant, or in this case
16 the state. Or if the applicant has given it to the state
17 under whatever agreement you have reached, it will come into
18 the agency, and that doesn't bother our security folks.

19 Once it's here, we have other protocols that we
20 have to follow because of concerns over how it's handled
21 internally. Now that we have it inside, we are responsible
22 for keeping it confidential. We don't want to cause any
23 problems.

24 The way they have suggested that we handle it
25 internally is that in fact any documents that you have that

1 are of a proprietary nature that those actually be given a
2 password using WordPerfect or Word. I think both of those
3 word processing programs have that ability. That document
4 can then be sent and the password given to the person using
5 some other method, and the person can then unlock the
6 document.

7 I recognize that causes some problems. I guess we
8 have WordPerfect here within the agency and everyone can
9 send it around, but if I were to send it, for instance, to
10 Private Fuel Storage, who uses Word as their word processing
11 program, I don't think my giving them the password to the
12 document will allow them to get into it. I think there is a
13 difference there between WordPerfect and Word, for instance.
14 So I don't know if that would help between the state, who I
15 think uses WordPerfect, and Mr. Blake's client Private Fuel
16 Storage, but that is one way it is handled within the NRC.

17 Does anybody have any comments on that?

18 MR. BLAKE: I don't know enough to comment, Judge.
19 Maybe Paul does.

20 MR. GAUKLER: I really don't know either. We do
21 have WordPerfect on our system. When I get WordPerfect
22 documents from the Board or from the state I pull them up on
23 WordPerfect. I could, if I had the password, pull them up
24 on WordPerfect.

25 JUDGE BOLLWERK: At this point you have indicated

1 you are comfortable with them e-mailing it to you or
2 allowing them to e-mail it into the agency. I'm not trying
3 to interpose ourselves into that. If that's the agreement
4 you've reached, that's fine with the Board.

5 One thing I probably need to do, unless you have
6 some objection, is modify the protective order we had to
7 permit that. I don't want the order not to indicate what
8 the process we are using is. Does anybody have any
9 objection in terms of at least getting it into the agency?

10 MR. TURK: Your Honor, for clarification, the
11 staff has not talked with the state or PFS about using
12 e-mail for proprietary information. I would like to know
13 whether either of those parties would object if we file by
14 e-mail in the same manner that they do.

15 MR. BLAKE: PFS does not.

16 MS. CHANCELLOR: State certainly doesn't.

17 JUDGE BOLLWERK: I don't. You should make sure
18 you are not going to violate anything with the security
19 folks. Once it gets within the agency there are different
20 protocols involved. I don't have a problem with it as long
21 as security doesn't have a problem with it.

22 MR. TURK: I would not use e-mail or fax for
23 safeguards information.

24 JUDGE BOLLWERK: Right. There was a document
25 recently put out, a little folder that described how

1 proprietary information is supposed to be dealt with within
2 the NRC, and it suggests this password process for agency
3 distribution. I guess if Private Fuel is telling you it's
4 okay to send things back to them that they have already sent
5 you, I don't have a problem with that. You may want to make
6 sure you are not going to run into some problem with the
7 security people.

8 MS. CHANCELLOR: Judge Bollwerk, with respect to
9 proprietary information, we have spoken quite a bit with
10 Mr. Julian. I think we have worked out a system with him
11 whereby the information that goes to the agency goes
12 directly to him and to nobody else. We have worked with him
13 with respect to that.

14 JUDGE BOLLWERK: There are two different processes
15 going on here. One is how the information comes into the
16 agency and the second one is how we deal with it once it's
17 here. It sounds to me, at least in this instance, under our
18 general protocols we would actually treat the information
19 somewhat differently in terms of passing around
20 electronically by using, as our security office suggested,
21 this password process with WordPerfect.

22 What I think I am hearing Mr. Turk say is that he
23 would like to go ahead and be able to send things that
24 contain proprietary information that PFS has provided or
25 that the state has provided back out to them in a filing

1 using e-mail. I don't have a problem with that. I'm just
2 telling him he may need to make sure that security doesn't
3 have a problem with that as well.

4 Am I making myself understandable, Mr. Turk?

5 MR. TURK: Yes. Thank you.

6 JUDGE BOLLWERK: That sounds reasonable to me, but
7 our security people are security people. I want to make
8 sure we are not causing you any problems. You don't need
9 the security people coming down on you. That's all I'm
10 saying.

11 MR. BLAKE: Judge Bollwerk, the only problem that
12 our folks pointed out and that Paul and I have talked about
13 as well is that it's easy to push buttons. When you have an
14 address list, that requires a little extra care because some
15 folks are able to get proprietary and some aren't. We're
16 not worried about using that mechanism, that medium, but we
17 do have a little concern that you can push the button and
18 distribute it to the world. It's just a care thing.

19 JUDGE BOLLWERK: I think what that counsels is
20 perhaps if you are using some kind of an e-mail list that
21 maybe you need to look at it and look at the protective
22 order that is involved and maybe make a second list which is
23 only your proprietary names if there are names on the other
24 list that the information shouldn't go to.

25 MS. CHANCELLOR: That's what we do at the moment,

1 Your Honor.

2 JUDGE BOLLWERK: Mr. Turk, maybe I could ask you
3 to do one thing for me. Are you planning on interacting
4 with the security office about this question of sending the
5 information back out again?

6 MR. TURK: I'll do that.

7 JUDGE BOLLWERK: Could you let me know what the
8 response to that conversation is? That way, if I modify the
9 order, then I can apply this to the staff as well so that I
10 don't have sort of an outlier, as it were.

11 MR. TURK: Okay. Do you recall the name of anyone
12 over there that you have spoken with already?

13 JUDGE BOLLWERK: Let me see if Mr. Whetstine has
14 that name.

15 MR. WHETSTINE: That would be Lou Grosman.

16 JUDGE BOLLWERK: As I say, we did have a meeting
17 with the security folks for about half an hour to discuss
18 this exact problem. So they are aware of this case and in
19 fact how it has come up in this case.

20 MR. TURK: I'll coordinate with Mr. Whetstine
21 also.

22 JUDGE BOLLWERK: I would appreciate that.

23 Unless somebody else at this point has any other
24 questions or comments about proprietary information, let's
25 move to the question of scheduling. We have received, and I

1 hope all the parties have gotten it, a copy of the outlined
2 schedule that has been proposed for the contentions in
3 Groups I and II, which I guess would divide them into two
4 categories, and also for Group III, which are the
5 environmental contentions.

6 Is anybody prepared to make a presentation about
7 that? Do the parties have any comments they want to make to
8 the Board before I move any further on that?

9 MR. BLAKE: Judge, I just want to make an
10 observation that the state and the staff and PFS have kind
11 of taken the lead on putting this together. We have spent a
12 large amount of time, and I really want to thank Mr. Turk
13 and Ms. Chancellor for being really good, collegial
14 participants in trying to put this schedule together. We've
15 worked very hard at it.

16 I hope the Board will find it acceptable if not
17 totally, in large part. It does represent a good deal of
18 effort from each of the parties. I don't know how many we
19 have been through, but I'd guess a dozen iterations of one
20 sort or another.

21 JUDGE BOLLWERK: Notwithstanding the snow days.

22 MR. TURK: Your Honor, Paul Gaukler and I were in
23 on the first of those two snow days on Tuesday, and we had a
24 long telephone conversation with Mr. Blake and Denise
25 Chancellor.

1 Your Honor, the only observation I would make is
2 what this proposed schedule tends to do is to go forward
3 with those contentions that are ready for hearing along the
4 Board's original schedule, and that is that Groups I and II
5 contentions, Utah E, H, R, S, and GG. It then attempts to
6 go forward as much as possible with contentions K and L
7 short of going to hearing.

8 So the schedule you will see in that column for
9 those two contentions, K and L, assumes that the staff will
10 go ahead at the end of April with a position on those two
11 contentions. Everyone would then go forward up to the point
12 of filing testimony in January of 2001 on those two
13 contentions.

14 We would then go into hiatus on those contentions
15 while we catch up with the environmental group. The
16 environmental contentions then would recognize the staff's
17 publication dates for the DEIS and FEIS and allow discovery
18 on both of those documents. We would then go forward to
19 hearing on those contentions as well as K and L during the
20 summer of 2001 with the goal of getting a final decision in
21 the case by the end of November 2001.

22 JUDGE BOLLWERK: Anything you want to say,
23 Ms. Chancellor?

24 MS. CHANCELLOR: I would just like to reiterate
25 what Mr. Blake said. We have all put a lot of work and

1 effort into the schedule. I think we have tried to
2 accommodate everybody's needs.

3 From the state's perspective, it would be helpful
4 if the Board would not issue the schedule for a few days, or
5 a schedule similar to this one. We would like to contact
6 some of our experts, many of whom are academics, just to
7 ensure that they aren't going to be away for large blocks of
8 time, for example, when they may need to file prefiled
9 testimony or when they may be needed for hearing, given that
10 there is a significant change in the schedule. We don't
11 anticipate any problems, but we realize that once the
12 schedule has been issued, it basically gets cast in stone.

13 They are the only comments I have.

14 JUDGE BOLLWERK: How long do you need to
15 accomplish that process?

16 MS. CHANCELLOR: I would imagine by early next
17 week. If I can't pin things down by then, I would be
18 willing to just go forward with whatever you come out with.

19 JUDGE BOLLWERK: If I haven't heard from you by
20 close of business on Monday, then it's all right to go
21 ahead?

22 MS. CHANCELLOR: Yes, that would be fine.

23 MR. TURK: Your Honor, one other thing.

24 JUDGE BOLLWERK: Mr. Turk, yes.

25 MR. TURK: It's not made explicit in the schedule,

1 but the staff has two documents that would be coming out
2 which affect the schedule or at least we are hoping would
3 not be interfered with by the schedule.

4 In July of this year, we are aiming to get the
5 final certificate of compliance out for the Wholetech cask,
6 if in fact the staff decides to certify it.

7 In September of this year, 2000, we are aiming to
8 get out the final SER, which would include cask-specific
9 issues, assuming that the Wholetech cask is certified. Part
10 of this schedule that you see in front of you is trying to
11 accommodate the staff's need to work on the SER for the PFS
12 during the September period.

13 JUDGE BOLLWERK: Anything that the applicant or
14 the state want to say about those representations by
15 Mr. Turk?

16 MS. CHANCELLOR: No, Your Honor. We'll work
17 around Mr. Turk's schedule as best we can.

18 JUDGE BOLLWERK: Mr. Kennedy hasn't joined us yet,
19 I take it.

20 Hearing nothing, I'm going to assume that's right.
21 Ms. Walker or Mr. Quintana, you are aware of this
22 document. Is there anything you want to say about it?

23 MR. QUINTANA: No. I think we are in good shape.

24 JUDGE BOLLWERK: Ms. Walker?

25 MS. WALKER: Just that I appreciate the effort

1 that went into it and we support it.

2 JUDGE BOLLWERK: From the Board's perspective,
3 obviously it's clear that it did take a lot of work. I
4 think one of the hallmarks of this proceeding, and I mention
5 it to the Commission every time I get a chance, is the
6 cooperation between the parties. I won't say it's unusual,
7 but it's certainly pleasant to have it. You have all dealt
8 with proceedings where it's not there. It makes our life
9 much easier, and I hope to some degree your lives as well.

10 I don't see anything on the face of that the Board
11 is going to have a problem with. Obviously we only got it
12 about an hour ago and have been looking through it. It
13 looks in pretty good shape to us.

14 I do have a couple of specific questions that deal
15 with some matters that are pending or have recently been
16 filed and how they might affect this. There is some future
17 scheduling we need to do in the short term as well.

18 I know, for instance, that Utah E is in Groups I
19 and II for hearing in June of this year. There is the cost
20 to you, which I understand. Hopefully we'll go forward in
21 any event.

22 There is also the pending summary disposition
23 motion and now also a late filed contention that I guess was
24 filed yesterday, which I noticed this morning on my e-mail.

25 Obviously the Board hasn't ruled on the summary

1 disposition motion. Would the parties assume that the cost
2 issue would be tried in June no matter what the Board does
3 with the rest of the contentions?

4 MR. BLAKE: Speaking for PFS, I don't think we
5 have addressed that specific issue. We really were waiting
6 for the Board's determination on E and then expecting that
7 the costs would go forward if we prevailed; if we didn't,
8 that some of them potentially could be put off and the costs
9 go forward in June or July. I had not thought about them.
10 I don't remember discussing it with the state or with the
11 staff.

12 JUDGE BOLLWERK: I guess the question I'm raising
13 is, how severable is the issue of costs versus anything
14 else? Does anybody else want express any views on that?

15 MR. GAUKLER: My understanding was that we would
16 see what the Board's decision was and would try to do
17 whatever discovery was necessary; depending how the Board's
18 decision came out either way, to have a June hearing on all
19 aspects of Utah E, and if for some reason that proved
20 difficult, then we might ask the Board to extend Utah E.

21 JUDGE BOLLWERK: Does anybody else have anything
22 to say on that subject?

23 MS. CHANCELLOR: Yes, I do. For efficiency sake
24 and to sort of keep the issues together, I don't think that
25 E is severable because one, I think, is complementary to the

1 other. We haven't actually talked about it, but my thought
2 was that maybe E could go into the column with K and L if
3 the Board's decision on summary disposition doesn't allow
4 this to go forward in the June hearing. Also, there are
5 some outstanding motions to compel. So that would affect
6 what happens with respect to discovery.

7 JUDGE BOLLWERK: Mr. Turk, anything you want to
8 say on that subject?

9 MR. TURK: Can I ask you for a clarification, Your
10 Honor? When you refer to the cost issue, do you mean the
11 entire Contention E?

12 JUDGE BOLLWERK: No. The basis that dealt with
13 the cost was not the subject of the summary disposition
14 motion, if my recollection is correct.

15 MR. BLAKE: You're right, Judge.

16 JUDGE BOLLWERK: My question was, had the parties
17 contemplated that E basis 6 would go forward regardless of
18 what the Board did with the summary disposition motion, or
19 was that not part of their thinking? I guess what I am
20 hearing is up to this point you really haven't dealt with
21 that specifically; you were going to wait and see what the
22 Board does.

23 MR. TURK: I think you are talking about subpart
24 6, the cost estimates being vague, generalized and
25 understated?

1 JUDGE BOLLWERK: Yes.

2 MR. TURK: That on its face would appear to be a
3 separable issue, but I don't see the advantage of separating
4 it, and in fact it's possible that Part 20 in the other
5 areas might cause that to change also. I would prefer to
6 keep the contentions together. I could be persuaded out of
7 that position, though. I think PFS and the state are
8 probably closer to that issue than I am because of their
9 efforts in discovery until now.

10 JUDGE BOLLWERK: All right.

11 It looks like you are looking for a decision from
12 us sooner rather than later relative to Contention E. I
13 think a lot of things hang on that in terms of the summary
14 disposition motion. I guess I am looking at this also in
15 the context of the three late filed contentions that were
16 lodged with the Board or filed yesterday by e-mail.

17 In looking at the scheduling on this, normally
18 what we have been doing is giving approximately two weeks to
19 respond to those sorts of late filed contentions. Given
20 that there are three of them, I am wondering if a staggered
21 schedule of response, perhaps moving the response for
22 Contention E up somewhat, would best serve the interest of
23 the parties and the Board. That raises a question with the
24 staff and the applicant as to how much time they need to
25 respond.

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1 What I am thinking is maybe having responses for
2 that particular late filed contention filed by the 4th of
3 February, which is a week from tomorrow. Then moving
4 perhaps the response for the Contention F, as amended, to
5 the 9th, and then the response for Contention L to the 14th,
6 so that the responses are sort of staggered.

7 MR. BLAKE: Paul, do you care to take a crack at
8 that?

9 MR. GAUKLER: I have not looked at these
10 contentions.

11 MR. BLAKE: I haven't either. That's my problem.

12 MR. GAUKLER: The schedule sounds doable from our
13 perspective.

14 JUDGE BOLLWERK: What I tried to do is leave you
15 sort of a weekend in between the due date for each one so
16 that in theory you can move to the next one and the next
17 one. The other option is to make them all due within about
18 two weeks, but that means you have three due on one day, or
19 approximately.

20 MR. GAUKLER: I definitely agree with Your Honor's
21 approach of putting E and F first in sort of the Group I
22 contentions. It makes sense to get those done as soon as
23 possible, and L, the need to have that resolved so quickly
24 isn't there.

25 JUDGE BOLLWERK: What I am basically doing is

1 giving you about a week to do E, about 14 days to do F, and
2 a little less than 21 days to do L. That's the way it kind
3 of breaks out.

4 MR. BLAKE: Paul, why don't we just step up to the
5 bar and say okay? We will get egg on our face ultimately
6 when we look at this and can't do it and have to come back
7 and beg, but why don't we just say yes?

8 JUDGE BOLLWERK: I'm always willing to listen to
9 begging. Not whining, but begging is okay.

10 [Laughter.]

11 MR. BLAKE: You missed out on a lot of it here in
12 the course of this scheduling negotiation, Your Honor.

13 MR. TURK: Your Honor, I think F is pretty
14 straightforward, but E is going to take us a little more
15 time. Also, during the coming week we are going to be
16 attending depositions on the security plan contentions.

17 MR. GAUKLER: I will talk with Ms. Chancellor
18 after this, but I think the tentative dates would be the 8th
19 and 9th.

20 MR. TURK: Let me talk to Ms. Marco for one
21 second.

22 JUDGE BOLLWERK: Ms. Chancellor, let me go to you
23 while they are talking. The pattern on these is you ask for
24 a reply time.

25 MS. CHANCELLOR: That's correct, Your Honor.

1 JUDGE BOLLWERK: If I stagger the schedule, that
2 is going to stagger your reply time. Is that going to cause
3 you any problem, assuming you ask for it?

4 MS. CHANCELLOR: Staggered time is always good, I
5 think. It was really difficult to get those three things in
6 together. I don't think it would affect us at all if we got
7 staggered reply time.

8 MR. TURK: Your Honor, if we do not have to attend
9 security plans depositions during the coming week, then we
10 could file our response on E by the 4th.

11 JUDGE BOLLWERK: All right. I'm not hearing any
12 objections or any other proposals. I will put this in an
13 order. Why don't you assume that you are going to get an
14 order in the next day or so that says that the responses for
15 E are due on the 4th of February, which is I believe is a
16 week from tomorrow, a Friday; the responses on Contention F
17 are due on the 9th of February, which is a Wednesday; the
18 responses relating to Contention L are due on the 14th,
19 which is two weeks from Monday.

20 Ms. Chancellor, I haven't looked. What have you
21 generally been asking for, four or five days?

22 MS. CHANCELLOR: I think it has been five days, or
23 maybe seven. Either five or seven. I don't remember, Your
24 Honor.

25 JUDGE BOLLWERK: Do you want her to file a motion,

1 or shall we deal with it here in terms of whether you are
2 going to oppose her filing or reply?

3 MR. BLAKE: I don't think we have ever opposed the
4 reply opportunity, Your Honor. I doubt that we would do it
5 now.

6 JUDGE BOLLWERK: What about the staff?

7 MR. TURK: I think we are in the same position,
8 Your Honor. I might as well note it now. I'd have to say
9 that we are opposed to the general idea that every time a
10 motion is filed or a new contention is filed someone has an
11 automatic right or thinks they should have an automatic
12 right to reply. On contentions, I think it's important to
13 give that ability to reply, but when we start seeing them on
14 all the motions that get filed, I think that is when staff
15 is going to have to start opposing.

16 JUDGE BOLLWERK: I'm trying to remember any other
17 instance other than late filed contentions. I could be
18 wrong.

19 MS. CHANCELLOR: I don't believe we have asked for
20 reply time other than for contentions, Your Honor.

21 JUDGE BOLLWERK: All right. Mr. Turk, you are
22 right. There is no automatic opportunity for reply. I'm
23 just trying to move the process forward here since we have
24 you all on the phone. Frankly, my normal preference is to
25 have people file motions and we rule on motions, but in this

1 instance I thought I could perhaps move this thing forward
2 and just issue one order that would set all the times, if
3 nobody has an objection.

4 MR. TURK: I guess our position, Your Honor, is we
5 won't object as long as any reply is limited to things that
6 could not have been anticipated in filing the contention in
7 the first place. I guess we are not opposing, but if we see
8 something that strikes us as improper, we may come back with
9 a motion to strike.

10 JUDGE BOLLWERK: All right. You always have that
11 option if you think there is something improper that has
12 happened.

13 We will issue an order in this instance that
14 provides for response times and also for reply by the state,
15 there being no objection and subject to further motions
16 anyone wants to file once the reply has been submitted.

17 There is also outstanding with the Board the
18 question of the depositions C, H and GG. I don't think
19 there is any reason why we wouldn't grant that at this
20 point. So that would also be included in any order we send
21 out. I haven't done anything about that because I wanted to
22 see the schedule first and see what other proposals might be
23 on the table, but I think that is a pending motion, and we
24 will deal with that one as well.

25 MR. KENNEDY: Your Honor, this is John Kennedy.

1 I've joined you.

2 JUDGE BOLLWERK: Mr. Kennedy, it's going to be
3 hard for me to recap everything. When did you come in?

4 MR. KENNEDY: Just during this last discussion.
5 Don't worry about that. I'll check with the state. If
6 there is something, I'll catch up on it.

7 JUDGE BOLLWERK: You probably got an e-mail as
8 well that has a schedule on it and you may want to take a
9 look at that.

10 Ms. Chancellor is going to be getting back to me
11 by close of business Monday. She is checking with witnesses
12 about dates. If you have any problems with this schedule,
13 you need to get back to us by that point as well, which
14 would be Monday, the 31st.

15 MR. KENNEDY: Thank you.

16 JUDGE BOLLWERK: Any other matters the two Board
17 members want to raise at this point?

18 Again, let me just reiterate that I think the
19 schedule looks like a reasonable one. I think you should be
20 aware that in June we probably will be trying to do some
21 limited appearance sessions.

22 Let me raise one question. With respect to H and
23 R, do you have a sense of how long you are going to take on
24 those issues, anyone, in terms of how long they might take
25 to be tried? Those appear to be going forward and I don't

1 think there are going to be any summary disposition motions
2 and they are not subject to any late filed contentions.

3 MS. CURRAN: With respect to H, I think it might
4 be a day or two. I'm not sure, though. At this point it is
5 hard to say.

6 JUDGE BOLLWERK: Does anybody want to say anything
7 with respect to R?

8 MS. CHANCELLOR: I think ours shouldn't take very
9 long, half a day to a day.

10 JUDGE BOLLWERK: Anything the applicant or staff
11 want to say. I heard two days for H and one day for R.

12 MR. BLAKE: I think those are good guesses.

13 MR. TURK: That would be fine for us, too, Your
14 Honor.

15 JUDGE BOLLWERK: So that is three days. I guess
16 we have E potentially, F which is now subject to a late
17 filed contention, and GG which is subject to a summary
18 disposition motion.

19 MR. TURK: I think GG should be very quick also,
20 Your Honor. Probably a day.

21 JUDGE BOLLWERK: All right. That gives us a
22 little less than a week.

23 I guess we will need to revisit this again. If we
24 can put in a day or so or perhaps two days, maybe three,
25 depending on what we are doing, of limited appearances. I

1 don't know what the interest is out there. I have no idea.
2 We recently did two days down in North Carolina on a
3 different case and we seemed to be able to fill that time.
4 We will probably be looking at least a couple of days of
5 limited appearance sessions within that time frame.

6 I'm just telling the parties now so you can plan
7 for it and be ready to be available for those if you want to
8 attend. Normally the parties do wish to attend those.
9 Probably we are looking at at least one session in Salt Lake
10 City and one session out in the Tuella area somewhere. That
11 is the Board's thinking.

12 Does anybody want to comment on limited
13 appearances at this point?

14 MR. TURK: One note on a tangent, Your Honor. In
15 June the staff also expects to be holding public meetings on
16 the draft EIS out in Utah.

17 JUDGE BOLLWERK: Will that be during that time
18 frame? Are you talking about the hearing or before then?

19 MR. TURK: We haven't scheduled the dates yet, but
20 it will be either during that time frame or very close to
21 it. We may find that people are coming in and giving their
22 comments on one and not the other.

23 JUDGE BOLLWERK: The issues in this part of the
24 hearing are more safety issues than environmental issues,
25 but we have never limited anyone in terms of what they want

1 to say in a limited appearance session, in general at least.
2 I would ask that you keep the Board apprised of what your
3 planning is.

4 If you are going to be at the beginning of the
5 period, that may give us a reason to do ours at the end of
6 the period or vice versa. I don't really know, but I would
7 appreciate it if the staff sets those dates that they let us
8 know, and I will obviously keep you apprised of what we are
9 thinking as well.

10 MR. TURK: We'll do that, Your Honor.

11 JUDGE BOLLWERK: I appreciate that.

12 MR. BLAKE: Judge Bollwerk, are you looking for
13 evening sessions on limited appearances, or are we talking
14 about daytime?

15 JUDGE BOLLWERK: In North Carolina we did both an
16 afternoon and an evening. I think that is useful to the
17 members of the public, because some folks obviously have
18 things in the evening going on and they can make it in the
19 afternoon, or if folks are busy in the afternoon, they can
20 make it in the evening. I'd like to leave that flexibility
21 if we can, but we can work those details out.

22 The obvious way would be to have an afternoon and
23 evening session in Salt Lake City and then an afternoon and
24 evening session in Tuella. I don't have any sense of how
25 much interest there is out there in doing this. If we do a

1 set of sessions and we don't get to everybody, we can always
2 set another set if we need to later.

3 MR. GAUKLER: I think there is a lot of interest
4 in the proceeding. How much interest will lead to people
5 actually turning up, I really don't have any way of knowing.

6 JUDGE BOLLWERK: I think down in North Carolina we
7 heard from about 80 people in two days. It was about 20
8 people per session.

9 Anything else anyone wants to bring to the
10 attention of the Board at this point?

11 [No response.]

12 JUDGE BOLLWERK: Mr. Whetstine, is there anything
13 that you need in terms of administrative matters?

14 We have been working with the Hilton in Salt Lake
15 City to set aside time in June. I think that is probably
16 where we will be holding these hearings. That time frame
17 works out well in terms of what you propose with what the
18 Hilton has available. So I suspect that is where we will be
19 holding at least the hearings in June as well as perhaps one
20 of the limited appearance sessions. We will have to decide
21 how we want to do that.

22 Anything else anybody wants to bring to the
23 attention of the Board at this point?

24 [No response.]

25 JUDGE BOLLWERK: Thank you all very much. I think

1 you deserve a lot of credit for the schedule. You've done a
2 good job and the Board really appreciates your efforts.

3 Let me mention one other thing. There is a
4 prehearing telephone conference set for the 22nd of February
5 on the security contentions. At one point I had indicated I
6 might not be available for that. It appears that I will be,
7 so we should keep that prehearing telephone conference on
8 the schedule. That's the 22nd of February. I believe it
9 was set for 11:00 a.m. eastern time. That would be 9:00
10 a.m. mountain time. Keep that on your schedule. It looks
11 like we will be doing that.

12 If there is nothing else, thank you all very much
13 and have a good afternoon.

14 [Whereupon, at 1:48 p.m., the telephone conference
15 was adjourned.]
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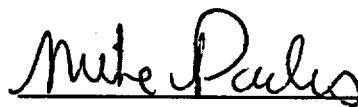
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PLACE OF PROCEEDING: Rockville, MD

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Mike Paulus

Official Reporter

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