

CONFIDENTIAL TRANSCRIPT  
STATE COMMISSION ON JUDICIAL CONDUCT

TRANSCRIPT OF PROCEEDINGS BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS  
(TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)  
AUSTIN, TEXAS

IN THE MATTER OF THE	)	SOAH DOCKET NO.
APPLICATION OF BFI WASTE	)	582-08-2178
SYSTEMS OF NORTH AMERICA, INC.)		
PROPOSED SOLID WASTE PERMIT	)	TCEQ DOCKET NO.
AMENDMENT NO. 1447A	)	2007-1774-MSW

PREHEARING CONFERENCE  
THURSDAY, MAY 8, 2008

BE IT REMEMBERED THAT AT approximately 10:05 a.m., on Thursday, the 8th day of May 2008, the above-entitled matter came on for hearing at the State Office of Administrative Hearings, 300 West 15th Street, Hearing Room 402, Austin, Texas, before WILLIAM NEWCHURCH, Administrative Law Judge; and the following proceedings were reported by Kim Pence, a Certified Shorthand Reporter of:

THURSDAY, JUNE 19, 2008

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1 EXHIBIT INDEX 2 EXECUTIVE DIRECTOR MARKED RECEIVED 3 1. Published Notice 10 13 4 2. Mailed Notice 10 13 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 PROCEEDINGS 2 THURSDAY, MAY 8, 2008 3 (10:05 a.m.) 4 JUDGE NEWCHURCH: Coming on the record, 5 it is five minutes after 10:00 a.m. It is May 8, 6 2008. This is a hearing of the State Office of 7 Administrative Hearings in a Texas Commission on 8 Environmental Quality matter. 9 My name is Bill Newchurch. I'm the 10 Administrative Law Judge presiding today for a 11 preliminary hearing, and that concerns the Application 12 of BFI Waste Systems of North America, Incorporated 13 for a Major Amendment to Type I MSW Permit No. 14 -- 14 AUDIENCE MEMBER: We can't hear over 15 there. Can you turn the mic on or something? 16 JUDGE NEWCHURCH: I think it's on. 17 AUDIENCE MEMBER: Thank you, sir. 18 JUDGE NEWCHURCH: I'll try to pull it 19 closer -- 1447. Can you hear better now? 20 AUDIENCE MEMBER: Better. 21 JUDGE NEWCHURCH: Okay. So let's see. 22 Let's begin by noting the appearance of the applicant 23 and the statutory parties. 24 MR. GOSSELINK: Thank you, Your Honor. 25 My name is Paul Gosselink with the law firm of
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1 EXHIBIT INDEX 2 PIONEER FARMS MARKED RECEIVED 3 1. Map 54 56 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 Lloyd-Gosselink representing BFI Sunset Farms. With 2 me is a party representative. He's Mr. Brad Dugas and 3 is the marketing vice-president. 4 MR. CARLSON: Judge, I'm John Carlson. 5 I'm co-counsel for the applicant. 6 JUDGE NEWCHURCH: Good morning to all of 7 you. 8 For the Executive Director? 9 MR. SHEPHERD: Your Honor, my name is 10 Steve Shepherd representing the Executive Director; 11 with me, Susan White. 12 I do want to let you know that I do have 13 the notice documents whenever you're ready for those. 14 JUDGE NEWCHURCH: For the Office of 15 Public Interest Counsel? 16 MS. MANN: Good morning. Christina Mann 17 representing the Office of Public Interest Counsel. 18 JUDGE NEWCHURCH: Okay. And we'll let 19 other -- I'll let other people make their -- note 20 their appearances in just a few minutes, but let's 21 deal with jurisdiction. 22 Mr. Shepherd, you had jurisdictional 23 documents you wanted to offer? 24 MR. SHEPHERD: Yes, Your Honor. I have 25 both the notice that the applicant published in the

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1 newspaper, which I would offer as ED's No. 1. And  
2 then I also have the notice that was mailed out by the  
3 Chief Clerk, which I would offer as ED's Exhibit  
4 No. 2, and I have copies of those for anyone who would  
5 like them.  
6 (Exhibit ED Nos. 1 and 2 marked)  
7 (Discussion off the record)  
8 JUDGE NEWCHURCH: All right. Those of  
9 you who have asked for copies, do you need some more  
10 time to look at those?  
11 MR. BLACKBURN: Yes, Your Honor, just a  
12 minute.  
13 JUDGE NEWCHURCH: All right. We'll stay  
14 off the record while you do that.  
15 (Discussion off the record)  
16 JUDGE NEWCHURCH: Back on the record.  
17 First of all, Mr. Shepherd, just to be clear, you're  
18 offering these two exhibits for the sole purpose of  
19 showing the Commission in my jurisdiction to proceed,  
20 just that we have legal authority, not for any truth  
21 of the matter asserted in these documents?  
22 MR. SHEPHERD: That is correct.  
23 JUDGE NEWCHURCH: Okay. And is there  
24 objection to the admission by anyone present of  
25 Exhibits 1 and 2 for the sole purpose of showing the

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1 jurisdiction?  
2 MR. BLACKBURN: I have no objection on  
3 the basis of the sole purpose being jurisdictional. I  
4 do have a question about who the permittee actually  
5 is, but I would presume that would be something that  
6 we could get into at a later stage.  
7 JUDGE NEWCHURCH: That seems correct,  
8 and I heard a name that sort of -- Sunset Farms I  
9 think it was. So I'm a little confused about that.  
10 And actually, why don't we just jump into that.  
11 Mr. Gosselink, do you want to clarify?  
12 MR. GOSSELINK: Yes, sir. The applicant  
13 is BFI Waste Systems of North America, L.L.C. --  
14 JUDGE NEWCHURCH: Right.  
15 MR. GOSSELINK: -- commonly known as the  
16 Sunset Farms landfill.  
17 JUDGE NEWCHURCH: Okay. So it's just a  
18 shorthand nickname for that particular landfill?  
19 MR. GOSSELINK: It's a nicer sounding  
20 name.  
21 JUDGE NEWCHURCH: Okay.  
22 (Laughter)  
23 MR. BLACKBURN: Well, in particular,  
24 Your Honor, there's another group as well called Giles  
25 Holdings, L.P. and at least on an earlier notice it

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1 appears at least that they are identified potentially  
2 as a permittee, and I'd just like to get that  
3 clarified as to whether Giles Holdings, L.P., in fact,  
4 is a co-permittee or not.  
5 JUDGE NEWCHURCH: Mr. Gosselink, did you  
6 want to address that?  
7 MR. GOSSELINK: They are not a  
8 co-permittee. The permittee will be BFI Waste Systems  
9 of North America, L.L.C. There was a draft permit  
10 issued to both parties. Entities objected. We had  
11 not asked for that. That was not the way we applied  
12 for it. It was corrected. So the only permittee is  
13 BFI Waste Systems of North America, L.L.C. Giles  
14 Holdings is a landowner of the majority of the  
15 property.  
16 JUDGE NEWCHURCH: All right. So your  
17 representation at least is that the sole applicant is  
18 BFI Waste Systems of North America, L.L.C.?  
19 MR. GOSSELINK: Yes, Your Honor.  
20 JUDGE NEWCHURCH: Is there anything  
21 else?  
22 MR. BLACKBURN: No. I would just like  
23 to note at least at this point that we have a concern  
24 about who the applicant actually is and would like the  
25 ability at some future time to explore that if it, in

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1 fact, shows up in the discovery as an issue.  
2 JUDGE NEWCHURCH: If you've got a reason  
3 to believe that there's a matter in dispute there or  
4 some confusion, you can certainly pursue that.  
5 Whether or not you prevail, of course I don't know,  
6 but you can certainly pursue that.  
7 MR. BLACKBURN: Mainly I just wanted to  
8 note it, Your Honor.  
9 JUDGE NEWCHURCH: Okay. So hearing no  
10 objection, Executive Director Exhibits 1 and 2 are  
11 both admitted for the limited purpose of showing  
12 jurisdiction.  
13 (Exhibit ED Nos. 1 and 2 admitted)  
14 JUDGE NEWCHURCH: And having admitted  
15 those exhibits, is there any objection by any person  
16 present to either the Commission's jurisdiction to  
17 consider the application or my jurisdiction to hold  
18 the hearing to prepare a proposal for decision for the  
19 Commission?  
20 (No response)  
21 JUDGE NEWCHURCH: Without objection,  
22 I'll find that both the Commission and I have  
23 necessary jurisdiction.  
24 PARTY STATUS  
25 JUDGE NEWCHURCH: So now we'll move on

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1 to admission of parties, and many of you --  
2 AUDIENCE MEMBER: It's hard to hear you  
3 still.  
4 JUDGE NEWCHURCH: I'm trying. I'll try  
5 to speak up.  
6 Many of you are familiar faces, and you  
7 participate in these regularly. So you understand  
8 what a party is and what a party does, but I'll  
9 explain it some more for the folks here who are not  
10 regular participants.  
11 It certainly doesn't look like the  
12 lawyer shows on TV, but a party sort of looks like  
13 what you might see in that setting. A party gets to  
14 offer evidence. A party gets to call witnesses. A  
15 party gets to cross-examine other witnesses. If there  
16 is a proposal to settle this case, a party would have  
17 the opportunity to agree to that settlement. And if  
18 all parties settle, then the case would be disposed  
19 of.  
20 A party also gets to seek discovery,  
21 which is trying to get documents and information in  
22 other ways from other parties to the case to prepare  
23 for the case. So, for example, a party who was a  
24 landowner nearby might want to ask for certain  
25 documents from the applicant that it thought would

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1 help it better understand the application and possibly  
2 show that the application should be denied. So a  
3 party gets to pursue discovery.  
4 You could also have an opportunity to  
5 ask for admissions by the other side, which is pretty  
6 much a question of "Isn't such and such true" and the  
7 other side has to respond.  
8 And a party gets to take depositions  
9 also as part of discovery to prepare for the hearing.  
10 So you get to call someone else's potential witness  
11 and ask them questions under oath before you actually  
12 get to the trial. So that's a real shorthand  
13 description of what a party is and what a party does.  
14 So now I want to move on to the  
15 admission of parties, and my preference in these  
16 proceedings, especially when we've got a lot of people  
17 who are going to seek party status, is to ask for  
18 representations from the spokesperson for the  
19 potential party and see if any of the facts  
20 represented are in dispute. And if they're not, then  
21 we'll go ahead and allow those people to be admitted  
22 as parties if they seem to show that they have an  
23 affected interest. That's kind of a loose term. Are  
24 they potentially affected? Could they be affected by  
25 the approval of the application?

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1 For the most part over the years, what  
2 that has boiled down to is they own land nearby, they  
3 reside nearby. There is also a special category for  
4 local governments, and the Commission has specific  
5 rules concerning local governments and how they might  
6 be affected. In theory, other types of interests  
7 could be affected, and it's -- I could go into a long  
8 laundry list, but it's probably going to be  
9 incomplete.  
10 So let's just say if someone thinks they  
11 could personally be affected by the application being  
12 approved, not just that "I don't like this idea," but  
13 that "I specifically and personally and uniquely have  
14 an interest that might be affected by the  
15 application," that person has the potential to be a  
16 party.  
17 So why don't we do this just to proceed  
18 in an orderly manner: We've got a number of people  
19 who already have come forward to the party tables, and  
20 most of these are attorneys. And so I'd prefer to  
21 start on the left. Of course, the applicant is on the  
22 left, and then we'll proceed down the table and deal  
23 with those folks. And then we'll take up other folks  
24 who are seeking party status.  
25 There's one other thing you need to

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1 understand if you're seeking to be a party. The  
2 Commission has rules that give me very broad authority  
3 to group parties in to what we call "aligned parties,"  
4 and that's so we can have an orderly case. If we had  
5 50 different sets of people coming forward and  
6 offering witnesses and cross-examining witnesses and  
7 seeking discovery, this proceeding could go on for a  
8 couple of decades. And so to make it more orderly, I  
9 have broad authority to align parties to say "Your  
10 interests are pretty much the same, and I'm going to  
11 put you in one group, and now you have to select a  
12 spokesperson who will speak for you collectively."  
13 Normally we reduce -- we align groups in  
14 these kinds of cases. Usually there's a small number  
15 of groups, maybe one. Often local governments want to  
16 be broken out into their own groups. So we frequently  
17 do that. There might be specific situations where we  
18 want to break the other protestants into two or three  
19 groups. So the exact number is not fixed, but suffice  
20 to say I'll be aligning the protestant parties into a  
21 relatively small number of groups. So please keep  
22 that in mind as you seek party status.  
23 In fact, lots of times what folks will  
24 do is they'll say "We're a neighborhood association.  
25 We all have pretty much the same interests. This

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1 person is the spokesman for our association or our  
2 group of landowners nearby, and we're going to let  
3 that person be admitted as a party to speak for us  
4 collectively" because in the long run I'm going to be  
5 aligning parties anyway.  
6 So with that little explanation of  
7 alignment, let's start with Mr. Blackburn.  
8 MR. BLACKBURN: Thank you, Your Honor.  
9 I'm Jim Blackburn, and I guess I would -- first of  
10 all, I'm here representing Northeast Neighbors  
11 Coalition. There are a number of individuals that are  
12 part of that group. I'm also here representing Harris  
13 Branch Residential Property Owners, and there's a  
14 number of individuals as well that I think if I  
15 don't -- if I don't represent, I think they'd agree to  
16 be aligned with our group.  
17 And there is an interim order that was  
18 adopted by the Texas Commission on Environmental  
19 Quality that made recommendations with regard to party  
20 status for many of the groups and individuals that I  
21 think would be aligned under the general heading of  
22 Northeast Neighbors Coalition. And I'm not sure how  
23 you would like to proceed with that, but perhaps I  
24 could ask many of the individuals that are part of the  
25 Northeast Neighbors Coalition to identify themselves,

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1 and then we could perhaps align all of those  
2 individuals with Northeast Neighbors Coalition,  
3 assuming you -- assuming there's no objection to  
4 Northeast Neighbors Coalition having party status.  
5 JUDGE NEWCHURCH: Okay. First of all, I  
6 have what appears to be a certified copy of the order  
7 you referred to, and there are -- I haven't tried to  
8 count them, but it looks like there's at least a  
9 couple of dozen particular people named, and they're  
10 broken into categories, and then there's other  
11 categories with a lot of names.  
12 So, Mr. Blackburn, are you saying you  
13 represent almost all of those?  
14 MR. BLACKBURN: Well, I would say that,  
15 and what I might ask is the individuals that have  
16 party status that were designated on this interim  
17 order that are part of the Northeast Neighbors, if  
18 they would just stand and identify themselves that  
19 they would be willing to be aligned with Northeast  
20 Neighbors, that might cut through a lot, if that would  
21 be acceptable.  
22 JUDGE NEWCHURCH: Sure, let's do that.  
23 All right. Let's do this. There are, for the record,  
24 looks like about a dozen people who are standing up.  
25 And, Mr. Blackburn, could you ask one or two of those

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1 people perhaps to act as spokespeople and describe  
2 their particular interests?  
3 MR. BLACKBURN: I would ask Mark McAfee  
4 to come forward and make a statement of interest and  
5 Evelyn Remmert, if you wouldn't mind.  
6 JUDGE NEWCHURCH: Yeah, and I'm going to  
7 try and dispense with oaths and so forth just to cut  
8 things, to go quickly, especially if we don't have any  
9 disputes about these matters. And, of course, if we  
10 do, people will have to take oaths and we'll get more  
11 formal.  
12 Mr. McAfee, did you want to describe the  
13 nature of your interest, please.  
14 MR. McAFEE: Sure. My wife and I bought  
15 historic property in 1980, and we operate a business.  
16 We've been operating our business there since then.  
17 And we do weddings and receptions, primarily garden  
18 weddings and receptions, very incompatible obviously  
19 with the landfill expansion.  
20 MR. BLACKBURN: And could you identify,  
21 Mark, where your business is or where the Barr Mansion  
22 is relative to the landfill site?  
23 MR. McAFEE: It's to the west, almost  
24 due west of the landfill site, and it's just slightly  
25 under a mile of the expansion.

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1 JUDGE NEWCHURCH: Okay. You named  
2 someone else, Mr. Blackburn.  
3 MR. BLACKBURN: Ms. Remmert, could you  
4 just make the same statement, kind of where you live  
5 relative to Sunset Farms and what your concern is?  
6 MS. REMMERT: Yes, sir. My name is  
7 Evelyn Remmert, and I'm a property owner, along  
8 with my husband Cecil Remmert and my brother  
9 Alfred Wendland, Jr. Our property is adjacent to BFI.  
10 We join BFI on Blue Goose Lane.  
11 JUDGE NEWCHURCH: You directly adjoin  
12 the property, you're right next door?  
13 MS. REMMERT: Right next door, right  
14 across the road on Blue Goose.  
15 JUDGE NEWCHURCH: Okay. Mr. Gosselink,  
16 are those representations by Ms. Remmert and McAfee in  
17 dispute concerning their property interests?  
18 MR. GOSSELINK: I am familiar with both  
19 of those parties, and their representations appear  
20 correct to me as to their location and why they are  
21 interested. So I have no objection to Mr. McAfee,  
22 Ms. Remmert. I have no objection to the Northeast  
23 Neighbors Coalition being a party.  
24 The only -- the only thing I would ask  
25 is that those people who are here be identified so

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1 that they can actually be the parties because of the  
2 rules. If you don't come, you're not able to be a  
3 party, I believe.  
4 JUDGE NEWCHURCH: That's true, but if we  
5 admit northeast -- if I admit Northeast Neighbors  
6 Coalition as the single party, do we need to go into  
7 all of that as long as we have a couple of  
8 spokespersons for that coalition?  
9 MR. GOSSELINK: I guess I would prefer  
10 that, but, you know, they can all be witnesses. I  
11 understand that.  
12 JUDGE NEWCHURCH: Right.  
13 MR. GOSSELINK: They just would be  
14 witnesses as witnesses as opposed to witnesses as  
15 parties. That would be the distinction. And I  
16 have -- I would like to potentially -- I would like to  
17 challenge to see whether or not they meet -- if two of  
18 the entities identified are appropriate as parties.  
19 There's a Mr. Alfred Wendland, who my records show  
20 lives six miles away, and I'd like to be sure that  
21 he's entitled to be a party. There may be information  
22 I'm not aware of.  
23 MS. REMMERT: Sir?  
24 JUDGE NEWCHURCH: Just a second.  
25 MR. GOSSELINK: And I'd like to

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1 challenge the Harris Branch Residential Property  
2 Owners Association just to be sure that they indeed  
3 have established associational standing.  
4 JUDGE NEWCHURCH: Okay. Mr. Blackburn,  
5 you made a reference to Harris Branch Residential  
6 Property Owners Association. It wasn't clear to me  
7 whether you were saying that they're part of the  
8 Northeast Neighbors Coalition or that you think they  
9 would be aligned with that group.  
10 MR. BLACKBURN: Well, they would  
11 certainly be aligned with it. I think they had  
12 requested individual party status but would be aligned  
13 with Northeast Neighbors. This is where we run into  
14 one of the problems with these multiple -- I will be  
15 asking about multiple parties -- I mean, multiple  
16 proceedings at the same time.  
17 Mr. Bentley, who is the president of  
18 that association, could not be here today. And in  
19 such a case, I would ask that perhaps they could have  
20 provisional standing, and that I be allowed to submit  
21 at least either testimony from Mr. Bentley at a later  
22 time to firm up their individual party status, but  
23 they would be aligned with Northeast Neighbors  
24 Coalition. They would be a member of the Northeast  
25 Neighbors Coalition regardless.

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1 JUDGE NEWCHURCH: Okay. Well, I'm  
2 trying to keep this as simple as possible.  
3 MR. BLACKBURN: I understand.  
4 JUDGE NEWCHURCH: All right. So I've  
5 got two people, Mr. McAfee and Ms. Remmert, who say  
6 that they are spokespersons for the Northeast Neighbors  
7 Coalition.  
8 MR. BLACKBURN: Right. And Joyce  
9 Best --  
10 JUDGE NEWCHURCH: I hear no objection to  
11 their representations about their personal interests  
12 and no objection to their having Northeast Neighbors  
13 Coalition as a group admitted as a party represented  
14 by Mr. Blackburn. All correct?  
15 MR. GOSSELINK: Correct.  
16 JUDGE NEWCHURCH: Okay. So given that,  
17 I'm going to admit the Northeast Neighbors Coalition  
18 with Mr. Blackburn as their representative and  
19 Ms. Remmert and Mr. McAfee as their -- let's say not  
20 their representative because that's your job, but  
21 their spokespersons. They are your contacts, they are  
22 the people who are --  
23 MR. BLACKBURN: And they're who we put  
24 on as evidence of our affected party status, if you  
25 will.

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1 JUDGE NEWCHURCH: Well, I think there's  
2 been no dispute about the fact that those particular  
3 individuals are affected.  
4 MR. BLACKBURN: Right.  
5 JUDGE NEWCHURCH: That's why I was  
6 trying to clarify that with Mr. Gosselink. So  
7 Northeast Neighbors Coalition is admitted, and we'll  
8 get to Harris Branch in a minute.  
9 All of you who are members of Northeast  
10 Neighbors Coalition, would you raise your hand,  
11 please?  
12 (Complied)  
13 JUDGE NEWCHURCH: Okay. And do you have  
14 any reason to personally be admitted if the coalition  
15 is admitted and Mr. Blackburn is its attorney?  
16 (No response)  
17 JUDGE NEWCHURCH: Okay. No one is  
18 indicating that they do. So I think we've dealt with  
19 Northeast Neighbors Coalition.  
20 With regard to Harris Branch Residential  
21 Property Owners, I understood you to say that its  
22 spokesperson or its officer was not here today.  
23 MR. BLACKBURN: That's correct, Your  
24 Honor.  
25 JUDGE NEWCHURCH: And you were wanting

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1 to reserve the right to seek party status for it at  
2 some future date.  
3 MR. BLACKBURN: If that would be  
4 acceptable, Your Honor. They would be -- they are a  
5 member of Northeast Neighbors Coalition, but they may  
6 still want to pursue individual party status and be  
7 aligned as well. And Mr. Bentley was at the Waste  
8 Management hearing a few weeks ago, but was unable to  
9 be here today.  
10 JUDGE NEWCHURCH: Okay. And I think you  
11 know, Mr. Blackburn, that the Commission has a  
12 specific rule that talks about late admission of  
13 intervenors and allows people -- it generally requires  
14 that people appear today at this hearing to be  
15 admitted as parties, but it does allow for the  
16 possibility of late admission upon a showing of good  
17 cause -- and I'm paraphrasing. I think this is  
18 right -- good cause and that the schedule will not be  
19 seriously disturbed, and that other parties will not  
20 be seriously disturbed in their preparations for the  
21 hearing or put at a disadvantage.  
22 So you can -- you or anyone else can  
23 always file a motion to be admitted after today as a  
24 party, subject to those conditions. And, of course,  
25 if there's no objection from the other parties and

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1 particular the applicant, then that would be a fairly  
2 smooth process.  
3 MR. BLACKBURN: Thank you, Your Honor.  
4 JUDGE NEWCHURCH: Fair enough?  
5 MR. BLACKBURN: Fair enough.  
6 JUDGE NEWCHURCH: Okay. Moving down the  
7 line. I think we have Mr. Morse representing the  
8 county.  
9 MR. MORSE: Yes, Your Honor.  
10 JUDGE NEWCHURCH: Travis County?  
11 MR. MORSE: Yes, Your Honor.  
12 JUDGE NEWCHURCH: And you filed a motion  
13 to intervene that I received a couple of days ago, but  
14 let's cut to the chase.  
15 Mr. Gosselink, Travis County seeks to be  
16 admitted as a party, is there objection to Travis  
17 County's admission?  
18 MR. GOSSELINK: No objection.  
19 JUDGE NEWCHURCH: Travis County is  
20 admitted as a party.  
21 MR. MORSE: Thank you, Your Honor.  
22 JUDGE NEWCHURCH: All right. Then I  
23 think we have the City of Austin represented by  
24 Ms. Noelke.  
25 MR. NOELKE: Yes, Your Honor. The city

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1 would request to be admitted as a party. I have given  
2 you the request, and I believe all the parties at the  
3 table have a copy of our request. I would note that  
4 the city is a local government and that the facility  
5 is located both in our ETJ and a portion of it within  
6 the city limits.  
7 JUDGE NEWCHURCH: All right.  
8 Mr. Gosselink, is there objection to the City of  
9 Austin being admitted as a party?  
10 MR. GOSSELINK: There's no objection to  
11 the city or the county on the understanding that they  
12 are not seeking to add issues since they have not --  
13 they did not participate at the TCEQ Commissioner's  
14 agenda. The issues that have come over are the  
15 issues. If they have additional issues, I'd like to  
16 hear that. I think they've told me privately they do  
17 not, but I'd like them to state that on the record if  
18 they would.  
19 MR. NOELKE: The city does not have  
20 additional issues at this time.  
21 JUDGE NEWCHURCH: And, Mr. Morse, what  
22 about the county?  
23 MR. MORSE: Nor does Travis County.  
24 JUDGE NEWCHURCH: Okay. So the county  
25 has already been admitted. Ms. Noelke is representing

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1 the City of Austin. There's no objection to Austin  
2 being admitted, so Austin is admitted as well.  
3 Ms. Mann with the Office of Public  
4 Interest Counsel, you are automatically a party by  
5 statute, as you know.  
6 MS. MANN: (Nodded)  
7 JUDGE NEWCHURCH: Mr. Renbarger, you  
8 represent TJFA, L.P.?  
9 MR. RENBARGER: That is correct, Your  
10 Honor. I'm appearing on behalf of TJFA, Limited  
11 Partnership. It is a Texas limited partnership. It  
12 is the record owner of two pieces of property within  
13 one mile of the BFI facility. Indeed one of the  
14 tracts of land is immediately across the street, much  
15 like Ms. Remmert's, within a stone's throw of the  
16 property. And TJFA is seeking party status, and we do  
17 have a representative today if need be.  
18 JUDGE NEWCHURCH: Mr. Gosselink, are  
19 those representations concerning TJFA's property  
20 rights in dispute?  
21 MR. CARLSON: Judge, can I cover this  
22 one?  
23 JUDGE NEWCHURCH: Yes, sir.  
24 MR. CARLSON: BFI does formally object  
25 to TJFA as a party in this proceeding. I don't know



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1 if this is the proper date, but let me tell you this  
2 is the fourth landfill application in Central Texas  
3 over the last several years in which TJFA has sought  
4 and obtained party status because they have -- on the  
5 basis of some relatively recently purchased property  
6 near the facilities.  
7       After reviewing some of the deposition  
8 testimony in the prior proceedings, it's apparent to  
9 us that there's common ownership and control interests  
10 between TJFA and one of BFI's competitors in the  
11 central market.  
12       MR. RENBARGER: Your Honor, if I may  
13 object? I mean, frankly we're talking about a party  
14 status proceeding. We're not talking about business  
15 relationships. Either they own property or they  
16 don't, or they're not an existing entity or they are.  
17 And I would respectfully request that we not go way  
18 down a bunch of rabbit trails dealing with any other  
19 kind of interests that TJFA may be associated with.  
20       JUDGE NEWCHURCH: Well, I'm going to  
21 hear -- it's Carlson. Right?  
22       MR. CARLSON: It's Mr. Carlson, yes,  
23 Your Honor.  
24       JUDGE NEWCHURCH: Go ahead.  
25       MR. CARLSON: And I'll be brief here.

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1 TJFA and TDS and its primary owner Mr. Gregory, are  
2 smart businesspeople. They've done a -- they're  
3 worthy competitors of BFI. They've done a very good  
4 job of getting party status in these other  
5 proceedings. They're represented by able lawyers.  
6       Nevertheless, we believe that there  
7 will -- can be a good argument that TJFA will not be  
8 an affected person under the MSW rules such that they  
9 can obtain party status, but we can't make that case  
10 until we do some discovery. And so what we'd like to  
11 do is take some discovery of them and if and when we  
12 believe that we've developed the appropriate evidence,  
13 we will file a motion to strike. As far as any  
14 individual evidence that they would need to put on  
15 today, I'd say we could go past that, and they can be  
16 admitted as a party, and we'll re-address that issue  
17 after some discovery is taken.  
18       MR. RENBARGER: May I respond, Judge?  
19       JUDGE NEWCHURCH: Just a second. First  
20 of all, as SOAH's natural resources team leader, I'm  
21 familiar with those other cases. And so going back to  
22 my original question, Mr. Renbarger says TJFA owns  
23 property within one mile, and I thought your  
24 representation was that one piece of property is --  
25       MR. RENBARGER: The property line is

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1 60 feet from BFI's land.  
2       JUDGE NEWCHURCH: And is that in dispute  
3 that they own that property?  
4       MR. CARLSON: We do not dispute that  
5 they own the property itself.  
6       JUDGE NEWCHURCH: All right.  
7       MR. CARLSON: Without getting into the  
8 nuts and bolts, there seems to be, from what we've  
9 seen in the prior testimony, a pattern of purchasing  
10 properties immediately before an expansion is going to  
11 happen on one property next to a competitor's  
12 landfill. And some of the things that we've seen  
13 leads us to believe that TJFA does not have an  
14 interest that's really beyond a general interest of  
15 the public type of issue. And that's probably the  
16 track that we'll go down. We don't have that  
17 information. We've never had the opportunity to take  
18 discovery of TJFA ourselves, and so we'd like to have  
19 that opportunity.  
20       MR. RENBARGER: Again, may I respond,  
21 Your Honor?  
22       JUDGE NEWCHURCH: Just a second. In the  
23 other cases, particularly in -- I think it was the  
24 Williamson County Waste Management application, there  
25 was an extensive argument along very similar lines, I

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1 believe. Are you familiar with this?  
2       MR. CARLSON: I am, Your Honor.  
3       JUDGE NEWCHURCH: And I think that TJFA  
4 sought admission as a party there. There was an  
5 argument that there was some other corporations that  
6 were affiliated and more particularly Mr. Gregory was  
7 affiliated with the entire groups of corporations,  
8 including -- is it TSD, Texas Disposal -- TDS?  
9       MR. CARLSON: Yes, sir.  
10       JUDGE NEWCHURCH: Okay. So -- and I  
11 think when all was said and done, Judge Vickery ruled  
12 that regardless of any of those other things, TJFA,  
13 because it had property immediately -- very close to  
14 the proposed facility was affected in the same way  
15 that any other property owner was.  
16       MR. CARLSON: Yes, sir, I understand  
17 that argument. I would note a couple of things.  
18 That's not a final -- there's no final decision in  
19 there, and we'd like to have an opportunity to make a  
20 similar record for the purposes of any appeal in this.  
21 And I'm not saying we want to do this necessarily  
22 today. It's a fairly complex argument. I don't think  
23 it would be a fruitful exercise of our time here  
24 today.  
25       JUDGE NEWCHURCH: Okay. Based on the

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1 undisputed representations that TJFA has property  
2 within 60 feet, I find that they are affected. And  
3 given that, TJFA is admitted as a party.  
4 If you want to file a motion to strike  
5 in the future because you discover other information  
6 which leads you to believe that they should not have  
7 been admitted, you can certainly do that.  
8 I would also note if there could be a  
9 showing, not just the representation, but an actual  
10 showing that TJFA is affiliated with a competitor,  
11 that could well raise credibility questions about --  
12 by any witness they might call.  
13 I would also note that it might be that  
14 there's a basis for a very tight protective order  
15 concerning discovery of certain information by TJFA.  
16 All those things sound like they might be appropriate  
17 without specifically ruling on them. But  
18 nevertheless, TJFA, because it has property in the  
19 immediate vicinity, is affected, and you're admitted  
20 as a party.  
21 MR. RENBARGER: Thank you, Your Honor.  
22 MR. CARLSON: Thank you, Judge.  
23 JUDGE NEWCHURCH: Okay. Mr. Shepherd  
24 and Ms. White representing the Executive Director of  
25 the Commission. The Executive Director is

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1 automatically a party by statute.  
2 For those of you who don't regularly  
3 participate in these proceedings, maybe I should  
4 clarify the difference between Ms. Mann representing  
5 the Office of Public Interest Counsel and Mr. Shepherd  
6 representing the Executive Director along with  
7 Ms. White. The Executive Director is the head of the  
8 vast majority of the staff of the Commission. They  
9 are the folks who have reviewed the application. They  
10 are the folks who will be calling witnesses from among  
11 the staff concerning the application. So they have  
12 that very formal institutional role.  
13 Ms. Mann's role is somewhat different.  
14 It is to look in a broader way at the broad public  
15 interest. Is that pretty much what you do?  
16 MS. MANN: That would be fair. We don't  
17 have a position coming into these proceedings. We do  
18 take a position as we participate as a party mostly  
19 through cross-examination. Our dual function would  
20 also be to provide procedural information. While we  
21 don't represent anyone individually, we can help folks  
22 understand the process and how to utilize the public  
23 participation mechanisms that are available. So I'm  
24 available to ask those kinds of questions. And you  
25 can ask me whatever, and if I can't tell you, I'll

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1 just let you know.  
2 JUDGE NEWCHURCH: Okay. And down on the  
3 end here, sir, I've got a sign-in sheet. Are you  
4 Mr. Williams? No?  
5 MR. WILLIAMS: Yes, I'm Mr. Williams.  
6 JUDGE NEWCHURCH: Oh, I'm sorry. I  
7 thought the gentleman on the end was Mr. Williams.  
8 I'm mistaken.  
9 MR. SHEPHERD: Oh, it's -- I'm sorry,  
10 Judge. That gentleman is with us, and I didn't  
11 introduce him because I don't know if I can pronounce  
12 his last name. But his first name is Peter, and his  
13 last name is --  
14 MR. NGANGA: Nganga.  
15 JUDGE NEWCHURCH: Mr. Nganga, you are a  
16 staff person for the Commission?  
17 MR. NGANGA: Yes, Your Honor.  
18 JUDGE NEWCHURCH: Okay, very good. All  
19 right. So we've got Northeast Neighbors Coalition and  
20 lots of hands went up. I've got a few other sign-in  
21 sheets. Maybe we could go back to my left again.  
22 Mr. Terrill, you have filed a sign-in  
23 sheet indicating you represent Giles Holdings?  
24 MR. TERRILL: Yes, Your Honor.  
25 JUDGE NEWCHURCH: And do you seek to be

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1 admitted as a party?  
2 MR. TERRILL: Yes.  
3 JUDGE NEWCHURCH: What's the nature of  
4 Giles' interest?  
5 MR. TERRILL: They own the land or a  
6 good bit of the land, a majority of the land that is  
7 where the landfill is located that's the subject of  
8 the application.  
9 JUDGE NEWCHURCH: And would it be fair  
10 to assume that given that Giles supports the approval  
11 of the application?  
12 MR. TERRILL: Yes, Your Honor.  
13 JUDGE NEWCHURCH: Is there objection to  
14 the admission of Giles as a party?  
15 MS. MANN: So long as Giles is aligned  
16 with the applicant, which is an unusual circumstance,  
17 but it's happened before in some of the coal plant  
18 cases where there have been neighbor business  
19 associations that have been supportive of the  
20 applications.  
21 The Public Interest Counsel has a little  
22 bit of difficulty because -- with having folks  
23 admitted as parties that are effectively supporting an  
24 application that are not the applicant because it's  
25 the applicant's burden to carry the -- well, it's

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1 the applicant's burden to establish that the  
2 application and the draft permit should be approved.  
3 And when we have additional parties that jump in to  
4 help do that, it's procedurally awkward initially.  
5 And in addition to that, it's hard to  
6 say how they have the idea of -- the "affected person"  
7 generally means negatively affected. People are  
8 concerned that there's going to be a negative impact  
9 on their property or their livelihood or their health.  
10 And so I find it unusual to have folks admitted and  
11 aligned with the applicant. But that's somewhat an  
12 editorial comment aside. So long as they're aligned  
13 with the applicant, I don't think we would personally  
14 object.  
15 JUDGE NEWCHURCH: Mr. Gosselink and  
16 Mr. Terrill, are you in agreement that Giles should be  
17 aligned if Giles is admitted as a party with Sunset  
18 Farms?  
19 MR. GOSSELINK: If Giles is admitted as  
20 a party, we would prefer they be aligned. We'd be  
21 very much concerned if they were opposed.  
22 (Laughter)  
23 JUDGE NEWCHURCH: Mr. Terrill?  
24 MR. TERRILL: We don't have any  
25 objection to being aligned, and there's not any

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1 requirement that an affected person be negatively  
2 affected. It's just that they have affected status,  
3 and as the landowner plainly they are affected.  
4 JUDGE NEWCHURCH: Yeah, I agree with  
5 that. In fact, in other types of proceedings, not  
6 TCEQ proceedings, it's common to have intervenors who  
7 are, in fact, in support of the application or the  
8 rate change or whatever or the CCN.  
9 So without objection then, Giles  
10 Holdings, L.P. is admitted as a party and is aligned  
11 with BFI.  
12 And that takes care of I think the vast  
13 majority of folks.  
14 MR. BLACKBURN: Your Honor, could I ask  
15 for a short recess to meet with the Northeast  
16 Neighbors group to see if there's any individual that  
17 would request party status? There may be, and I would  
18 at least like to clarify that to my own mind.  
19 JUDGE NEWCHURCH: Okay. And we'll do  
20 that in just a minute.  
21 Is there anyone who is not affiliated  
22 with Northeast Neighbors who seeks to be admitted as a  
23 party who we haven't gotten to yet?  
24 (Hands raised)  
25 JUDGE NEWCHURCH: So there are three of

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1 you. And why don't you just stand and tell us who you  
2 are, please?  
3 MS. SCARBOROUGH: While I am a member of  
4 the Northeast Neighbor because of where I live, I am  
5 also on the Board of Governors of Pioneer Farms.  
6 JUDGE NEWCHURCH: And what's your name,  
7 please?  
8 MS. SCARBOROUGH: Celeste Scarborough.  
9 JUDGE NEWCHURCH: And, Ms. Scarborough,  
10 I think I have a sign-in sheet, and you're on -- did  
11 you say a member of the Board of Pioneer Farms?  
12 MS. SCARBOROUGH: Yes, sir.  
13 JUDGE NEWCHURCH: And since it's local,  
14 I sort of know what Pioneer Farms is. Why don't you  
15 make a representation concerning what it is and how it  
16 might be affected?  
17 MS. SCARBOROUGH: Certainly. Pioneer  
18 Farms is a living history museum. It's totally  
19 volunteer run and supported. We have over 11,000  
20 school children come out each year and see what  
21 pioneer life is like from the 1800s. We have four  
22 individual farms on the property that represent  
23 different life styles. We're developing a town. A  
24 recent acquisition is the Henry Orsay house off of  
25 10th and Neches. He was Land Commissioner in 1865.

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1 THE REPORTER: You're going to have to  
2 speak up.  
3 MS. SCARBOROUGH: I'm sorry. Henry  
4 Orsay was a Land Commissioner in 1865, and his house  
5 was our most recent acquisition on the square of the  
6 town. We have farm animals. I fed them all this  
7 morning; over 30 farm animals in total. It's a  
8 significant preservation of the 1800's period. We  
9 have a Tonkawa interpretation we're going to do for  
10 Indians. The tepees have already been ordered. It's  
11 just a valuable place for kids to come and experience  
12 the history of the blackland prairies.  
13 JUDGE NEWCHURCH: And how far is the  
14 Pioneer Farms' property from the applicant's property?  
15 MS. SCARBOROUGH: It is under two miles.  
16 JUDGE NEWCHURCH: All right.  
17 MS. SCARBOROUGH: Our objection is if  
18 the height increases to 800 something, we will be able  
19 to see the landfill from the farm, and it will  
20 seriously affect the atmosphere and our visitor count.  
21 JUDGE NEWCHURCH: Mr. Gosselink, is  
22 there -- are Ms. Scarborough's representation  
23 concerning Pioneer Farms, the nature of its mission  
24 and its property and distance from the applicant's  
25 site, are those facts in dispute?

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1 MR. GOSSELINK: The distance from the  
2 property is in dispute, and the ability to see the  
3 landfill, if that's the basis for their complaint, is  
4 also in dispute.  
5 The TCEQ Executive Director's staff put  
6 together a map for utilization at the Commissioners'  
7 jurisdictional hearing, which I believe identified  
8 them as beyond the two-mile limit at approximately  
9 2.3 miles.  
10 MS. SCARBOROUGH: Perhaps the entrance  
11 is, but we have over a hundred acres.  
12 JUDGE NEWCHURCH: All right. So that  
13 particular fact is in dispute --  
14 MR. GOSSELINK: Yes, it is.  
15 JUDGE NEWCHURCH: -- concerning their  
16 distance. Nevertheless, is there objection to the  
17 admission of Pioneer Farms as a party?  
18 MR. GOSSELINK: I would object to their  
19 admission as a party. I would not object to their  
20 inclusion in the Northeast Neighbors Coalition, but I  
21 would object to their admission as a party on the  
22 basis that 2.3 miles has historically been beyond the  
23 generalized distance where parties are accepted  
24 without a particular unique reason why they should be.  
25 And if the unique reason is that they can see it, we

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1 are going to present evidence that shows that they  
2 cannot.  
3 JUDGE NEWCHURCH: Okay.  
4 Ms. Scarborough, would it be acceptable if Pioneer  
5 Farms was admitted as part of the Northeast Neighbors  
6 Coalition?  
7 MS. SCARBOROUGH: No.  
8 JUDGE NEWCHURCH: All right. And,  
9 Mr. Blackburn, is that acceptable to the coalition?  
10 MR. BLACKBURN: I mean, we'd be happy to  
11 have them as a member. I mean, that's their choice.  
12 JUDGE NEWCHURCH: All right. So given  
13 that, Pioneer Farms is admitted as a member of the --  
14 well, I don't need to admit them. You are a part of  
15 the coalition, and there's no objection to the  
16 coalition being admitted. So you are admitted through  
17 the coalition. Is that clear? It's a little -- it's  
18 lots of lines.  
19 MS. SCARBOROUGH: Sure, the lines --  
20 JUDGE NEWCHURCH: Basically the  
21 coalition is admitted, Mr. Blackburn represents the  
22 coalition, and you are one of the entities and people  
23 who are dealing with Mr. Blackburn and being  
24 represented through the coalition. Fair enough or  
25 not? Do you need to be --

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1 MS. SCARBOROUGH: I went to Google  
2 Earth, you know, and you can see our land height. You  
3 can see where your land height is going to be. I  
4 mean, you can see it. It's very plain. But if  
5 Mr. Blackburn will accept us, we will be an active  
6 part of the Northeast Neighbors Coalition.  
7 MR. BLACKBURN: I mean, I will  
8 certainly -- I mean, I think we are open to most  
9 anyone in that part of the world joining and  
10 participating. I do not want to argue against her  
11 independent party status, however.  
12 JUDGE NEWCHURCH: All right.  
13 MR. BLACKBURN: I think she is clearly  
14 asking for independent party status as well. We will  
15 accept her as a member any time she wishes to come,  
16 but I do think she is clearly asking for independent  
17 party status if I hear her correctly.  
18 MS. SCARBOROUGH: I would like that,  
19 yes.  
20 MS. MANN: And, Your Honor, to that end,  
21 the Commissioners had this exact same discussion, and  
22 they recommended in their -- or they referred her as a  
23 potential affected person in the interim order with an  
24 understanding that she was -- I think they  
25 understood -- to be over three miles away, whatever

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1 the map says, and they had this discussion about the  
2 unique characteristics of Pioneer Farms, and they  
3 decided to go ahead and refer her -- I'm sorry --  
4 refer Pioneer Farms as an affected person in its  
5 individual capacity.  
6 JUDGE NEWCHURCH: Okay.  
7 MR. SHEPHERD: Your Honor, if I could  
8 also interject in that representing the Executive  
9 Director during our hearing request before the  
10 Commissioners, we did provide a map. We have that map  
11 available. That map reflected that the property of  
12 Ms. Scarborough is about two miles, right on the  
13 two-mile line from the facility. There was some  
14 discussion at that agenda meeting. The Commissioners  
15 did recommend that she be an affected person. I just  
16 wanted to clarify that, that the Executive Director  
17 does not have any objection to her being admitted as a  
18 party.  
19 JUDGE NEWCHURCH: Okay. Let's do this.  
20 MR. GOSSELINK: Your Honor, we  
21 actually -- the map has just showed up if you wanted  
22 to see it.  
23 JUDGE NEWCHURCH: Let's do this. In a  
24 minute I want to take a break because I think in  
25 retrospect Mr. Blackburn's request to go off the

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1 record so you can have a discussion with some of these  
2 others is probably the better way to go.  
3       Based on what I've heard, if Pioneer  
4 Farms is admitted, I am almost certainly going to  
5 align Pioneer Farms with Northeast Neighbors  
6 Coalition. So we can take a long complicated path to  
7 get to pretty much the same place or not.  
8       As an independent party, Pioneer Farms  
9 would have to agree to the settlement. You know, I  
10 don't know if a settlement is in the cards. It might  
11 not be, but that would be the only significant  
12 difference between being admitted individually as a  
13 party and aligned with Northeast versus just being a  
14 member of Northeast.  
15       MR. BLACKBURN: Right, and that is the  
16 discussion I wanted to have with the individuals  
17 before a final decision was made on whether they would  
18 take party status or request party status or not.  
19       JUDGE NEWCHURCH: Right. And given the  
20 objection to Pioneer Farms' representation of its  
21 distance, I would need to hear evidence that -- and  
22 any witness would be subject to cross-examination  
23 concerning those facts.  
24       I'll also note for the record I sort of  
25 smell a land use incompatibility argument that

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1 Mr. Blackburn well knows how to make, and I think  
2 that's coming down the road anyway concerning this  
3 visibility issue. So that issue won't go away whether  
4 Pioneer Farms is admitted individually or not. And  
5 whether you'll prevail or not, who knows, but we know  
6 that's coming, and Mr. Gosselink is smiling because he  
7 knows it's coming, too.  
8       So let's take a break while  
9 Mr. Blackburn confers with the others. Those of you  
10 who are still potentially interested in being admitted  
11 individually, if you would confer with Mr. Blackburn  
12 to talk about individual admission versus alignment  
13 versus just being part of the coalition?  
14       And we'll be off the record for about  
15 ten minutes while you have that discussion.  
16       (Recess: 10:55 to 11:10 a.m.)  
17       JUDGE NEWCHURCH: All right. Back on  
18 the record. Mr. Blackburn?  
19       MR. BLACKBURN: Yes, Your Honor, there  
20 are five, I'll call them entities, that would like  
21 individual party status. I have discussed this with  
22 the applicant. The representation would be they would  
23 have independent party status but would be aligned  
24 with Northeast Neighbors Coalition. So for service  
25 purposes, it gets served to me, and I will take care

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1 of distribution within the group itself. And if there  
2 is a split or a division that occurs within the group,  
3 a conflict of interest, things like that, then that  
4 will be brought to everyone's attention, at which  
5 point they may separate out, if necessary. A major  
6 reason for separate party status would be in the case  
7 of a settlement or a dispute about strategy or  
8 whatever. With that --  
9       JUDGE NEWCHURCH: Just -- go ahead.  
10       MR. BLACKBURN: With that I'd like to  
11 identify that Evan Williams on behalf of Williams,  
12 Ltd. owns property immediately adjacent to the BFI  
13 site and would request individual party status as  
14 Williams, Ltd., which is the entity that is the  
15 commercial entity that owns the property.  
16       JUDGE NEWCHURCH: And do we want to --  
17       MR. BLACKBURN: Do you want to go  
18 through the whole group?  
19       JUDGE NEWCHURCH: Well, I think there's  
20 some agreements. Mr. Gosselink, is Williams, Ltd. one  
21 of the entities to which you can agree to its  
22 admission --  
23       MR. GOSSELINK: Yes, it is.  
24       JUDGE NEWCHURCH: -- provided they're  
25 aligned with Northeast?

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1       MR. GOSSELINK: It's vacant land owned  
2 by Mr. Williams. In his business capacity, I think  
3 his business entity is entitled to party status.  
4       JUDGE NEWCHURCH: All right. So  
5 Williams, Ltd. is admitted and aligned with Northeast.  
6       Go ahead, Mr. Blackburn.  
7       MR. BLACKBURN: And the second would be  
8 Roger Joseph of Roger Joseph Properties, Incorporated,  
9 which is in a similar situation owning property  
10 immediately adjacent.  
11       JUDGE NEWCHURCH: And let me find his  
12 sign-in sheet. Mr. Gosselink, is that agreeable?  
13       MR. GOSSELINK: Same -- yes, the same  
14 comments.  
15       JUDGE NEWCHURCH: All right. So  
16 Roger Joseph is admitted and aligned with Northeast.  
17       MR. BLACKBURN: The third would be Mark  
18 and Melanie McAfee and the Barr Mansion in an  
19 individual capacity aligned with Northeast Neighbors  
20 Coalition.  
21       MR. GOSSELINK: We have no objection to  
22 Mark and Melanie McAfee as the owners of Barr Mansion.  
23 In all these cases, these individuals do not  
24 individually live near the landfill, but their  
25 businesses are near the landfill. So we have no

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1 objection to their businesses.  
2 JUDGE NEWCHURCH: Okay. So Mark and  
3 Melanie McAfee are admitted and aligned with  
4 Northeast.  
5 MR. BLACKBURN: There is a map that we  
6 might use for a reference to simplify the next two.  
7 The next is an individual by the name of Del Rogers.  
8 Mr. Rogers is here. I believe Mr. Gosselink has  
9 requested some testimony.  
10 There is a map that some of the parties  
11 have, and Mr. Roberts is identified -- Mr. Rogers is  
12 identified on the map as Property No. 28. And if I  
13 may approach, Your Honor, I have this exhibit. I  
14 borrowed it as an exhibit from the Executive Director,  
15 and I'm not sure if they will allow me to put it into  
16 evidence, but if I may, we could actually perhaps put  
17 this in as evidence if that would -- you know, would  
18 be what you would prefer.  
19 JUDGE NEWCHURCH: Okay. So at least at  
20 this point, Mr. Roger's interest is disputed. Is that  
21 correct?  
22 MR. BLACKBURN: I don't think it's  
23 disputed. I think they just don't know Mr. Rogers, if  
24 I understood. Oh, there's the big map.  
25 MR. CARLSON: The big one came in if you

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1 want to use that instead.  
2 JUDGE NEWCHURCH: Okay.  
3 MR. BLACKBURN: If I may, Your Honor,  
4 approach and just demonstrate?  
5 JUDGE NEWCHURCH: I guess what I'm  
6 trying to figure out is, are you trying to clarify so  
7 that BFI's representatives understand, or do I need to  
8 take evidence to nail this point down?  
9 MR. GOSSELINK: I just need to  
10 understand what his interest is.  
11 JUDGE NEWCHURCH: Why don't you explain  
12 it more so that he can understand it properly?  
13 Perhaps we don't need formal evidence. I always try  
14 to avoid that because it makes things more  
15 complicated.  
16 MR. BLACKBURN: Well, my understanding  
17 was that Mr. Rogers asked for party status as an  
18 individual homeowner living within 1.5 miles of the  
19 proposed landfill facility because of the various  
20 issues of odor, visual interference and what I would  
21 call more general land use incompatibility  
22 characteristics.  
23 JUDGE NEWCHURCH: And you want to know  
24 where his property is specifically?  
25 MR. GOSSELINK: I see it now.

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1 JUDGE NEWCHURCH: And is his interest  
2 disputed now?  
3 MR. GOSSELINK: No. If, Mr. Blackburn's  
4 representations of his interests are correct, they  
5 would satisfy his party status request.  
6 JUDGE NEWCHURCH: All right. So  
7 Mr. Rogers is admitted and aligned with Northeast.  
8 MR. BLACKBURN: And that returns us to  
9 Ms. Scarborough and Pioneer Farms, and Ms. Scarborough  
10 continues to request individual party status. I would  
11 identify on the map that counsel was kind enough to  
12 have held up for a minute, Ms. Scarborough's property  
13 is identified as No. 26, which at least on this map is  
14 shown to be -- well, not on this map.  
15 MR. GOSSELINK: No, her interest is --  
16 MR. BLACKBURN: It's on this map,  
17 though.  
18 MR. GOSSELINK: 35 on the official map  
19 of the Executive Director.  
20 MR. BLACKBURN: Excuse me, Your Honor.  
21 There's some confusion. There appears to be two maps.  
22 JUDGE NEWCHURCH: Off the record.  
23 MR. BLACKBURN: Yes, let's go off the  
24 record.  
25 (Discussion off the record)

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1 JUDGE NEWCHURCH: Back on the record.  
2 Mr. Blackburn?  
3 MR. BLACKBURN: Your Honor, I think  
4 we're going to need testimony on this one party.  
5 JUDGE NEWCHURCH: Ms. Scarborough, did  
6 you want to offer -- I understand Mr. Blackburn is  
7 going to be assisting you, but did you want to testify  
8 yourself?  
9 MS. SCARBOROUGH: Yes.  
10 JUDGE NEWCHURCH: Okay. Why don't we do  
11 this: Why don't we use this chair over here by the  
12 court reporter. If you would take the oath, please?  
13 (Witness Scarborough sworn)  
14 JUDGE NEWCHURCH: And, Mr. Blackburn,  
15 why don't I just allow you to question her. That's  
16 probably the most efficient way to do it.  
17 MR. BLACKBURN: Well, I may have an  
18 agreement with Mr. Gosselink now. I'm not sure. I  
19 believe that --  
20 PRESENTATION ON BEHALF OF PIONEER FARMS  
21 CELESTE SCARBOROUGH,  
22 having been first duly sworn, testified as follows:  
23 DIRECT EXAMINATION  
24 BY MR. BLACKBURN:  
25 Q And let me ask you, Ms. Scarborough -- I'm

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1 going to make a statement and just ask you if it's  
2 true or not. Is it true that Pioneer Farms is  
3 within -- is closer than two miles to the landfill but  
4 that your home is actually outside of the two-mile  
5 area?  
6 A I haven't even thought about my home.  
7 Q Okay. So you're --  
8 A I'm not even considering my home.  
9 Q So you're asking for party status on behalf  
10 of Pioneer Farms?  
11 A Absolutely.  
12 Q And Pioneer Farms -- I'm going to show you a  
13 map that is going to be --  
14 MR. BLACKBURN: Do you have an exhibit  
15 number, Your Honor? Is this 1?  
16 JUDGE NEWCHURCH: Why don't we make this  
17 Pioneer Exhibit No. 1.  
18 (Exhibit Pioneer No. 1 marked)  
19 Q (BY MR. BLACKBURN) And I'm going to show you  
20 Pioneer Exhibit No. 1, Ms. Scarborough, and ask you to  
21 draw -- and I'm going to bring a red pen and ask you  
22 to draw in red where your -- where Pioneer Farms'  
23 property is.  
24 A Certainly. I'm putting an "X" where the  
25 entrance is. And as general as I can be, we own down

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1 to the creek south of the entrance, to the west a  
2 little bit where the City of Austin has property that  
3 abuts the Walnut Creek as it runs around the property,  
4 to the south to the creek all the way on the east side  
5 to the Ponderosa property line, which I think I can  
6 make out here, but it's --  
7 Q But you have drawn on this map, in red,  
8 roughly a rectangle of the property that is Pioneer  
9 Farms?  
10 A To the best of my knowledge, that is it.  
11 Q And there is a pink line on this map. Do you  
12 see that?  
13 A Yes.  
14 Q And does your property basically extend  
15 inside the pink line toward BFI Sunset Farms?  
16 A I would say at least 70 percent of it does,  
17 yes.  
18 Q Okay. Thank you.  
19 A Here is your pen.  
20 Q Thank you.  
21 MR. BLACKBURN: Paul, do you want to see  
22 this?  
23 MR. GOSSELINK: Yes.  
24 MR. BLACKBURN: Anybody else want to see  
25 this?

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1 (Discussion off the record)  
2 MR. BLACKBURN: Your Honor, I offer into  
3 evidence Exhibit 1, and I would note for the record  
4 the pink line is the two-mile line, and her property  
5 is -- portions of the Pioneer Farms are well within  
6 the two-mile limit, and I hereby move for introduction  
7 of Pioneer Farms for separate party status but to  
8 align them with Northeast Neighbors.  
9 JUDGE NEWCHURCH: Okay. And you're  
10 offering this for the limited purpose of showing  
11 Pioneer Farms' land and its distance from the BFI  
12 Sunset facility?  
13 MR. BLACKBURN: That's correct, Your  
14 Honor.  
15 JUDGE NEWCHURCH: Is there objection to  
16 the admission of Pioneer 1 for that limited purpose?  
17 MR. GOSSELINK: There is no objection to  
18 the entry of that exhibit for that purpose, Your  
19 Honor, and I would like to ask Ms. Scarborough a few  
20 questions.  
21 JUDGE NEWCHURCH: Sure. We haven't  
22 quite gotten there yet. So Pioneer 1 is admitted.  
23 (Exhibit Pioneer No. 1 admitted)  
24 JUDGE NEWCHURCH: Mr. Blackburn and  
25 Ms. Scarborough, is there other evidence or testimony

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1 you wanted to offer concerning Pioneers' interest?  
2 Q (BY MR. BLACKBURN) Well, could you describe  
3 what occurs at Pioneer Farms, please?  
4 A On Sunday afternoons, Fridays and Wednesdays,  
5 we are open to the public. We offer tours to the  
6 general public. The volunteers are dressed in period  
7 costume. We historically, accurately depict what life  
8 was like in the 1800s on the blackland prairie in  
9 Central Texas. We cover farm life, commerce.  
10 Students come back with a great sense -- when school  
11 groups come out with a great sense of where they came  
12 from, how hard our ancestry has worked to get us where  
13 we are today.  
14 We also have cultural exhibits on the  
15 farm. We have a German farm that represents the  
16 tenant farmer that didn't own the land or the house.  
17 The house actually had 13 children that lived in it,  
18 and it's about the size of a small bathroom.  
19 Q But this is -- essentially it's a historic --  
20 A It's a historic, living history museum with  
21 live people and animals and working -- we have people  
22 who do period crafts. It's an educational, historic  
23 preservationist's place.  
24 Q And could you identify your concerns about  
25 the expansion of the landfill and why you would like

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1 to have party status in this proceeding?  
2 A Certainly. It is our opinion that if the  
3 landfill currently expands from its cap to 75 feet  
4 higher, that we will be able to see from a substantial  
5 portion of the farm the landfill as it operates and  
6 grows. And we feel that that will affect dramatically  
7 the atmosphere of the farm and overall our visitor  
8 counts, which is where all our revenue comes from.  
9 Q Would it be fair to say that a mountainous  
10 landfill was not part of the historic representation  
11 that you're seeking to put forward?  
12 (Laughter)  
13 A With several axle trucks wheeling around on  
14 it, exactly. No.  
15 MR. BLACKBURN: Pass the witness.  
16 JUDGE NEWCHURCH: Mr. Gosselink?  
17 MR. GOSELINK: Can Mr. Carlson cross?  
18 JUDGE NEWCHURCH: Well, first of all,  
19 let me -- because your interest is most opposed. Is  
20 there anyone else who wants to cross-examine  
21 Ms. Scarborough concerning Pioneer's request for party  
22 status? Yes, ma'am, go ahead.  
23 CROSS-EXAMINATION  
24 BY MS. MANN:  
25 Q Ms. Scarborough, what authority do you have

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1 to offer -- to come by here today to request party  
2 status for Pioneer Farms? What's your relationship  
3 with Pioneer Farms?  
4 A I have been a volunteer there for five years,  
5 and I've been on the Board of Governors for three  
6 years. I am in charge of all scout camping facilities  
7 and tours on the farm. I volunteer on a regular basis  
8 when I'm not doing my full-time job on the weekends,  
9 in costume. I also have been given the authority to  
10 be here by a vote of the Board of Governors in March  
11 of 2008.  
12 Q Is there a record of that vote?  
13 A Yes, there is.  
14 Q Do you have that with you today?  
15 A I do not.  
16 Q Could you make that available in the very  
17 near future?  
18 A Yes, ma'am.  
19 MS. MANN: Okay. I have no further  
20 questions.  
21 JUDGE NEWCHURCH: Anyone else besides  
22 BFI for cross-examination?  
23 MR. SHEPHERD: No, thank you.  
24 JUDGE NEWCHURCH: Mr. Carlson?  
25 MR. CARLSON: Thank you, Judge.

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CROSS-EXAMINATION

1  
2 BY MR. CARLSON:  
3 Q Just a few clarification questions,  
4 Ms. Scarborough. I want to separate out the home  
5 address from the Pioneer Farms address for a second.  
6 What is your home address?  
7 A 1632 Payton Falls Drive.  
8 Q Okay. And that's further away from the  
9 landfill. Is that correct?  
10 A It's about a half mile from Pioneer Farms'  
11 entrance.  
12 Q Okay. As you're sitting here today, you're  
13 not complaining on the basis of your own home  
14 property. Is that correct?  
15 A No. We live in a very deep hollow. We can't  
16 get cell reception at our house.  
17 Q Can you see the landfill, the Sunset Farm  
18 landfill from your personal property?  
19 A I cannot at this time.  
20 Q I understand you're here -- appearing here on  
21 behalf of Texas Pioneer. Correct?  
22 A Pioneer Farms.  
23 Q Pioneer Farms?  
24 A Yes, sir.  
25 Q Pioneer Farms -- how is Pioneer Farms

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1 organized?  
2 A It is under the -- it's a subsidiary of the  
3 Austin Heritage Society which operates under a  
4 501(c)(3). We have a memorandum that gives the  
5 Pioneer Farms Board of Governors complete authority  
6 over the direction of the farm and its  
7 representations.  
8 Q Okay. Is it actually an incorporated entity?  
9 A Yes.  
10 Q It is? So there are -- there's a certificate  
11 of incorporation some place?  
12 A Yes.  
13 Q Did you bring that with you?  
14 A No.  
15 Q Are there bylaws?  
16 A Yes.  
17 Q Did you bring those with you?  
18 A No.  
19 Q And what is the purpose of Pioneer Farms?  
20 A It serves as a living history museum.  
21 Q What is Pioneer Farms' mailing address?  
22 A I believe it's 11908 Pioneer Farms Boulevard.  
23 With all the construction in the area, they've  
24 recently changed. It was a Sprinkle Cutoff address.  
25 It is no longer with Braker coming through.



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1 Q And I understand we're talking about a  
2 hundred acre tract of land. Is that correct?  
3 A Yes, sir.  
4 Q Who is the legal owner? Whose name is on the  
5 deed for that hundred-acre tract?  
6 A The Heritage Society of Austin.  
7 Q Is there anybody from the Heritage Society of  
8 Austin that's here today?  
9 A No, sir.  
10 Q Okay. You serve on that board?  
11 A No, sir.  
12 Q Is there any point on the hundred-acre tract  
13 that Pioneer Farms is located on that you can  
14 presently see the Sunset Farms landfill?  
15 A I understand that -- through secondhand  
16 knowledge that if you were to climb some trees on one  
17 end of the farm, you could see it.  
18 Q And you've never done that yourself?  
19 A I have not done that myself.  
20 Q Somebody's just told you that. Is that  
21 correct?  
22 A Yes.  
23 Q But you've never been any place -- you've  
24 been all over the property?  
25 A Oh, yes.

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1 Q And you've never in any situation, even in  
2 the wintertime when there are no leaves, you haven't  
3 been able to see the landfill.  
4 A No.  
5 Q Is that fair to say?  
6 A That is fair to say.  
7 Q And I understand from the prior questioning  
8 that there is some sort of resolution authorizing you  
9 to appear on behalf of Pioneer Farms today?  
10 A Yes, sir.  
11 Q But you don't have that?  
12 A No, sir. It was just in a board meeting.  
13 Q What does the resolution say?  
14 A We just agreed -- we voted that I could  
15 represent the farm's behalf at these meetings.  
16 Q Other than the visual impact or potential  
17 visual impact, do you have any other concerns or  
18 complaint about the proposed application?  
19 A There's a slight concern that the increase in  
20 volume might promote smell into our area. I don't  
21 know that. I don't know any scientific basis for  
22 that, but a large enough increase in volume might  
23 increase the area that the smell -- and that would  
24 really be also a deterrent for the visitors. Although  
25 we have enough farm animals' smell that might overcome

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1 that at some point.  
2 (Laughter)  
3 Q (BY MR. CARLSON) I understand there are a  
4 couple of buildings on the property itself. Correct?  
5 A Yes.  
6 Q Where are those located approximately? Are  
7 they in the central part, north, south?  
8 A We have three farms that are spread apart,  
9 and there are three buildings -- three homes in each  
10 of those areas with adjacent buildings, barns and  
11 whatnot. Then we also have a town square that's  
12 completely separate from that. I would say that the  
13 general area of the buildings covers about 35 acres.  
14 Q And I assume that those are the focal points  
15 of your particular operation, it's where people tend  
16 to go?  
17 A Yes.  
18 Q Okay. And as we sit here today, can a person  
19 at any of those three areas -- three or four areas  
20 physically see the landfill?  
21 A No, they cannot.  
22 MR. CARLSON: All right. Judge, I will  
23 pass the witness. We will formally object to Pioneer  
24 Farms based on their distance from the landfill.  
25 JUDGE NEWCHURCH: Ms. Scarborough, I

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1 can't resist. Does the historical representation  
2 include a representation of how waste was managed on a  
3 blackland prairie farm?  
4 A Yes. We have compost.  
5 JUDGE NEWCHURCH: Thank you.  
6 A We absolutely do.  
7 JUDGE NEWCHURCH: Good. Mr. Blackburn?  
8 MR. BLACKBURN: Did I offer the exhibit  
9 into evidence?  
10 JUDGE NEWCHURCH: Exhibit Pioneer 1 is  
11 admitted into evidence.  
12 MR. BLACKBURN: With that, I think I  
13 will pass.  
14 JUDGE NEWCHURCH: Mr. Gosselink or  
15 anyone else, did you want to offer evidence to oppose  
16 Pioneer's request for party status?  
17 MR. CARLSON: No, Your Honor.  
18 JUDGE NEWCHURCH: And, Mr. Carlson, I  
19 understand you to say you continue to object.  
20 MR. CARLSON: Yes, sir, based on the two  
21 mile or approximate two-mile proximity from the  
22 landfill.  
23 JUDGE NEWCHURCH: Okay. I'm going to  
24 find that Pioneer Farms is sufficiently affected to be  
25 admitted as a party, and they are admitted as a party

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1 and aligned with Northeast. Thank you,  
2 Ms. Scarborough.  
3 MS. SCARBOROUGH: Thank you.  
4 JUDGE NEWCHURCH: Mr. Blackburn, if I  
5 understood you correctly, those were the only other  
6 entities that wanted to be admitted individually as  
7 parties but be aligned with Northeast. Is that  
8 correct?  
9 MR. BLACKBURN: That is my understanding  
10 from the conversations on break. We might just ask to  
11 make sure, but I believe that is correct.  
12 JUDGE NEWCHURCH: Okay. Does anyone  
13 else seek to be admitted individually as a party in  
14 this proceeding?  
15 (No response)  
16 JUDGE NEWCHURCH: All right. So I will  
17 close the admission of parties. And just to recap  
18 because we've got so many and I don't want to overlook  
19 someone later, the applicant is admitted; the  
20 Executive Director and the PIC are admitted; Northeast  
21 Neighbors Coalition is admitted, and aligned with it  
22 and admitted individually are Delmer D. Rogers,  
23 Roger Joseph, Pioneer Farms, Melanie McAfee, Mark  
24 McAfee and Evan Williams. Is that right?  
25 MR. BLACKBURN: That's correct.

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1 JUDGE NEWCHURCH: Okay.  
2 MR. BLACKBURN: And then I asked for  
3 permission at a later time to make a submission with  
4 regard to the Harris Branch subdivision.  
5 JUDGE NEWCHURCH: Right, and anyone can  
6 always do that, to seek late admission.  
7 And additionally Travis County is  
8 admitted as a party; the City of Austin is admitted as  
9 a party; TJFA is admitted as a party, and I think  
10 that's it. Have I overlooked anyone?  
11 MR. TERRILL: Giles.  
12 JUDGE NEWCHURCH: Giles, which is  
13 aligned with BFI. Anyone else?  
14 (No response)  
15 JUDGE NEWCHURCH: Okay. Good. So our  
16 other major mission today is to talk about a schedule.  
17 By the way, I'm familiar with the pending Waste  
18 Management case presided over by Judge Scudday and  
19 that he denied a motion in that case to abate that  
20 proceeding so that this proceeding could proceed. But  
21 in any event, I'm ready to talk about a schedule.  
22 Have the parties discussed a schedule for this case?  
23 MR. GOSSELINK: Yes, we have.  
24 JUDGE NEWCHURCH: Okay.  
25 MR. GOSSELINK: And we are, I believe,

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1 on the verge of agreeing to a schedule by virtue of  
2 the efforts of all the parties to get together before  
3 this hearing.  
4 JUDGE NEWCHURCH: Great.  
5 MR. GOSSELINK: Okay. And so far as I  
6 can tell, I have the document before me after having  
7 talked to Ms. Noelke and Mr. Renbarger, and I think  
8 everybody is in agreement with all pieces except  
9 possibly the deadline to file responses to objections  
10 to prefiled testimony, whether that should occur  
11 before or after Thanksgiving. And with the exception  
12 of that, I can provide you with a copy that I think is  
13 the winner.  
14 JUDGE NEWCHURCH: Why don't you give me  
15 a copy so that I can take a look at that, and then  
16 we'll talk about a Thanksgiving filing versus after  
17 Thanksgiving.  
18 MR. BLACKBURN: Your Honor, what I would  
19 say is I've got two motions here, one for a stay and  
20 one to certify the question to the Commission. These  
21 are the same motions that I filed with Waste  
22 Management with Judge Scudday. I have no objection to  
23 the schedule that has been worked out in the sense  
24 that the timing and all that is right.  
25 What I have an objection to is the

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1 continuing problem that we've got of two hearings  
2 running concurrently involving the same neighborhoods  
3 and involving -- you know, basically a double burden  
4 on the neighborhood with regard to having to prepare  
5 for and protest two full landfill expansion hearings  
6 at the same time.  
7 JUDGE NEWCHURCH: Okay. So your motion  
8 is to stay -- you have a written motion?  
9 MR. BLACKBURN: I do, Your Honor, and if  
10 this is the appropriate time, I think probably before  
11 we take up the schedule --  
12 JUDGE NEWCHURCH: Yeah, please.  
13 MR. BLACKBURN: I mean, I understand the  
14 schedule, and Mr. Gosselink's representation is  
15 correct, assuming that these motions were denied, I'm  
16 in full agreement with the schedule. I just feel like  
17 I need to, for the record, place these motions before  
18 you.  
19 JUDGE NEWCHURCH: All right. And why  
20 don't you -- if you've got them in writing, why don't  
21 you hand me those motions and copies to the parties.  
22 Let's go off the record because I want  
23 an opportunity to quickly read through these.  
24 (Discussion off the record)  
25 JUDGE NEWCHURCH: Okay. I'm ready.

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1 Back on the record.  
2 Mr. Blackburn, first to deal with your  
3 motion to abate, I understand you to be asking to  
4 abate this proceeding until there's a final  
5 determination concerning the Waste Management  
6 application that's sited for an adjacent site.  
7 MR. BLACKBURN: That's correct.  
8 JUDGE NEWCHURCH: And that could be six  
9 months from now, a year from now, however long that  
10 might be?  
11 MR. BLACKBURN: As far as I'm -- it's my  
12 understanding there is no schedule yet in that  
13 proceeding. We filed similar motions, the same motion  
14 essentially in that proceeding, and that motion was  
15 denied. So at least at this point it appears we're  
16 moving forward with a hearing in that Waste Management  
17 proceeding. We do not have a specific schedule yet.  
18 JUDGE NEWCHURCH: Okay. Does anyone  
19 want to argue for or against the motion by Northeast  
20 to abate?  
21 MR. GOSSELINK: Yes, Your Honor.  
22 JUDGE NEWCHURCH: Let's go with for  
23 before we get to against because I'm assuming you're  
24 against.  
25 MR. GOSSELINK: Yes, Your Honor.

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1 MR. RENBARGER: Your Honor, on behalf of  
2 TJFA, we would certainly join in support of the  
3 motions filed on behalf of Northeast.  
4 JUDGE NEWCHURCH: Anyone else?  
5 (No response)  
6 JUDGE NEWCHURCH: Mr. Gosselink -- oh,  
7 I'm sorry.  
8 MS. MANN: Just to comment, for the  
9 Public Interest Counsel, this is Christina Mann. It  
10 makes a lot more sense from our perspective to abate  
11 Waste Management because this has been set for a PFD  
12 in a certain amount of time and considered through the  
13 entire 801 process without a direct referral, and that  
14 is more reflective of what would be our response to  
15 the certified question issue.  
16 So in other words, by jumping -- my  
17 jumping ahead, without affecting the BFI schedule that  
18 we have in front of us that you're going to consider  
19 shortly, we could certify a question that could answer  
20 whether or not one or both -- one of the hearings  
21 should be abated without having to actually abate one  
22 today, if that made any sense. I apologize.  
23 In other words, I don't have a  
24 position -- I don't feel it's appropriate to abate BFI  
25 while Waste Management jumped ahead of the schedules

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1 when we have a 12-month schedule and a full  
2 consideration by the Commissioners at an agenda. So  
3 my answer would be -- I don't really have a position  
4 on it other than to say that I think a certified  
5 question would be appropriate to address both of  
6 the -- to give the Commissioners an attempt to address  
7 both of the -- the broader considerations.  
8 JUDGE NEWCHURCH: Okay.  
9 MS. MANN: Okay.  
10 JUDGE NEWCHURCH: Mr. Gosselink?  
11 MR. GOSSELINK: Thank you. We would  
12 object to the motion to abate, and our basis would  
13 be -- underlying basis would be two things: The first  
14 is that we followed the 801 process, and we are here  
15 before you with a 12-month deadline. This schedule  
16 meets that 12-month deadline, and if we do go forward  
17 without abatement, this schedule either as I've given  
18 it to you or with potentially minor modifications,  
19 meets and satisfies the appropriateness of all the  
20 parties' sense of what a schedule should look like and  
21 can be approved.  
22 Secondly, we have approximately two  
23 years of capacity remaining in our landfill, which is  
24 less than the capacity of Waste Management. I don't  
25 know that that's a legal argument, but it does go to

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1 the general sense if you're trying to figure out who  
2 should go first based upon how long each party has to  
3 suffer a delay. We have less time.  
4 If the motion is to abate BFI, we  
5 object. If the motion is to refer a certified  
6 question, we would object to that also. And we find  
7 to the same extent that Mr. Blackburn has copycatted  
8 his own motion in Waste Management, we find Waste  
9 Management's brief in the Austin Community landfill  
10 case to be very persuasive.  
11 If you are not inclined to make a ruling  
12 today on this schedule, we would like the opportunity  
13 to brief, if that's necessary, but we would urge you  
14 to go forward and implement this agreed-upon or I  
15 think agreed-upon but at least almost agreed-upon  
16 schedule now.  
17 If the question is do we have a position  
18 on what Waste Management's schedule should be, we have  
19 no position. We think that if you implement this  
20 schedule now, Waste Management can seek to have a  
21 schedule that goes faster than this or goes slower  
22 than this, depending upon how they and the parties  
23 work it out in their case. And in their case, they're  
24 due to have a proposed set of schedules by May 19th.  
25 And if that doesn't -- if they can't agree by

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1 May 19th, then Judge Scudday is going to have a  
2 hearing on June 6th. I don't think we can get -- we  
3 can accomplish our 12-month mandate if we all have to  
4 wait either past June 6th or later. So I'm anxious to  
5 go forward for the reasons that I've given.  
6 JUDGE NEWCHURCH: Mr. Blackburn, you  
7 represent either Northeast or other protesting  
8 intervenors in the Waste Management case. Right?  
9 MR. BLACKBURN: That is correct.  
10 JUDGE NEWCHURCH: And have those  
11 parties, including Waste Management, yet agreed on a  
12 schedule for that case?  
13 MR. BLACKBURN: No, Your Honor.  
14 JUDGE NEWCHURCH: All right. And so  
15 Mr. Gosselink's representations about the parties are  
16 supposed to get together by the 19th of the month to  
17 try and agree on that, that's correct to your  
18 knowledge? Can you confirm that?  
19 MR. BLACKBURN: Yes, yes, Your Honor,  
20 that's a correct representation --  
21 JUDGE NEWCHURCH: Okay.  
22 MR. BLACKBURN: -- and we certainly  
23 don't take issue with it.  
24 JUDGE NEWCHURCH: All right. Well, with  
25 regard to the specifics of the motion to abate, the

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1 motion asks to abate until the BFI matter is finally  
2 resolved, and that motion is denied.  
3 MR. BLACKBURN: You meant the Waste  
4 Management matter?  
5 JUDGE NEWCHURCH: The Waste  
6 Management -- I'm sorry, excuse me -- is finally  
7 determined, that motion is denied.  
8 Obviously parties' schedules have to be  
9 accommodated, and so I don't mean to say that we don't  
10 need to somehow figure out a way so that Northeast and  
11 its aligned parties can reasonably prepare for both  
12 cases, but to abate one entirely til the other is  
13 determined I think is not something I can agree with,  
14 and that motion is denied.  
15 With regard to the certified question, I  
16 didn't actually ask for further explanation or  
17 argument on it. Did you have something further to  
18 offer, Mr. Blackburn, besides what you've put in  
19 writing?  
20 MR. BLACKBURN: Not really, Your Honor.  
21 I just think that it is a policy issue whether a  
22 neighbor should be subjected to having to defend  
23 itself against two applications at one time. I mean,  
24 it was denied -- the request was denied in the Waste  
25 Management hearing. I felt that I had to raise it in

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1 this proceeding because this is my other opportunity  
2 to raise it.  
3 You know, beyond that I think it's a  
4 policy issue that the Commissioners should decide. I  
5 don't think they had all of these facts in front of  
6 them when they made this referring and particularly  
7 didn't understand about Waste Management asking for a  
8 direct referral, which puts us in the position of  
9 having both hearings at the same time. And I  
10 certainly would like the opportunity to argue a policy  
11 question to the Commissioners if you would allow it.  
12 And if you don't, then we'll go forward.  
13 JUDGE NEWCHURCH: All right. Is there  
14 argument in support of the motion? I know Ms. Mann,  
15 you basically -- I thought you were saying that you  
16 thought the question should be certified.  
17 MS. MANN: Yeah, OPIC is supportive of  
18 this basically for the reasons Mr. Blackburn stated.  
19 We feel that when you have -- and I don't want to --  
20 this is not anything that BFI could have done any  
21 differently obviously, and I don't -- so we're  
22 supportive of the schedule presented and are  
23 supportive to certify this motion because it does  
24 relate to both -- to the same neighborhood that is  
25 both the BFI hearing and the Waste Management hearing.

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1 And we think it is a policy issue and it  
2 is appropriate for the Commissioners to decide because  
3 Mr. Blackburn is right again, both of these -- the  
4 potential that both of these would be scheduled nearly  
5 simultaneously was not before the Commissioners when  
6 they scheduled this hearing. So I think it's an  
7 appropriate question to certify to the Commissioners.  
8 JUDGE NEWCHURCH: Anyone else?  
9 MR. SHEPHERD: The executive -- I'm  
10 sorry.  
11 JUDGE NEWCHURCH: Go ahead.  
12 MR. RENBARGER: On behalf of TJFA, I  
13 think we would certainly support the same reasoning  
14 that OPIC has advanced in the sense that we are in the  
15 same boat as the citizens. We have land that is  
16 subject to two contested case hearings going on, if  
17 not simultaneously certainly in very close proximity  
18 to the other, and it certainly is a burden. Thank  
19 you.  
20 MR. SHEPHERD: The Executive Director  
21 does not think that it's necessary to refer the  
22 certified question to the Commissioners in that we  
23 would see that the Administrative Law Judges in both  
24 these cases are capable of coordinating the schedules  
25 between the two and accommodating any needs that come

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1 up along the way. So we are in support of moving  
2 forward and adopting the agreed discovery schedule.  
3 JUDGE NEWCHURCH: Mr. GosseLink?  
4 MR. GOSSELINK: This is a scheduling  
5 issue. This is not a major policy issue. And the  
6 schedule issue can be accommodated by the Court, by  
7 the Judges, especially given the fact that you have  
8 the ability to uniquely coordinate with all the Judges  
9 who work for you. I think that -- I think this is  
10 just a scheduling issue, and I think it can be worked  
11 out, and I would urge -- I would urge the parties in  
12 the Waste Management case to try to do that. And if  
13 they can't, then Judge Scudday can work from there.  
14 We have a two-year window before our  
15 landfill closes. If we're placed into a certified  
16 question delayed process, that seriously jeopardizes  
17 our ability to stay in business.  
18 And I would say one further thing. In  
19 the Waste Management case -- and I understand why  
20 Mr. Blackburn is doing what he's doing, but in the  
21 Waste Management case, all the parties, at least on  
22 the abatement issue, argued that Waste Management  
23 should be abated because they wanted BFI to go first.  
24 JUDGE NEWCHURCH: The parties other than  
25 Waste Management?

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1 MR. GOSSELINK: Other than Waste  
2 Management, yes, correct.  
3 JUDGE NEWCHURCH: Okay.  
4 MR. GOSSELINK: I'm sorry.  
5 MR. BLACKBURN: Right, and I will also  
6 concur with that. I mean, I think BFI went through  
7 the 801 process correctly. You know, if you're  
8 willing to queue, they were first. However,  
9 unfortunately we are in the position of having to  
10 defend ourselves against two of these landfills at the  
11 same time. And, you know, it's not fair to us  
12 regardless.  
13 JUDGE NEWCHURCH: Okay. I'm going to  
14 deny the motion to certify the question. I agree with  
15 Mr. GosseLink this is a scheduling dilemma. People  
16 can't be in the same place at the same time. They  
17 can't file two sets of testimony on the same day.  
18 That's unrealistic and unreasonable. It's not  
19 uncommon to have the same party in multiple  
20 proceedings going on at the same time, Commission  
21 proceedings. In CCN cases, it happens constantly  
22 where we've got a utility or some other entity that's  
23 involved in multiple cases with overlapping schedules.  
24 So the schedules have to be meshed so  
25 that the parties can reasonably do what they need to

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1 do in the time available, and we can do that and do  
2 that constantly. I don't see any broad-based policy  
3 issue of interpretation here that the Commission needs  
4 to -- that I feel like I need the Commission's advice  
5 on or determination before proceeding. It's really  
6 just a scheduling dilemma. So that motion is denied.  
7 With regard to the schedule, it sounds  
8 like you've agreed on everything other than the  
9 deadline for filing responses to objections. Is that  
10 what you said?  
11 MR. GOSSELINK: That's my understanding,  
12 although I think I heard a whisper from Ms. Noelke  
13 that Mr. Renbarger may have one other date he'd like  
14 to change.  
15 MR. RENBARGER: Thank you, counsel. I'm  
16 not certain of that, but there have been a lot of  
17 copies of schedules circulating. I just want to make  
18 sure that the one that comes before the Judge is what  
19 I think it is. And if a short recess is in order for  
20 us to confirm those dates, that would certainly be  
21 appreciated.  
22 JUDGE NEWCHURCH: Let's go off the  
23 record while -- this is the one I've got in front of  
24 me. So you can take a look at that.  
25 (Recess: 11:55 to 12:10 p.m.)

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1 JUDGE NEWCHURCH: Okay. I'm ready.  
2 back on the record. I've conferred with  
3 Judge Scudday, and he sees no reason to think that  
4 this would be a problem in his case. He will figure  
5 out a schedule that accommodates the parties and their  
6 obligations in this case, and so that's what he's  
7 going to do.  
8 So given that, I'm going to approve the  
9 parties' scheduling. Because this document has been  
10 changed so many times, I'm going to go through each  
11 bullet item just to make sure we're all in agreement  
12 on what exactly is being approved.  
13 So the first bullet item is applicant  
14 provides copies of the application to all parties.  
15 That's May 16th of this year. Responses to requests  
16 for discovery due, disclosure may commence, that's  
17 May 29th of this year.  
18 MS. MANN: You just flipped it. It's  
19 requests for disclosure due, discovery may commence.  
20 I'm sorry.  
21 JUDGE NEWCHURCH: That's what it says.  
22 MS. MANN: I know, but you flipped it  
23 when you said it out loud.  
24 JUDGE NEWCHURCH: Oh, I'm sorry.  
25 MR. NOELKE: No, actually it was typed

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1 incorrectly. Wasn't it, Mr. Gosselink?  
2 MS. MANN: No, that's correct.  
3 MR. NOELKE: Responses to requests?  
4 MR. GOSSELINK: Yeah.  
5 MS. MANN: Are we doing automatic  
6 disclosures? Is this what this states?  
7 JUDGE NEWCHURCH: Off the record.  
8 (Discussion off the record)  
9 JUDGE NEWCHURCH: Let's go back on the  
10 record. All right. For clarification purposes,  
11 although it's not specifically said on this written  
12 document, the parties are in agreement that as of  
13 today they are all requesting disclosure of each  
14 other. Correct?  
15 MR. GOSSELINK: Yes.  
16 JUDGE NEWCHURCH: All right. Given  
17 that, responses to those requests for disclosure are  
18 due on May 29th, and other discovery may request --  
19 may commence on May 29th with responses to those  
20 discovery requests due within 30 days of receipt of  
21 the request.  
22 On June 6th, the applicant will  
23 designate experts. On June 27th, the other parties  
24 will designate their experts. Depositions of fact  
25 witnesses may begin on June 23rd. Written discovery

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1 requests are due on July 18th, and responses to those  
2 requests will be due 30 days after receipt of the  
3 request.  
4 Discovery of expert witnesses may begin  
5 on August 11th. You've reserved a date for a  
6 prehearing conference to address discovery disputes,  
7 if needed, and that date would be August 27th. Let me  
8 look at my own calendar. I've actually got a short  
9 hearing scheduled for that day. Can we move that to  
10 August 26th? Is that a problem for anyone?  
11 MR. GOSSELINK: That's fine.  
12 JUDGE NEWCHURCH: Okay. So we'll make  
13 that August 26th, we'll reserve for a prehearing  
14 conference, if necessary.  
15 And I guess the way I'll handle that is  
16 I'll just indicate in my order after today that you  
17 should reserve that date on your calendars, and you'll  
18 be getting a more specific order as we get closer to  
19 that date if it looks like there's going to be a need  
20 for that conference.  
21 MR. GOSSELINK: We are going to be in a  
22 hearing on another landfill at that time, but I will  
23 find someone to attend the scheduled prehearing  
24 conference since it was my suggestion.  
25 JUDGE NEWCHURCH: Okay.

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1 MR. GOSSELINK: It's sort of hard to  
2 find spots for all of these items you have to  
3 accommodate here.  
4 JUDGE NEWCHURCH: Yes, it is. The  
5 applicant's prefiled testimony and exhibits for its  
6 direct case -- I assume that's what you mean -- direct  
7 case exhibits -- right -- not rebuttal?  
8 MR. GOSSELINK: Yes.  
9 JUDGE NEWCHURCH: We don't typically do  
10 rebuttal pre-filing in TCEQ cases. So applicant's  
11 prefiled testimony and direct case exhibits would be  
12 due September 25th. All other parties, except the  
13 applicant and the ED, will prefile their direct case  
14 testimony and exhibits on -- oh, there we go,  
15 October 27th. And the ED will prefile its direct  
16 case -- his direct case on November 5th.  
17 The deadlines for filing objections to  
18 all prefiled direct cases is November 17th. The  
19 responses to the objections to the prefiled direct  
20 cases would be December 3rd and the -- just a second.  
21 Let me look at something here.  
22 (Brief pause)  
23 JUDGE NEWCHURCH: All right. The  
24 deadline for completion of all depositions is  
25 December 9th. All pretrial motions are due by

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1 December 15th. A prehearing conference to rule on all  
2 pending motions, objections and other procedural  
3 matters, you've got December 19th, but that actually  
4 doesn't work for me because I have a five-day hearing  
5 that's scheduled to end that day. And the tricky part  
6 is the following week is Christmas week, which is a  
7 terrible week to try and get folks together, even at  
8 the beginning of the week. Let's see.  
9 MR. GOSSELINK: We tried to figure out  
10 the last plausible day to have it before Christmas.  
11 JUDGE NEWCHURCH: Yeah.  
12 MR. GOSSELINK: The 22nd works for the  
13 applicant.  
14 JUDGE NEWCHURCH: Let's do this. This  
15 might drive me crazy, but I think I can do this. Can  
16 we have that prehearing conference at noon on  
17 December 19th? That's a little unusual, but I can  
18 figure out a way to get out of the other one during  
19 the lunch break to deal with this one. And given  
20 that, you can expect the ruling to be quick and dirty.  
21 (Laughter)  
22 JUDGE NEWCHURCH: The hearing on the  
23 merits would be January 12th through the 23rd, and  
24 that is clear for me. All parties file closing  
25 arguments on February 23rd.

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1 MR. GOSSELINK: We have based that, Your  
2 Honor, on the fact that the applicant intends to  
3 expedite the transcript. Looking at the court  
4 reporter, if the court reporter slows us down, we will  
5 all probably seek relief from that date for whatever  
6 amount of time we need.  
7 THE REPORTER: (Nodding)  
8 MR. GOSSELINK: She's shaking her head  
9 that she'll get the job done.  
10 JUDGE NEWCHURCH: Shell get it done.  
11 She always does.  
12 So the parties will file closing  
13 arguments on February 23rd. I'm just looking at my  
14 own schedule because I've got another commitment in  
15 March. I want to make sure there's not a conflict  
16 here.  
17 The parties will file their replies on  
18 March 9th. That's good. Okay. That's when I'm in  
19 hearing, so that's not a problem. And then based on  
20 that and SOAH's 60-day guideline, the PFD would be due  
21 May 8, 2009. That all looks good. Did I make any  
22 mistakes along the way? Is there something else we  
23 need to add? Ms. Mann?  
24 MS. MANN: During the BFI hearing, MLK  
25 day is there, and usually the hearing offices are

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1 closed. So are we taking that into account that we --  
2 JUDGE NEWCHURCH: That is a state  
3 holiday, and the office is closed. It's not one of  
4 those skeleton days. It's a completely --  
5 MS. MANN: It's just closed.  
6 JUDGE NEWCHURCH: It's closed. So we're  
7 not going to be able to meet for hearing on that day.  
8 What day is that?  
9 MS. MANN: That would be January 19th.  
10 JUDGE NEWCHURCH: January 19th.  
11 MS. MANN: I just wanted to bring that  
12 to everyone's attention.  
13 JUDGE NEWCHURCH: But you've allowed two  
14 weeks.  
15 MR. GOSSELINK: If we need to go to  
16 Monday, we can go to Monday. Two weeks is obviously  
17 an estimate at this point.  
18 JUDGE NEWCHURCH: Right.  
19 MR. GOSSELINK: If we estimate that it  
20 is -- there are a lot of parties -- and two weeks is a  
21 reasonable estimate.  
22 JUDGE NEWCHURCH: All right. It seems  
23 like it is a reasonable estimate, especially with  
24 prefiled evidence. We don't tend to have those multi,  
25 multi-week hearings like we used to. I think we'll be

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1 okay with that. We'll lose that one day.  
2 Let's do this. I'm just going to ask  
3 the parties to reserve the 26th, which is the  
4 following Monday on their calendars just in case we  
5 need that extra day. That will probably ensure that  
6 we finish because nobody wants to hang over through  
7 the weekend just to get that one last day so -- those  
8 of you from out of town.  
9 Let's see. I don't like to set time  
10 limits for presentations. I don't find in my own  
11 practice that it works very well. But what I do is I  
12 make sure that we meet the schedules that you've  
13 committed to. And so if that means occasionally  
14 working through the lunch hour or through part of it  
15 or it means working into the evening, I like to do  
16 that if I have to. And I'll also feel free to goose  
17 you along if you're not getting anywhere with your  
18 examination of witnesses, but I don't want to set  
19 specific time limits.  
20 Are there other procedural matters that  
21 we need to talk about?  
22 MR. GOSSELINK: Can service be done  
23 electronically?  
24 JUDGE NEWCHURCH: Well, you certainly --  
25 you're talking about on one another --

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1 MR. GOSSELINK: Yes.  
2 JUDGE NEWCHURCH: -- as opposed to  
3 filing with SOAH?  
4 MR. GOSSELINK: Yes.  
5 JUDGE NEWCHURCH: You certainly can do  
6 that if you're in agreement. Do you want to agree to  
7 some specific terms? Like sometimes I've had parties  
8 say "Let's agree that we can e-mail service on one  
9 another, but we will call one another to let them know  
10 that there's been an e-mail service so that in case  
11 something gets stuck in junk mail they know to look  
12 for it," that kind of thing. Do you want to agree  
13 to --  
14 MR. GOSSELINK: We haven't talked about  
15 that, but I would be agreeable to that. If anybody  
16 has a problem, maybe they can say how to fix it.  
17 JUDGE NEWCHURCH: I don't know that I  
18 have an e-mail address from everyone. I think we have  
19 a blank on the form, but it looks -- I'm spot  
20 checking. It looks like I've got e-mail addresses  
21 from pretty much all the parties. So that will be on  
22 the service list.  
23 And so then you're in agreement that you  
24 can serve each other through e-mail with a courtesy  
25 phone call to let you know that there's been a filing

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1 of service?  
2 MR. CARLSON: Judge, with one caveat.  
3 Sometimes when you have very voluminous attachments,  
4 for example, or pleadings, those obviously don't go  
5 over well and tend to crash people's systems, and I  
6 think we can all agree under certain circumstances  
7 that there will be hard copies going out in lieu of  
8 electronic copies.  
9 JUDGE NEWCHURCH: Right, and it's always  
10 an option. You can always -- if you want to have a  
11 runner go over there and deliver it, then you can  
12 certainly do that, or mail.  
13 MR. GOSSELINK: We're all local so --  
14 we're all local. We all know each other pretty well.  
15 So it will work I think.  
16 JUDGE NEWCHURCH: Okay, good.  
17 MR. RENBARGER: The only caveat I would  
18 add, Judge, would be as if --  
19 MR. GOSSELINK: I'm sorry. Blackburn is  
20 not local.  
21 JUDGE NEWCHURCH: He's just here all the  
22 time it seems like.  
23 MR. GOSSELINK: He wants me to make sure  
24 the record is clear on that.  
25 (Laughter)

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1 MR. BLACKBURN: That's right.  
2 JUDGE NEWCHURCH: Do you have an  
3 apartment?  
4 MR. BLACKBURN: I'll just drive by and  
5 pick it up as I come through.  
6 JUDGE NEWCHURCH: All right.  
7 MR. RENBARGER: In any event, on the  
8 schedules dates when parties are to receive other  
9 filings of the other parties, that those be  
10 accomplished on that date, be it electronically or be  
11 they actually physically have those documents in hand.  
12 JUDGE NEWCHURCH: So you're saying  
13 physical service on the date as opposed to the mailbox  
14 rule?  
15 MR. RENBARGER: That's correct.  
16 JUDGE NEWCHURCH: Okay. Is that what  
17 everybody else understood as well?  
18 (No response)  
19 JUDGE NEWCHURCH: Okay. I'll be  
20 specific in the order on that point.  
21 Anything else?  
22 (No response)  
23 JUDGE NEWCHURCH: Then we are adjourned.  
24 Thank you all.  
25 (Proceedings Concluded at 12:25 p.m.)

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C E R T I F I C A T E

1  
2  
3 STATE OF TEXAS )  
4 COUNTY OF TRAVIS )  
5  
6 I, Kim Pence, a Certified Shorthand  
7 Reporter in and for the State of Texas, do hereby  
8 certify that the above-mentioned matter occurred as  
9 hereinbefore set out.  
10 I FURTHER CERTIFY THAT the proceedings  
11 of such were reported by me or under my supervision,  
12 later reduced to typewritten form under my supervision  
13 and control and that the foregoing pages are a full,  
14 true and correct transcription of the original notes.  
15 IN WITNESS WHEREOF, I have hereunto set  
16 my hand and seal this 20th day of May 2008.  
17  
18  
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