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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF THE
ADJUTANT GENERAL

In the Matter of)
)
PRIVATE FUEL STORAGE, LLC)
)
(Independent Spent)
Fuel Storage Installation))

Docket No. 72-22-ISFSI

NRC STAFF'S RESPONSE TO THE
STATE OF UTAH'S "MOTION TO DELAY THE
HEARING SCHEDULE FOR UTAH CONTENTION E"

INTRODUCTION

In accordance with 10 C.F.R. §§ 2.730(c) and the Atomic Safety and Licensing Board's ("Licensing Board") "Order (Schedule for Responses to Motion to Delay Hearing Schedule on Contention Utah E/Confederated Tribes F)," dated March 20, 2000, the NRC Staff ("Staff") hereby responds to the "Motion to Delay the Hearing Schedule for Utah Contention E" ("Motion"), filed by the State of Utah ("State") on March 17, 2000. For the reasons set forth below, the Staff submits that the State's Motion should be denied.

DISCUSSION

In its Motion, the State asserts that hearings on Contention Utah E/ Confederated Tribes F ("Financial Assurance"),¹ which are scheduled to be held in June 2000, should be postponed for an

¹ In Contention Utah E, the State generally contends that Private Fuel Storage, L.L.C. ("PFS" or "Applicant") has failed to demonstrate the financial qualifications required by 10 C.F.R. §§ 72.22(e) and 72.40(a)(6), and that PFS' application for an Independent Spent Fuel Storage Installation ("ISFSI") should therefore be denied. *See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-07, 47 NRC 142 (1998).*

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indefinite period, pending review by the Commission of the Licensing Board's recent decision in LBP-00-06;² in that decision, the Licensing Board granted summary disposition in favor of PFS on numerous subparts of Contention Utah E/Confederated Tribes F, and referred its decision to the Commission for review. *Id.*, slip op. at 73-74. As a result of the Board's ruling, the only issues remaining for hearing in Contention Utah E/Confederated Tribes F are the issues of PFS' onsite insurance coverage (*see* Bases 5 and 10), and the adequacy of PFS' estimates of its construction and operating costs (Basis 6); these issues are scheduled to go to hearing in June 2000. The remainder of the issues raised in this contention were resolved by the Licensing Board's decision in LBP-00-06 and have been referred to the Commission for review. The State's Motion requests that the Licensing Board postpone the hearing on any portion of Contention E until the Commission renders its decision on the referred issues, "so that all issues relating to Contention E can be heard together." Motion at 1.

In support of its request, the State argues that "proceeding with the hearing on the balance of Contention E before knowing what the Commission's decision will be on the certified question will have a pervasive effect on the hearing of Utah Contention E." *Id.* at 3. According to the State, proceeding to hearing on some issues now (a) would be unduly "costly and time consuming" and could result in a duplication of work if further hearings are required as a result of the Commission's action on the referral; (b) would "destroy the integrity of the State's presentation of its case on all the issues relevant to Contention E"; (c) would require the State's witnesses to review the same

² *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-06, 51 NRC ___ (March 10, 2000) ("Memorandum and Order (Granting in Part, Denying in Part, and Referring Ruling on Summary Disposition Motion Regarding Contention Utah E/Confederated Tribes F)").

documents twice and would prevent the State from "presenting the case as a whole"; (d) may impede the State's effort to get a "fair and meaningful hearing," since "the crux of the State's concern is whether PFS has the financial wherewithal" to conduct licensed activities; and (e) would "not affect the overall schedule." *Id.* With regard to the potential for delay, the State argues that deferring Contention E will not delay the final decision in the proceeding -- stating, "[f]or example, if the Commission renders a decision in the next few months, Contention E could follow the same schedule as Contentions K and L." *Id.* at 3-4; emphasis added.

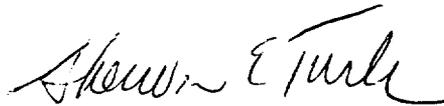
The State's arguments are without merit. First, the issues that remain to be heard (onsite insurance, and the adequacy of the Applicant's cost estimates) are entirely distinct from the issues that have been referred to the Commission. In brief, the issues to be heard in June relate to the amount of onsite insurance coverage and how much the facility will cost, whereas the issues referred to the Commission essentially relate to PFS' ability to pay for those costs. These are separate matters that do not require consideration together. Second, while it is reasonable to expect that the same witnesses would be relied upon to address both sets of issues and would have to prepare for hearing twice, this should not result in undue effort or expense for the State -- particularly since the hearings are to be held in Salt Lake City, in close proximity to the State's offices. Third, a bifurcation of issues in this manner is logical, since the reasonableness of PFS' cost estimates logically should be evaluated (and the costs determined) before testimony is presented concerning PFS' ability to pay those costs. Moreover, there is no reason to believe that such a bifurcated approach would result in a duplication of work, that it would destroy the integrity of a party's case, or that it would deprive the State of a "fair and meaningful" hearing.

Finally, the State has provided no reason to believe that the Licensing Board's decision will be reversed or remanded by the Commission -- assuming that the Commission even decides to accept the Licensing Board's referral. Further, in the event that the Commission does not reverse or remand LBP-00-06, any postponement of hearings to await the Commission's decision would ultimately be seen to have been unwarranted. Moreover, there is no reasonable basis to conclude at this time that a postponement of hearings on Contention E will not result in delay, since the Commission's review schedule and the timing of its decision on the referred issues is still unknown.

CONCLUSION

For the reasons set forth above, the Staff respectfully submits that the State's motion to delay the hearing schedule for Contention E should be denied.

Respectfully submitted,



Sherwin E. Turk
Catherine L. Marco
Counsel for NRC Staff

Dated at Rockville, Maryland
this 22nd day of March 2000

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NUCLEAR REGULATORY COMMISSION

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Docket No. 72-22-ISFSI

Office of the Secretary
Rulemaking and Adjudications
Staff

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S RESPONSE TO THE STATE OF UTAH'S 'MOTION TO DELAY THE HEARING SCHEDULE FOR UTAH CONTENTION E'" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the Nuclear Regulatory Commission's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the United States mail, first class, as indicated by double asterisk, with copies by electronic mail as indicated, this 22nd day of March, 2000.

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