

RAS-1639

DOCKETED
USNRC
April 7, 2000

'00 APR 14 A9:29

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

OFFICE OF THE
GENERAL COUNSEL
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20545

In the Matter of)
)
PRIVATE FUEL STORAGE L.L.C.) Docket No. 72-22
)
(Private Fuel Storage Facility))

**JOINT MOTION BY THE STATE OF UTAH AND THE APPLICANT TO
APPROVE STIPULATION FOR THE HEARING OF UTAH CONTENTION S**

The State of Utah ("State") and the Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") have agreed to sharpen the focus of Utah Contention S by not presenting certain issues as part of their prefiled testimony, or during direct testimony or cross-examination at the hearing, or otherwise, on Contention S. This motion, and Attachment A, sets forth the stipulation of the parties as to the scope of Contention S.

As originally submitted, Contention S consisted of eleven numbered bases. *See* State of Utah Contentions, November 23, 1997, Utah Contention S at pp 123-130. As currently constituted, Contention S consists of bases 1, 2, 4, 5, and 10.¹

Both the State and PFS have found that there has been a significant volume of documents relating to the specific costs for decontamination. Both parties also foresee that establishing how

¹ See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 196-97 (1998) (dismissing bases three, six, seven, eight, and nine); Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-99-39, 50 NRC 232, 236, 239 (1999) (dismissing basis eleven).

Template = SECY-041

SECY-02

the Applicant's decontamination cost estimates were derived, or should have been derived, may entail lengthy testimony and the introduction of a voluminous quantity of documents.

Accordingly, the State and PFS have agreed that the underlying decontamination cost estimates will not be the subject of the litigation of Contention S.

Rather, the State and PFS agree that the focus of litigating Contention S will be on the sufficiency of the Applicant's financial assurance under 10 CFR § 72.30(b) to fund all direct and indirect decommissioning costs, taking into account the year's dollars used to establish the Applicant's costs, the escalation factors employed to arrive at the future value of those costs, the maximum quantities of spent fuel at the site during the license term, the potential for large accidents, and the means by which the Applicant will provide sufficient funds if a comparison between the cost estimate and present funds indicate a deficit in present funding of the decommissioning plan.

Contention S as modified by the parties' stipulation is set forth in Attachment A. In summary, the following modifications have been made.

- a. Basis 1 of Contention S has been modified, by virtue of PFS's provision (in response to RAI 1-7) of confirmation of bank intent to issue a letter of credit, such that the State no longer contests that PFS has offered no reasonable assurance that it will be qualified to obtain a letter of credit of for \$1,631,000. The State will contest, however, the sufficiency of funds available to decommission the ISFSI, in that the letter of credit does not include funds for the decommissioning of the spent fuel storage casks. The Applicant reserves the right to maintain and argue that this assertion was not encompassed within Basis 1 as originally set forth by the State, and thus is beyond the scope of Utah Contention S as admitted.
- b. With respect to Basis 2, by virtue of language for the proposed letter of credit provided by PFS in response to RAI 1-7, the State no longer contests that PFS has not provided the wording for the letter of credit or failed to state that the letter of credit will be irrevocable. As a result, there

no longer remains any issue under Basis 2 which the State will contest or litigate in the hearing on Utah Contention S.

- c. Basis 4 of Contention S is modified such that the State does not contest whether the cost to decommission an individual storage cask is \$17,000 or whether the cost to decommission the remainder of the ISFSI, apart from the storage casks, is \$1,631,000. The State will, however, contest and litigate under this basis in what year's dollars these costs are stated and the escalation factors used to convert past dollars values into future dollars value when the costs are expected to be incurred, the asserted need for the decommissioning cost estimates to take into account the maximum quantities of spent fuel to be stored at the site during the license term, and the means by which the Applicant will provide sufficient funds if a comparison between the cost estimate and present funds indicate a deficit in present funding of the decommissioning plan.
- d. Basis 5 remains as stated. Accordingly, Basis 5 is set forth in Attachment A as it appeared verbatim in Contention S as originally filed by the State.
- e. Basis 10 of Contention S is modified such that the State does not contest whether the cost of a survey of the ISFSI site is \$260,000. The State will, however, contest and litigate under this basis in what year's dollars the \$260,000 cost is stated and the escalation factors used to convert past dollars values into future dollars value when this cost is expected to be incurred.

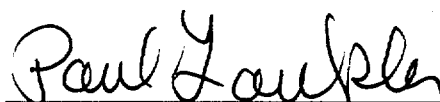
There may be some overlap between Contention S and Contention E, Financial Assurance, and some of the witnesses on Contention S and Contention E will likely be the same. Therefore, the State and PFS request the Atomic Safety and Licensing Board ("Board") that, to the extent possible, Contention S and Contention E be heard together.

Nothing in this joint motion shall be taken that either party accepts the other party's position on the merits of any portion of Contention S or that this motion is to be considered as a partial motion for summary disposition or partial withdrawal of Contention S.

The Applicant also requests leave of the Board to address prior to the hearing the legal dispute referenced with respect to Basis 1 on whether the issue that the State now seeks to raise under Basis 1 is beyond the scope of Contention S as admitted by the Board.

In conclusion, the State and the Applicant ask that the Board approve this request to sharpen the focus of Utah Contention S in accordance with Attachment A.

Respectfully submitted,

A handwritten signature in black ink that reads "Paul Gaukler". The signature is written in a cursive style and is positioned above a horizontal line.

Jay E. Silberg
Ernest L. Blake, Jr.
Paul A. Gaukler
SHAW PITTMAN,
2300 N Street, N.W.
Washington, DC 20037
(202) 663-8000
Counsel for Private Fuel Storage L.L.C.

Dated: April 7, 2000

ATTACHMENT A

The Bases for the Litigation of Contention S
(Bases 1, 4, 5, and 10) are modified to provide as follows:*

Basis 1: The Applicant has failed to provide reasonable assurance, as required by 10 CFR § 72.30(b), that funds will be available to decommission the ISFSI in that the letter of credit PFS intends to obtain “in the amount of \$1,631,000 to cover the estimated facility and site decommissioning costs, exclusive of the storage casks,” LA, App. B, p. 5-2, does not include funds for the decommissioning of the storage casks.**

Basis 4: The Applicant has failed to justify the basis for its decommissioning cost estimates of \$17,000 to decommission a storage cask and of \$1,631,000 to decommission the remainder of the ISFSI in that (i) the decommissioning cost estimates do not state the year’s dollars used (e.g., 1997 dollars) as provided in NUREG-1567, Draft Standard Review Plan for Spent Fuel Dry Storage Facilities, LA Appendix B, Chapter 4, and (ii) the estimates are not properly escalated to convert past dollars values into future dollars values (i.e. the future value of costs when the costs are expected to be incurred).

An applicant for a part 72 ISFSI license must submit a Decommissioning Funding Plan “at the time of the license application.” Regulatory Guide 3.66, Standard Format and Content of Financial Assurance Mechanisms required for decommissioning under 10 CFR Parts 30, 40, 70 and 72 (hereafter “Reg. Guide 3.66”), at.1-3, 1-6. The Decommissioning Plan “must compare the cost estimate with present funds, and if there is a deficit in present funding the plan must indicate the means for providing sufficient funds for completion of decommissioning.” NUREG 1567, at 16-4. This information is missing from the application.

Furthermore, to ensure that sufficient decommissioning funds are available, the Applicant should take a conservative approach in

* Basis 2 is not set forth below, because by virtue of language for the proposed letter of credit provided by PFS in response to RAI 1-7, there no longer remains any issue under Basis 2 which the State will contest or litigate in the hearing on Utah Contention S.

** As noted in the text of the Motion, the Applicant reserves the right to maintain, among other points, that the above assertion was not encompassed within Basis 1 as originally set forth by the State, and thus is beyond the scope of the Utah Contention S as admitted.

estimating the maximum quantity of spent fuel casks to be stored at the site during the license term.

Basis 5: The decommissioning cost estimate totally ignores the potential for large accidents and associated release or contamination at the ISFSI. LA Appendix B, Chapter 4. The very large number of casks that are to be handled at the ISFSI and the large number of operations and movements that will be required argue strongly for anticipating this potential and making arrangements for a multimillion dollar increase in decommissioning to “provide reasonable assurance that the planned decommissioning of the ISFSI will be carried out” as required by 10 CFR §72.30.

Basis 10: The Applicant specifies that decommissioning costs include \$260,000 for a survey of the ISFSI site. LA, App B, p. 4-6. The Applicant has failed to justify the basis for this estimate in that does not state the year’s dollars used (e.g., 1997 dollars) as provided in NUREG-1567, Draft Standard Review Plan for Spent Fuel Dry Storage Facilities, LA Appendix B, Chapter 4, and (ii) is not properly escalated to convert past dollars values into future dollars values (i.e. the future value of costs when the costs are expected to be incurred).

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
PRIVATE FUEL STORAGE L.L.C.)	Docket No. 72-22
)	
(Private Fuel Storage Facility))	ASLBP No. 97-732-02-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the Joint Motion by the State of Utah and the Applicant to Approve Stipulation for the Hearing of Utah Contention S were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 7th day of April 2000.

G. Paul Bollwerk III, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: GPB@nrc.gov

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: JRK2@nrc.gov and kjerry@erols.com

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: PSL@nrc.gov

* Susan F. Shankman
Deputy Director, Licensing & Inspection
Directorate, Spent Fuel Project Office
Office of Nuclear Material Safety &
Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and Adjudications
Staff
e-mail: hearingdocket@nrc.gov
(Original and two copies)

Catherine L. Marco, Esq.
Sherwin E. Turk, Esq.
Office of the General Counsel
Mail Stop O-15 B18
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
e-mail: pfscase@nrc.gov

John Paul Kennedy, Sr., Esq.
Confederated Tribes of the Goshute
Reservation and David Pete
1385 Yale Avenue
Salt Lake City, Utah 84105
e-mail: john@kennedys.org

Diane Curran, Esq.
Harmon, Curran, Spielberg &
Eisenberg, L.L.P.
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
e-mail: dcurran@harmoncurran.com

* Adjudicatory File
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Denise Chancellor, Esq.
Assistant Attorney General
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, Utah 84114-0873
e-mail: dchancel@state.UT.US

Joro Walker, Esq.
Land and Water Fund of the Rockies
2056 East 3300 South, Suite 1
Salt Lake City, UT 84109
e-mail: joro61@inconnect.com

Danny Quintana, Esq.
Skull Valley Band of Goshute Indians
Danny Quintana & Associates, P.C.
68 South Main Street, Suite 600
Salt Lake City, Utah 84101
e-mail: quintana@xmission.com

* By U.S. mail only


Paul A. Gaukler