

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'98 JUN 29 P2:55

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

ADJ. 1

SERVED JUN 29 1998

In the Matter of
PRIVATE FUEL STORAGE, L.L.C.
(Independent Spent Fuel
Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

June 29, 1998

MEMORANDUM AND ORDER
(General Schedule for Proceeding
and Associated Guidance)

During a June 17, 1998 prehearing conference, the Board discussed with the available parties future scheduling for this proceeding in light of a May 27, 1998 joint status report concerning discovery scheduling and the NRC staff's June 15, 1998 status report concerning its safety and environmental reviews of the pending license application of Private Fuel Storage, L.L.C. (PFS). See Tr. at 901-48. Thereafter, the Board received additional June 23 and 24, 1998 filings from intervenor State of Utah (State) and the staff, respectively, discussing procedures for filing proposed findings of fact and conclusions of law in this proceeding. On the basis of the May 27 and June 15 filings, the Board's June 17 prehearing conference, and the June 23 and June 24 postconference filings, the Board has drawn up a

general schedule for this proceeding, which is included as Attachment A to this issuance.

In addition to this schedule, the Board provides the following observations, guidance, and directives relative to the future conduct of this proceeding:

A. Impact of Preparation of the Staff's Safety and Environmental Analyses on the Adjudicatory Schedule

In its June 15 filing, the staff provided the Board with its current best estimates of when it would complete work on the Safety Evaluation Report (SER), Draft Environmental Impact Statement (DEIS), and Final Environmental Impact Statement (FEIS) relative to the PFS application. In addition, the staff provided estimates on certification of the Holtec International HI-STAR/HI-STORM cask system, which of the two transportation/storage cask systems referenced in the PFS application is the furthest along in the approval process. With the caveat that its estimates assume timely, adequate PFS and Holtec responses to staff questions regarding their applications, the staff stated it is currently projecting the following milestone dates for the PFS application:

October 1999 -- Site-specific SER (dealing with matters that are not impacted by cask certification issues)

September 2000 -- Final SER

DEIS -- October 1999

FEIS -- September 2000

License Recommendation -- September 2000 (assuming prior certification of the Holtec cask system components in September 1999 and July 2000)

See NRC Staff's Status Report Concerning Its Review of the PFS License Application (June 15, 1998) at 4 n.5. In addition, the staff indicated to the Board that notwithstanding the applicant's projected thirty-month construction schedule under which facility operation would begin in June 2002, based on information supplied by PFS at the staff's request, it appeared the earliest "need-date" for storage at the PFS ISFSI is calendar year 2005. See id. at 3 n.2.

As we have noted previously, the staff review milestones are important because timely disclosure of the staff's position on contested safety and environmental issues, as formulated during its SER and DEIS/FEIS preparation process, is material to the litigation of those issues. See Licensing Board Memorandum and Order (Requesting Additional Scheduling Information) (June 5, 1998) at 1-2 (unpublished) [hereinafter Information Request Order]. Moreover, agency regulations concerning the consideration of environmental matters in an adjudicatory hearing dictate that "the NRC staff may not offer the [FEIS] in evidence or present the position of the NRC staff on matters within the scope of NEPA and this subpart until the [FEIS] is filed with the Environmental Protection Agency,

furnished to commenting agencies and made available to the public." 10 C.F.R. § 51.104(a)(1).

Applicant PFS has expressed concern over the length of the staff's review schedule and its "need-date" analysis. See Tr. at 905-09. We also expressed our concern about scheduling in light of the need to conduct agency adjudications in a timely and expeditious manner. See Tr. at 922. Nonetheless, clear precedent affords the staff the authority to pursue its own course in scheduling licensing review matters. See Information Request Order at 2. We must, therefore, heed the staff's representation that, because of the interrelationship between its overall safety and environmental reviews for the PFS application and its ability to formulate and present a position on a particular contention or group of contentions in this proceeding, any attempt on our part to have the staff expedite its review relating to contested issues in this adjudication would adversely impact its overall review schedule. Accordingly, the attached general schedule, which divides the twenty-six admitted contentions contesting the PFS application into three groups, is based on the SER/DEIS/FEIS-related review dates by which the staff has indicated it will be able to take position to take a position on those issues.

If the staff's safety and environmental review schedule changes, the attached litigation schedule may change accordingly. Indeed, the schedule is subject to revision by

the Board to meet whatever exigencies may arise in the course of this litigation, including additional, late-filed contentions based on the staff's SERs or its DEIS/FEIS. In this regard, however, any contentions based on these documents should be submitted no later than thirty days after these documents are made available to the public. So that the intervenors will have an opportunity to ensure the availability of their experts for review of these documents, we request that the staff notify the intervenors and the Board of its intent to make these documents publicly available no later than fifteen days before the documents are to be issued publicly. Further, we anticipate the staff will take the necessary steps to see that the intervenors are notified of the actual public release of these documents and their availability on an expedited basis.

B. Informal and Formal Discovery

The attached schedule sets forth deadlines for informal and formal discovery for the twenty-six admitted issues, both of which are generally in line with the parties' prior suggestions. During the June 17 prehearing conference, the Board expressed its concern that the parties use the extended period allocated to informal discovery as efficiently as possible to obtain needed information. See Tr. at 943. Informal discovery offers an opportunity to seek and provide access to a significant amount of the relevant information regarding the admitted contentions.

This should provide the parties with the "big picture" relative to the contested issues and allow the much briefer period of formal discovery to be used for delving into more specific matters about which information uncertainties remain. It also may allow the parties to identify discovery matters that are in dispute, such as the purported status of certain documents or other information as privileged or otherwise not subject to disclosure, which can be discussed with other parties and raised with the Board, as appropriate, before the litigants are in the throes of the formal discovery process.

To this end, the document repositories being established by PFS and the State are a promising step toward providing the information access needed to hone the number and scope of the document requests, interrogatories, and depositions that are likely to be submitted during formal discovery. See Tr. at 935-39. Certainly, our prior prehearing order limiting the number of formal discovery interrogatories and depositions emphasizes the importance of this winnowing process. Further, because we view formal discovery as a "details" process in this context, the formal discovery requests made, and thus the responses they invoke, should be specific so as not to require the type of extensive document searches or extended interrogatory responses that often occur when formal discovery begins. To reflect the efficiencies that the informal process, if

properly used, should provide for formal discovery, we find it appropriate to shorten the periods for discovery provided for in the agency's rules of practice as follows:¹

Interrogatory Responses -- Seven days

Document Production Request Responses --
Fifteen days.

Motions to Compel Discovery -- Five days
from the date of the response or the
failure to respond

To be timely, a formal discovery request must permit a timely response on or before the day the formal discovery period closes. Likewise, depositions should be scheduled to conclude on or before the date formal discovery closes. Absent some other agreement of the parties, formal discovery requests and responses (including requests for admissions), as well as motions to compel and responses, should at a minimum be served on the Board (if required by agency rules), the lead party supporting or opposing the contention at issue, and the NRC staff by e-mail, facsimile transmission, or other means that will ensure receipt on the day of filing, with conforming paper copies to follow to all involved parties.

¹ The filing deadlines specified for interrogatory and document production responses, as well as the ten-day deadline for responding to admission requests, can be extended by agreement of the parties involved so long as the response does not run beyond the scheduled discovery cut-off date. The filing deadline for motions to compel can be extended only by leave of the Board.

Finally, to aid the Board in monitoring the ongoing informal discovery process, we request that on or before Friday, August 14, 1998, the parties provide us with a joint report outlining the status of informal discovery. That report should include a description of the efforts of each lead party and the staff to obtain and receive documentary information and to conduct interviews with individuals regarding each of the admitted contentions. In addition, the report should identify any problems or concerns any of the parties may have with the process or progress of informal discovery.² This status report should be provided to the Board and the parties by e-mail, facsimile transmission, or other means that will ensure receipt on the day of filing, with conforming paper copies to follow.

C. Summary Disposition Motions

During the June 17 prehearing conference, we noted that while we were not discouraging the filing of summary disposition motions, we do want to discourage the parties from waiting until the "last minute" to file extensive motions. To this end, we establish a staggered schedule for filing such motions that encourages filing earlier in the process.

² If the parties believe that it would be more fruitful to conduct a telephone or video conference in lieu of a written report on discovery status, they should contact the Board Chairman no later than Friday, August 7, 1998, and be prepared to provide three or four suggested dates and times when they would be available for such a conference.

Accordingly, absent leave of the Board, one summary disposition motion will be permitted for a lead party or the staff in connection with all the contentions it supports or opposes in any one group of contentions. For each group, the maximum number of pages for such motions are as follows:

Seventy-five pages: Group I -- Filed forty-five days or more before group final summary disposition motion filing date³

Groups II and III -- Filed sixty days or more before group final summary disposition motion filing date

Fifty pages: Group I -- Filed less than forty-five and more than fifteen days before group final summary disposition motion filing date

Groups II and III -- Filed less than sixty and more than thirty days before group final summary disposition motion filing date

Twenty-five pages: Group I -- Filed fifteen days or less before group final summary disposition motion filing date

Groups II and III -- Filed thirty days or less before group final summary disposition motion filing date

³ During the June 17 prehearing conference, PFS raised a concern about a delayed formal discovery response affecting a party's ability to file for summary disposition under a staggered schedule. See Tr. at 933. Although we do not anticipate this being a problem given the expedited discovery response schedule we have adopted, a party filing what it has identified as a summary disposition-related discovery request in a timely manner can request appropriate relief from the Board if it believes a response is being delayed for this purpose.

For a summary disposition motion filed before the final date for filing specified in the general schedule, the Board may adjust the response deadline accordingly.

D. Proposed Findings of Fact and Conclusions of Law

After considering the filings and comments of the parties, we adopt the use of simultaneous filings of findings of fact and conclusions of law at the end of the hearings on a particular group of contentions. Thus, the lead parties supporting and opposing a contention and the staff will file proposed findings and conclusions at the same time, with each party then responding to the other parties' filings in a second, simultaneous response. Each party's proposed findings and conclusion should be drafted in neutral language that avoids argument and each finding should identify the evidence the party asserts establishes the finding. In turn, each party's response should indicate which portions of the findings and conclusions of the other parties it accepts or rejects.

The Board will provide additional guidance on the format for the parties' proposed findings and conclusions at a later date.

E. Party Comments on General Schedule

Any party wishing to provide comments to the Board concerning the attached general schedule or any of the other matters discussed in this issuance should do so on or before Tuesday, July 7, 1998. Copies of those comments should be

provided to the Board and the other parties by e-mail, facsimile transmission, or other means that will ensure receipt on the day of filing, with conforming paper copies to follow.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁴



G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

June 29, 1998

⁴ Copies of this memorandum and order were sent this date to counsel for the applicant PFS, and to counsel for intervenors Skull Valley Band of Goshute Indians, Ohngo Gaudadeh Devia, Confederated Tribes of the Goshute Reservation, Castle Rock Land and Livestock, L.C./Skull Valley Company, LTD., and the State by Internet e-mail transmission; and to counsel for the staff by e-mail through the agency's wide area network system.

ATTACHMENT A

PRIVATE FUEL STORAGE PROCEEDING GENERAL SCHEDULE

EVENT	GROUP I ¹	GROUP II ²	GROUP III ³
Informal Discovery Begins -- All Parties	May 19, 1998	May 19, 1998	May 19, 1998
Informal Discovery Closes -- All Parties	December 31, 1998	December 31, 1998	December 31, 1998
Staff Position on Contentions	December 31, 1998	April 30, 1999	DEIS -- October 1999 FEIS -- September 2000
Formal Discovery Begins -- All Parties	January 1, 1999	January 1, 1999	January 1, 1999, except DEIS/ FEIS-related discovery against Staff, which begins on DEIS/FEIS issuance date
Formal Discovery Ends -- All Parties Except Against Staff	March 1, 1999	March 1, 1999	March 1, 1999
Formal Discovery Ends -- Against Staff	March 1, 1999	June 30, 1999	DEIS -- December 31, 1999 FEIS -- November 1, 2000
Summary Disposition Motions Final Filing Date	March 31, 1999	December 31, 1999	December 1, 2000
Summary Disposition Motion Responses Final Filing Date	April 30, 1999	January 31, 2000	January 2, 2001
Board Summary Disposition Decision	June 1, 1999	March 1, 2000	February 2, 2001
Pre-filed Testimony Submitted	July 1, 1999	March 31, 2000	March 2, 2001
In Limine Motions Due	July 15, 1999	April 14, 2000	March 16, 2001
Hearings (including limited appearance sessions as appropriate)	August 1 - September 30, 1999	May 1 - June 30, 2000	April 1 - May 31, 2001
Findings of Fact (Simultaneous filings)	November 1, 1999	August 1, 2000	July 2, 2001
Findings of Fact Responses (Simultaneous filings)	December 1, 1999	September 1, 2000	August 1, 2001
Initial Decision	February 1, 2000	November 1, 2000	October 1, 2001

¹ The contentions in Group I include Utah B; Utah C; Utah F/Utah P; Utah G; Utah K/Castle Rock 6/Confederated Tribes B; Utah M; Utah N; Utah R; and Security-C.

² The contentions in Group II include Utah E/Castle Rock 7/Confederated Tribes F; Utah H; Utah L; Utah S/Castle Rock 7; Utah GG.

³ The contentions in Group III include Utah O/Castle Rock 8 and 10; Utah T/Castle Rock 10, 12, and 22; Utah U; Utah V; Utah W; Utah Z; Utah AA/Castle Rock 13; Utah DD/Castle Rock 16; Castle Rock 17; Castle Rock 20; Castle Rock 21; and OGD O.

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NUCLEAR REGULATORY COMMISSION

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PRIVATE FUEL STORAGE, LLC

(Independent Spent Fuel Storage
Installation)

Docket No.(s) 72-22-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (GENERAL SCHEDULE...) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Docket No.(s)72-22-ISFSI
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Dated at Rockville, Md. this
29 day of June 1998

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Office of the Secretary of the Commission