

June 15, 1998

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-ISFSI
)
(Independent Spent)
Fuel Storage Installation))

NRC STAFF'S STATUS REPORT
CONCERNING ITS REVIEW OF
THE PFS LICENSE APPLICATION

Pursuant to the Licensing Board's "Memorandum and Order (Memorializing Prehearing Conference Rulings)," dated May 20, 1998, and its "Memorandum and Order (Requesting Additional Scheduling Information," dated June 5, 1998, the NRC Staff ("Staff") hereby provides the following information concerning (a) the status of and schedule for issuance of the Staff's Safety Evaluation Report (SER) and the Draft and Final Environmental Impact Statements (DEIS/FEIS) for the Independent Spent Fuel Storage Installation (ISFSI) proposed to be constructed and operated by Private Fuel Storage L.L.C. ("PFS" or "Applicant"), (b) issuance of the SER for the various casks which PFS proposed to utilize at its facility, including casks to be manufactured by Holtec International and/or Sierra Nuclear Corp., and (c) the likelihood that the Staff could take a position on one or more safety contentions by August 14, 1998 (so as to permit the commencement of hearings in late 1998 or early 1999).

A. Schedule for Issuance of SER and DEIS/FEIS.

In its Order of June 5, 1998, the Licensing Board observed that "the staff's role in assessing objectively the application's adequacy relative to safety matters and in preparing the DEIS/FEIS make these staff safety and environmental findings of material significance to this litigation" (*Id.* at 2). Further, the Licensing Board observed that "in connection with any hearing on the merits of admitted contentions, fairness and efficiency considerations dictate timely disclosure of the staff's position on any contested safety and environmental issues as formulated in conjunction with its SER and DEIS/FEIS preparation processes" (*Id.*). The Staff shares the Licensing Board's views of these fundamental principles. In consideration of these principles, the Staff provides the following information in response to the Licensing Board's Orders.

As noted in the Licensing Board's Order of June 5, 1998, the Staff has previously provided a projected schedule for issuance of its SER and DEIS/FEIS for the PFS facility, in a status report dated October 1, 1997.¹ Therein, the Staff stated that it expected to issue an SER "in approximately two to three years" (*i.e.*, by October 1999 or October 2000). *Id.* at 5. With respect to the EIS, the Staff stated that it expects to issue a Draft EIS "within approximately two years [*i.e.*, by October 1999] with a Final EIS to be issued approximately six to twelve months later" (*i.e.*, by April or October 2000). *Id.* The Staff further noted that "its review schedule depends upon the prior occurrence of certain other events, including completion of the certification process for the casks to be used by PFS, and the receipt of timely and complete

¹ See "NRC Staff's Status Report and Response to Requests for Hearing and Petitions to Intervene. . . ," dated October 1, 1997, at 5.

responses from PFS to any requests for information which may be transmitted by the Staff during its review." *Id.*

The Staff's projected SER and EIS publication dates, as stated in the October 1997 status report, have not changed as of this time. The Staff's review of the Holtec International and Sierra Nuclear cask designs, and the Staff's review of the PFS application, are continuing; and the Staff continues to believe that its reviews will be completed within the times set forth in its October 1997 status report, based on the previous assumption that cask certification will involve a one-year rulemaking process and that timely, high-quality responses will be provided in response to Staff requests for information. This would result in a projected completion date for the Staff's review of the PFS license application of October 2000.

While the PFS application calls for construction to commence on January 1, 2000, with completion by December 31, 2001,² the Staff believes that the Applicant's proposed schedule is overly optimistic.³ In particular, the Applicant's stated expectation that the licensing and hearing processes will be completed in time to support a construction commencement date of January 2000 fails to properly account for the fact that the PFS application specifies the use of two different transportation/ storage cask systems (HI-STAR/HI-STORM, and TranStor), both of which are presently undergoing generic review and will have to be certified for use through a rulemaking process prior to the completion of the Staff's licensing review for the PFS facility.

² Despite its stated construction schedule, PFS has informed the Staff by letter dated May 18, 1998, that its earliest need-date for storage at the proposed PFS independent spent fuel storage installation (ISFSI) is Calendar Year 2005.

³ See Transcript of Prehearing Conference of May 19, 1998, at Tr. 851.

B. Schedule for Review of the Dual-Purpose Cask Systems.

The staff's estimate for the completion of its review of the Holtec dual-purpose cask system includes consideration of the expected time needed to complete: (1) certification of the Holtec Hi-Star 100 dual-purpose cask (the transportation component to be used for shipping to the PFS facility), and (2) certification of the Holtec Hi-Storm concrete storage cask (to be used at the PFS facility). Although some of the activities associated with these reviews can proceed in parallel, Hi-Star needs to precede Hi-Storm through rulemaking,⁴ and both of those rulemakings (or the TranStor rulemaking) must be completed, along with the SER and FEIS for this facility, before a license may be issued to PFS.⁵

⁴ The Holtec International dual-cask system involves two potential storage casks: (a) Hi-Star 100, a metal storage cask, and (b) the Hi-Storm cask, both of which are compatible with the Hi-Star 100 transportation cask. All three of these casks are being reviewed by the Staff on a generic basis at this time.

⁵ The Staff has prepared a chart depicting the major remaining milestones for the PFS licensing review process, including completion of the Holtec cask certification process. The time line includes the following actual or projected milestone dates: (1) For the PFS application: First Round RAIs - April 1998; PFS responses to RAIs - May, June, September, and December 1998; site-specific SER - October 1999; final SER - September 2000; EIS scoping meeting - June 1998; EIS scoping report - October 1998; DEIS - October 1999; FEIS - September 2000; license recommendation - September 2000 (assumes prior certification of the Hi-Star cask in September 1999, and certification of the Hi-Storm cask in July 2000). (2) For the Hi-Star cask: Response to RAIs - May 1998; commencement of Hi-Star rulemaking - October 1998; issuance of transportation SER - March 1999; issuance of Hi-Star certificate - September 1999. (3) For the Hi-Storm cask: First Round RAIs - December 1998; Second Round RAIs - April 1999; draft SER - July 1999; commence Hi-Storm rulemaking - August 1999; issue Hi-Storm certificate - July 2000. The PFS application references the Sierra Nuclear TranStor dual-purpose cask system in addition to the Holtec system. At this time, it appears that Holtec is further along in the certification process, and the schedule developed by the Staff therefore assumes dates associated with completing certification of the Holtec casks. While the same basic steps would apply to the certification of the Sierra Nuclear dual-purpose cask system, the review completion dates may be different.

C. Likelihood of Review Completion by August 1998.

In its Order of June 5, 1998, the Licensing Board inquired as to the possibility that the Staff could complete portions of its safety review by August 14, 1998, apparently with the goal of advancing to hearing on those issues in late 1998 or early 1999 (*see* Tr. at 852-53; Order of June 5, 1998, at 4). For the reasons set forth below, the Staff does not believe that it would be able to complete particular portions of its review within the time specified by the Licensing Board, nor does the Staff believe it would be able to do so without adversely impacting the schedule for its review of other issues.

In order for the Staff to take a position on particular contentions, its review of the matters embraced by or related to those contentions must first be completed. This will require the prior submission of PFS' responses to the Staff's requests for information and review of those responses by Staff reviewers and management. While many of PFS' responses to first round RAIs were submitted in late May 1998, the Staff's review of those responses has not yet been completed, and the Staff is not yet able to state whether an additional round of questions related to those matters will be required. Further, PFS has indicated that its responses to some of the Staff's RAIs will be submitted in June, September or December 1998; with respect to those responses, the Staff is unable to reliably predict when its review will be completed.⁶

⁶ In its Order of June 5, 1998 (at 5), the Licensing Board requested that the Staff provide its best estimate of the dates by which it would be ready to take a position on specific contentions. The Staff is unable to provide a reliable estimate concerning specific contentions at this time, given the inchoate status of the Staff's review of PFS' response to the Staff's RAIs. The Staff believes that the best estimate as to when it would be able to proceed to hearing on specific contentions is reflected in the litigation schedule that was jointly proposed by the parties in PFS' letter to the Licensing Board of May 27, 1998.

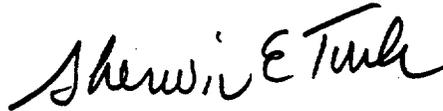
In addition, it should be noted that the Staff's ability to go to hearing on particular contentions is affected not only by the date upon which its review of those issues has been completed, but also by the reviewers' need to complete their review of issues outside the scope of the particular contentions involved in early hearings. Thus, in order to support a hearing on some issues in late 1998 or early 1999, the Staff's reviewers must be able not only to take a position on certain contentions by August 14, 1998, but must also be available to respond to discovery on those contentions, to review materials produced by other parties in response to discovery, to commence the preparation of testimony on those issues, to appear as witnesses in the proceeding, and to assist in developing cross-examination of other parties' witnesses in the proceeding within the six-month period following the statement of a Staff position on specified contentions. As may be expected, these hearing-related tasks are labor-intensive, and would necessarily impact upon the reviewers' availability to complete their licensing reviews of areas not embraced by the particular contentions involved in the first round of hearings.⁷

Given the need for Staff management and Staff reviewers to address matters that are not embraced by the Intervenors' contentions, the Staff is unable to commit to go to hearing on any particular contentions within the time period of interest to the Licensing Board. In this regard, the Staff believes that the establishment of a schedule requiring the Staff to take a position on some contentions in the near-term (*e.g.*, August 1998) would divert Staff resources from its licensing review, and that delays in the issuance of the Staff's SER and DEIS/FEIS will result.

⁷ The Staff notes that while it is reviewing certain parts of the PFS application in-house (*e.g.*, financial aspects, emergency planning, accident analysis, and quality assurance), the Center for Nuclear Waste Regulatory Analyses (CNWRA) is providing technical assistance to the Staff for much of the SER. In addition, Oak Ridge National Laboratory (ORNL) is providing technical assistance to the Staff for development of the EIS.

While the Staff has indicated that it could be ready to take a position on certain site-specific safety contentions by December 31, 1998, so that hearings could commence on those issues in late Summer 1999, even that schedule could involve a diversion of resources from the Staff's review of the PFS application and its certification review of the dual-purpose casks proposed for use at the PFS facility. The Staff does not foresee being able to take a position on specific contentions prior to December 31, 1998.

Respectfully submitted,

A handwritten signature in black ink that reads "Sherwin E Turk". The signature is written in a cursive style with a large, prominent "S" at the beginning.

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 15th day of June 1998

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S STATUS REPORT CONCERNING ITS REVIEW OF THE PFS LICENSE APPLICATION" 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 United States mail, first class, as indicated by an asterisk, with copies by electronic mail as indicated, this 15th day of June, 1998:

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