

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'98 JUN -5 A11:11

Before Administrative Judges:

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

OFFICE OF THE
RULE
ADJUDICATIVE

SERVED JUN - 5 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 5, 1998

MEMORANDUM AND ORDER

(Requesting Additional Scheduling Information)

In attempting to establish schedules for this proceeding that are both fair and efficient, we must consider two factors over which we lack direct control. One is applicant Private Fuel Storage, L.L.C.'s (PFS) proposed schedule for facility construction and operation. Assuming it is based on a realistic assessment of the period needed to complete the regulatory process, the applicant's schedule provides a general time frame within which an agency determination, whether negative or positive, should be rendered regarding the adequacy of its facility licensing request. In addition, as we recognized early in this proceeding, in setting litigation schedules we must pay heed to a pair of ongoing NRC staff activities: the staff's preparation and issuance of its Safety Evaluation Report

(SER) and its draft and final environmental impact statements (DEIS and FEIS). See Licensing Board Memorandum and Order (Initial Prehearing Order) (Sept. 23, 1997) at 2. Agency adjudicatory proceedings generally are not the appropriate forum for litigating the timing of these staff review processes. See Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 201-09 (1978). Nonetheless, 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. Therefore, 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.

It thus is not surprising that in discussing future scheduling for this proceeding with the parties at the recent May 19, 1998 prehearing videoconference, the focus of the Board's inquiry was the status of the applicant's proposed construction/operation schedule and the staff's SER and DEIS/FEIS preparation activities. Tr. at 842-56. From the information we were given early on in this proceeding, it appeared these two schedules are not in "sync." The applicant projected a construction start date of January 1,

2000, while the staff estimates that its SER and DEIS/FEIS processes likely would extend as much as nine months into the year 2000. Compare [PFS], Environmental Report for Private Fuel Storage Facility § 1.3 (rev. 0 June 1997) with NRC Staff's Status Report and Response to Requests for Hearing and Petitions to Intervene Filed by (1) the State of Utah, (2) Skull Valley Band of Goshute Indians, (3) Ohngo Gaudadeh Devia, and (4) Castle Rock Land and Livestock, L.C., et al. (Oct. 1, 1997) at 5. Based on the discussions at the May 19 prehearing conference, this disparity still seems to exist. See Tr. at 850-52.

In fulfilling a commitment to give the Board a proposed discovery schedule after its ruling on the admission of parties and contentions, on May 15, 1998, the parties outlined only a period for informal discovery. See Letter from Ernest L. Blake, Counsel for PFS, to Licensing Board (May 15, 1998) [hereinafter Blake Letter]. As a consequence, at the prehearing conference we requested they provide us with a fuller proposal that included a discovery cutoff date. See Licensing Board Memorandum and Order (Memorializing Prehearing Conference Rulings) (May 20, 1998) at 1 [hereinafter Licensing Board Order].

In response, the parties submitted a May 27, 1998 filing that suggests breaking the proceeding into two phases. See Letter from Ernest L. Blake, Counsel for PFS, to Licensing Board (May 20, 1998). The first would consist

of eight SER-related safety issues for which discovery would close on March 1, 1999. The second would include the balance of the safety issues, which are not likely to be done in time for phase one because of SER preparation considerations, and all environmental issues. Discovery on this phase also would close on March 1, except for discovery against the staff on any outstanding safety or environmental issues. Discovery on the remaining safety issues would close on June 30, 1999. For the environmental issues, PFS suggests a discovery cutoff against the staff that is tied to issuance of the DEIS, while the staff and the State of Utah (State) support an end date that is tied to issuance of the FEIS.

After reviewing these two submissions, the first of which included as an attachment the schedule for applicant responses to the staff's April 1, 1998 requests for additional information (RAI) regarding the PFS license application and Safety Analysis Report (SAR), it now appears to us that a three-phase proceeding may be the most efficient approach. The first phase would envelope the eight "Group I" safety issues, the second would include the remaining "Group I" safety issues, and the third would involve the parties' environmental contentions. Hearings on the first eight safety issues would begin late this year or early next year, with hearings on the other issues to follow at appropriate intervals thereafter.

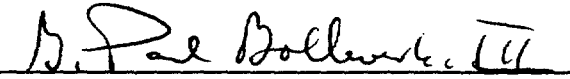
To this end, we need additional information from the staff relative to the eight "Group I" safety issues: Utah B; Utah C; Utah F/Utah P; Utah G; Utah K/Castle Rock 6/Confederated Tribes B; Utah M; Utah N; and Utah R. Certain questions in the staff's April RAI, to which PFS already has responded or will soon respond, appear to be relevant to some of these contentions (e.g., Utah C and RAI 8-8), while other contentions seemingly were not implicated in any of the staff's inquiries (e.g., Utah G). In this light, we would like to know whether the staff will be prepared on or before Friday, August 14, 1998, to take a position on any or all of these contentions such that discovery on any or all of these issues could be closed on or before Thursday, October 1, 1998. If the staff is not prepared to take a position on one or more of these contentions by August 14, we would like to have a specific explanation detailed the reasons why not and the staff's best estimate of the date or dates on which it would be prepared to take a position on each of those contentions. In addition, we would appreciate receiving more specific information on when the staff will ready to take a position on the five remaining safety issues: Utah E/Castle Rock 7/Confederated Tribes F; Utah H; Utah L; Utah S/Castle Rock 7; and Utah GG.

The staff should provide us with this information as part of the previously requested June 15, 1998 status report

on the preparation schedules for the PFS SER and DEIS/FEIS and the Holtec cask SER. See Licensing Board Order at 1-2.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD*


G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

June 5, 1998

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

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Docket No.(s) 72-22-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O--REQ. ADD'L SCHED'G... 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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Dated at Rockville, Md. this
5 day of June 1998

Adria T. Byrdson
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