UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY
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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, L.L.C.	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel Storage Installation)	January 6, 1998

MEMORANDUM AND ORDER
(Granting Leave to File Reply Pleadings and Requesting Information)

Pending before the Licensing Board are motions filed by petitioner State of Utah (State) and petitioners Castle Rock Land and Livestock, L.C., and Skull Valley Co., LTD. (Castle Rock/Skull Valley), on December 30 and December 31, 1997, respectively, requesting leave to file replies to the December 24, 1997, responses of applicant Private Fuel Storage, L.L.C. (PFS), and the NRC staff to these petitioners' contentions.[1] The petitioners also request they be given until January 22, 1998, to submit these

[1] Although petitioner Ensign Ranches of Utah, L.C., joined Castle Rock/Skull Valley in seeking intervention and in the first five of their contentions, as PFS points out it apparently does not join in the motion for leave to reply. This has no practical effect, however, since Castle Rock/Skull Valley joined in each of the contentions that would be covered by any reply pleading.

pleadings. In January 5, 1998 responses to the State and Castle Rock/Skull Valley motions, both PFS and the staff oppose the requests and the proposed filing deadline.

Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521 (1979), the principal authority discussed by the movants, PFS, and the staff in their filings, stands for the proposition that when there is an objection to the admissibility of a proffered contention, a presiding officer generally should afford the sponsoring party some additional opportunity to be heard in support of the contention. As both PFS and the staff point out, the prehearing conference scheduled to begin some three weeks hence will afford the State and Castle Rock/Skull Valley (as well as the other petitioners who have submitted contentions) just such an opportunity. Thus, denying the requests of the State and Castle Rock/Skull Valley to file a reply clearly would not run afoul of the Allens Creek guidance.

In this instance, however, there is an additional factor that supports permitting petitioners State and Castle Rock/Skull Valley to submit a written reply prior to the prehearing conference. The contentions of the State and Castle Rock/Skull Valley run some 150 pages. PFS and the staff responses to those contentions likewise are sizable, numbering more than 500 pages. With this mass of material, it is not untoward to anticipate that prehearing conference

arguments by the participants relative to these contentions will be lengthy. By permitting the State and Castle Rock/Skull Valley to file a reply, we would afford them the opportunity to identify the critical matters in dispute, thereby helping to focus and shorten the discussion at the prehearing conference. With this goal in mind, we thus are inclined to grant their request.

At the same time, we find the filing schedule proposed by the petitioners to be unrealistic. The usefulness of their reply pleading will be significantly diminished if the Board does not have an adequate opportunity to digest their submission prior to the January 27, 1998 start of the prehearing conference. Particularly given the other filings that are yet to be made, including PFS and staff responses to security plan and late-filed contentions submitted by the State, a somewhat shorter filing date for any reply pleadings is appropriate.

Accordingly, the Board grants the request of the State and Castle Rock/Skull Valley for leave to file a reply. Their replies, which should be limited to the admissibility of the contentions each sponsored ab initio and the propriety of their adoption by reference of other participants' contentions (as opposed to the admissibility

of those adopted contentions),[2] shall be filed on or before Friday, January 16, 1998.

As part of their replies, petitioners State and Castle Rock/Skull Valley should address the PFS suggestions for redrafting their contentions to include subcontentions. In addition, in their replies the State and Castle Rock/Skull Valley, should provide the Board with a listing classifying each of the contentions they proposed ab initio under one of the following four categories:

1. Safety -- relates primarily to matters discussed in the PFS Safety Analysis Report (SAR).

2. Environmental -- relates primarily to matters discussed in the PFS Environmental Report (ER).

3. Emergency Planning -- relates primarily to matters discussed in the PFS Emergency Plan (EP).

4. Other -- does not fall into one of the three categories outlined above.

Finally, on or before Friday, January 16, 1998, petitioner Ohngo Gaudadeh Devia (OGD) and petitioners Confederated Tribes of the Goshute Nation and David Pete (Confederated Tribes/Pete), who also have challenged the PFS application but have not requested the opportunity to file a reply to the PFS and staff responses to their contentions, should provide the Board with a filing that (1) indicates whether they object to the PFS suggestions for redrafting

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[2] In this filing, the State may provide any response to the December 31, 1997 "Applicant's Answer to State of Utah's Late-Filed Contentions."

their contentions to include subcontentions; and (2) classifies each of the contentions they proposed ab initio under one of the four categories specified above.

The filings required or permitted under this memorandum and order should be served on the Board, the Office of the Secretary, and counsel for the other participants by facsimile transmission, e-mail, or other means that will ensure receipt by close of business (4:30 p.m. EST) on the day of filing. See Licensing Board Memorandum and Order (Initial Prehearing Order) (Sept. 23, 1997) at 5-6 (unpublished); Licensing Board Memorandum and Order (Additional Guidance on Service Procedures) (Nov. 19, 1997) (unpublished).

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD[3]

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

January 6, 1998

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[3] 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, OGD, Confederated Tribes/Pete, Castle Rock/Skull Valley/Ensign Ranches, 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.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of 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 (GRANTING LEAVE...) 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
6 day of January 1998

Adria T. Byrdsong
Office of the Secretary of the Commission