

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY LICENSING BOARD

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In the Matter of: )

) Docket No. 72-22-ISFSI

PRIVATE FUEL STORAGE, LLC )  
(Independent Spent Fuel )  
Storage Installation) )

) ASLBP No. 97-732-02-ISFSI

) October 1, 1997

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STATE OF UTAH'S MOTION FOR EXTENSION  
OF TIME TO FILE CONTENTIONS

INTRODUCTION

The State of Utah hereby requests a 45-day extension of the October 24, 1997, deadline for filing of contentions established in the Licensing Board's Order dated September 23, 1997. Consideration of this motion is requested in the event the Board denies the State's concurrently filed Motion to Suspend Licensing Proceeding Pending Establishment of a Local Public Document Room and Applicant's Submission of a Substantially Complete Application, and Motion for Re-Notice of construction Permit/Operating License Application (October 1, 1997) (hereinafter "Motion to Suspend Licensing Proceeding"). An extension of 45 days is required in order to provide the State's attorneys and experts with a minimally adequate amount of time to review licensing documents and prepare contentions.

As required by the Board's September 23 Order, the State has contacted counsel for the other parties to the proceeding regarding this motion. Petitioners Castle Rock

Land and Livestock, L.C. *et al*; Ohngo Gaudadeh Devia; and Confederated Tribes of the Goshute Reservation and David Pete, support the motion. The Nuclear Regulatory Commission ("NRC") Staff does not object to a 30-day extension, with Staff responses due by December 22. The Applicant and the Skull Valley Band of Goshute Indians oppose the motion. The Applicant expects to file a response to this motion by early next week.

### STATEMENT OF FACTS

On June 25, 1997, the Applicant, Private Fuel Storage, L.L.C. ("PFS"), filed a license application seeking NRC approval for construction and operation of an Independent Spent Fuel Storage Installation ("ISFSI") on the Skull Valley Reservation in Utah. If licensed, the facility would be unprecedented in size, storing up to 4,000 casks of spent fuel (40,000 metric tons of uranium) on the site.<sup>1</sup> The spent fuel would be shipped to the facility by rail and truck from all over the country, through Salt Lake City and along watershed areas and other waterways. At various points, the casks must also be transferred from one mode of shipping container to another (intermodal transfer), and from shipping container to storage container.

The State received a copy of the application on June 25, and immediately petitioned the NRC Staff to reject the application because the Applicant had failed to

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<sup>1</sup> This is more than the inventory of spent fuel at all the nuclear power plants in the United States, which amounts to 30,000 metric tons. *See* Motion to Suspend Licensing Proceeding, note 2.

comply with NRC regulations requiring it to provide 60 days' notice to offsite emergency response organizations before submitting the emergency plan to the NRC. State of Utah's 2.206 Petition (June 27, 1997). On July 21, 1997, the State also petitioned the NRC Staff to reject the application on the ground that it either completely failed to address a number of major regulatory requirements or discussed them so superficially as to be meaningless. *See* Motion to Suspend Licensing Proceeding at pp. 11-14.

Ignoring these requests, the NRC announced its acceptance of PFS's application on July 22, 1997.<sup>2</sup> On July 31, 1997, the NRC published a "Notice of Consideration of Issuance of a Materials License for the Storage of Spent Fuel and Notice of Opportunity for a Hearing." 62 Fed. Reg. 41,099. The hearing notice set a deadline of September 15, 1997, for the filing of hearing requests and petitions to intervene. The State filed its Request for Hearing and Petition for Leave to Intervene on September 11, 1997.

At a meeting held by PFS in Tooele County on September 11, the State learned for the first time that some time in July, PFS had submitted a multi-volume calculation package to the NRC. The package contained about 1,500 pages of computations concerning such significant matters as storage pad parameters, cask stability, ground

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<sup>2</sup> On August 6, 1997, the Staff finally responded to the State's 2.206 petitions with a letter stating that the concerns raised by the State related to licensing, not enforcement. Letter from Charles E. Haughney to Dianne R. Nielson. *See* Motion to Suspend Licensing Proceeding, Exh. 4.

motion and settlement, storage pad analysis, geotechnical design criteria and parameters, meteorology, radiation protection, and dose calculations. Upon the State's request, PFS provided a copy of the calculations on September 22, 1997.

On September 23, 1997, the Board issued an order establishing various procedural deadlines and requirements, including a deadline of October 24, 1997, for the filing of contentions. The Board also announced the scheduling of the first Prehearing Conference for the week of November 17, 1997.

### ARGUMENT

As discussed below, for a number of reasons, an extension of 45 days is needed to provide the State with a minimally adequate opportunity to review and prepare contentions on the license application and related documents. Moreover, such an extension would cause no harm to the Applicant.

First, the State and other petitioners need additional time to review the extensive technical documents that must be evaluated in order to effectively prepare their contentions. The license application itself constitutes a multi-volume document, addressing numerous complex technical issues. Moreover, as discussed in the attached Motion to Suspend Licensing Proceeding at pp. 11-14, the difficulty of reviewing these complex documents is exacerbated by the various significant omissions and the superficiality with which licensing issues are discussed.

In addition to the license application itself, there are other documents that must

be reviewed, such as the calculation package containing quantitative analyses of a number of significant licensing issues. The State did not receive these documents until the third week of September. In addition, there are numerous other supporting documents that must be obtained and reviewed in order to comment on the license application, including geotechnical and hydrological reports, past Environmental Impact Statements, and demographic and census data. *See e.g.*, ER pp. 2.11-1 to 10. The supporting documents also include the Safety Analysis Reports ("SARs") for the TranStor Shipping Cask System (Docket 71-9268) and the TranStor Storage Cask System (Docket 72-1023), as well as documents relating to the NRC's review of the safety of these casks. The time provided by the Board's September 23 Order is insufficient to permit acquisition or an adequate review of these voluminous and complex technical documents.

Second, the State needs additional time in order to obtain access to important licensing documents relied on in the application but which are not currently publicly available. For instance, both the SAR for the Holtec storage, transport, and repository cask system (Docket 71-9261) and the SAR for the Holtec storage and transfer operation reinforced module cask system (Docket 72-1014) are used extensively in the Applicant's Safety Analysis Report and both are proprietary. In order to obtain these documents, the State must enter into proprietary agreements with the storage systems vendors and this process may take some time.

Third, the time provided by the Board for filing contentions is insufficient to allow the State to retain the experts and coordinate in-State experts needed to evaluate such highly technical issues as site suitability, and accident risks posed by transportation, cask transfer, and storage. The NRC should appreciate that as a governmental entity the State must work through budgetary procedures to obtain supplemental funding and through the procurement system to hire outside experts. The State has gone forward as quickly as possible to obtain additional funding and hire outside experts. For several months, the State has proceeded diligently to identify potential experts and solicit their proposals. The State is now in the process of establishing agreements with experts, which will give the experts less than two weeks to review and comment on the license application and related documents.<sup>3</sup> It is simply infeasible for the experts to conduct their review in such a short amount of time.

Fourth, an extension is warranted to give the State and other petitioners sufficient time to develop contentions regarding the extremely important safety and environmental issues raised by this proceeding. The facility proposed by PFS is unprecedented in nature and size. It will involve the shipment of huge amounts of highly radioactive waste across the State of Utah. In order to raise their significant safety and environmental concerns about the proposed facility in this hearing,

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<sup>3</sup> The State anticipates that it will need to request the views of the experts by October 15, in order to have sufficient time to prepare the contentions based on their views.

petitioners bear a heavy burden of pleading contentions with specificity, and supporting them with sufficient documented facts and/or affidavits to demonstrate that "a genuine dispute exists with the applicant on a material issue of law or fact." 10 C.F.R. § 2.714(b). This crucial threshold pleading of contentions will, for the most part, define the scope of the entire proceeding. Therefore, additional time is needed in order to ensure that the State and other petitioners have an adequate opportunity to thoroughly evaluate and address the risks posed by this large and unprecedented facility.

Finally, the requested 45-day extension until December 8 would cause no harm to the Applicant. As discussed at length in the State's Motion to Suspend Licensing Proceeding, the application is far from complete, and indeed should never have been docketed.<sup>4</sup> The application must be significantly amended before it is ready for any litigation on its merits, a process that will undoubtedly take much longer than the extension requested by the State. In fact, the Staff does not anticipate completing its own review for a matter of years. As counsel for the NRC Staff recently informed the State, the Staff does not expect to issue a Draft Environmental Impact Statement ("EIS") until approximately two years from now, with a Final EIS to follow six months to a year afterwards. The Staff does not expect to issue the Safety Evaluation Report until approximately three years from now. Clearly, in a case that will not be

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<sup>4</sup> See the State's 2.206 Petition, attached to Motion to Suspend Licensing Proceeding as Exhibit 3.

ready for litigation for another three years, there is ample room for a 6-week extension to file the critical pleading that will define the scope of the entire hearing.

### CONCLUSION

For the foregoing reasons, in the event that the Board denies the State's Motion to Suspend Licensing Proceeding, the State respectfully requests the Board to grant an extension of 45 days, or until December 8, 1997, to file contentions. In addition, the State requests the Board to reschedule the Prehearing Conference accordingly.

DATED this 1st day of October, 1997

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of "STATE OF UTAH'S MOTION OF EXTENSION OF TIME TO FILE CONTENTIONS," dated October 1, 1997, were served on the persons listed below by Federal Express (unless otherwise noted) with conforming copies by hand delivery to those indicated by asterisk:

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Dated this 1st day of October, 1997.



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