August 10, 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
	)	
(Private Fuel Storage Facility)	)	ASLBP No. 97-732-02-ISFSI

APPLICANT'S COMMENTS ON COMMISSION POLICY STATEMENT ON CONDUCT OF ADJUDICATORY PROCEEDINGS

In accordance with the Memorandum and Order (Opportunity for Comments on Commission Policy Statement on Conduct of Adjudicatory Proceedings) issued July 31, 1998 by the Atomic Safety and Licensing Board ("Board"), Applicant Private Fuel Storage L.L.C. ("Applicant") hereby provides the following comments on the Commission's Policy Statement on the Conduct of Adjudicatory Proceedings as it relates to the Board's June 29, 1998 Memorandum and Order setting forth the general schedule and associated guidance for this proceeding ("June 29 Order"). As set forth below, the Commission's new guidance does not require any changes to the Board's June 29 Order as proposed to be modified by the Applicant and the Staff in "Applicant's Comments on General Schedule for Proceeding and Associated Guidance," filed July 7, 1998.

The Commission's guidance provides that generally "any evidentiary hearing should not commence before the completion of the staff's Safety Evaluation Report

(SER) or Final Environmental Assessment (FES) regarding an application, unless the presiding officer finds that beginning earlier . . . will indeed expedite the proceeding, taking into account the effect of going forward on the staff's ability to complete its evaluations in a timely manner." Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC __, slip op. at 5, 63 Fed. Reg. 41,872, 41,874 (Aug. 5, 1998).[1] The Board's June 29 Order does provide for evidentiary hearings and discovery against the Staff on safety related contentions before the issuance of the SER; however, the hearings and the related discovery cut-off dates against the Staff set forth in the Order are based on the Staff's projection of the completion of its review on those matters that are to be the subject of the hearing and of its capability to both support the hearing and the timely completion of its evaluations.[2] Moreover, the conducting of discovery against the Staff and the holding of hearings prior to the issuance of the SER will certainly expedite this proceeding as it will avoid hearing and resolving all or most of the safety issues at the same time[3] and in close proximity to the filings and proceedings (summary

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[1] The Commission's guidance similarly provides that discovery against the Staff should generally commence for safety issues upon the issuance of the SER and for environmental issues upon issuance of the FES unless the presiding officer has found that starting discovery against the staff before its review documents are issued will expedite the hearing. CLI-98-12, slip op. at 10, 63 Fed. Reg. at 41,875.

[2] See May 27, 1998 Letter from Counsel for Applicant re "Proposed Discovery and Other Schedules" at 1 ("The Staff notes that [its] proposed cut-off of discovery against the Staff set forth below reflects its current projection as to when its review of those matters will be completed."); June 17, 1998 Prehearing Tr. at 915-17. The Board's June 29 Order adopts the cut-off dates for discovery against the Staff with respect to safety related contentions as proposed by the Staff in the May 27 letter and at the June 17, 1998 prehearing conference.

[3] The Staff indicated at the June 17 prehearing conference that it currently envisions issuing two SERs, a site-specific SER currently scheduled for issuance in October 1999 and a final SER dealing with matters

disposition, prefiled direct testimony, hearing, and finding of facts and conclusions of law) scheduled for resolving the environmental contentions.[4]

Nor does the Commission expect the Board to modify, at least in the present circumstances, the schedule for this proceeding in light of its new guidance set forth in CLI-98-12. In discussing this new guidance in CLI-98-13, the Commission stated that "[i]f at any point the NRC staff submits to the Board a sworn affidavit or declaration indicating that hearing, discovery, or other adjudicatory requirements are significantly disrupting or delaying the staff reviews, we would expect the Board to consider staying proceedings or otherwise modifying adjudicatory deadlines or schedules to accommodate the need for a prompt and thorough NRC staff review." CLI-98-13, 48 NRC __, slip op. at 13 (July 30, 1998). Here, as stated above, the Board's schedule is based on the Staff's current projections of its capability to support the existing schedule as well as its other review functions.

The Commission's new guidance also provides that "[b]oards should forego the use of motions for summary disposition, except upon a written finding that such a motion

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impacted by cask certification issues currently scheduled for issuance in September 2000. It is not exactly clear, however, within which SER the various contention issues would fall. See June 17, 1998 Prehearing Tr. at 918-20.

[4] Although for environmental contentions the Board's schedule does not provide for the commencement of hearings before the issuance of the FES, it does provide for a two-month discovery period against the Staff following issuance of the Draft Environmental Statement ("DES") followed by an additional one-month period of discovery against the Staff following the issuance of the FES. Allowing discovery against the Staff after the DES but prior to the issuance of the FES does expedite this proceeding as it permits a shorter period of discovery following the issuance of the FES. See "NRC Staff's Response to the State of Utah's Comments on the Scheduling Order of June 29, 1998" at 1-2, dated July 9, 1998.

will likely substantially reduce the number of issues to be decided, or otherwise expedite the proceeding." CLI-98-12, slip op. at 5, 63 Fed. Reg. at 41,873-74. The Commission is evidently concerned that interposing summary disposition motions between the end of discovery and the start of hearings could lengthen the overall proceeding. However, the Board has established a schedule which both encourages the early filing of summary disposition motions and establishes a set, maximum timeframe for the handling and resolution of summary disposition motions. The modifications proposed in "Applicant's Comments on General Schedule for Proceeding and Associated Guidance" dated July 7, 1998 (and adopted by the Staff) would allow earlier filing of appropriate summary disposition motions. The Applicant believes that appropriate summary disposition motions can potentially reduce the number of issues to be heard and thereby expedite the proceeding by reducing the length of the hearing and the subsequent time required for the filing of findings of fact and conclusions of law and the Board's issuance of its decision.[5] Moreover, even if a summary disposition motion is not granted, it is likely to clarify and focus the issues for hearing, thereby expediting the hearing process. Accordingly, the Board's schedule -- which provides a strict timeframe for the filing and resolution of

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[5] The Applicant does not believe that the number of issues needs to be "substantially reduce[d]," as suggested by the Commission's guidance, in order to expedite the proceeding, particularly where, as here, the Board has encouraged the early filing of summary disposition motions and has a set timeframe for their resolution, which the Applicant is sure will be met given the Board's continuing dispatch in rendering prompt decisions on matters before it.

summary disposition motions -- should continue to provide for the filing of such motions, but modified as proposed in Applicant's comments on the June 29 Order.

Respectfully submitted,

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Dated: August 10, 1998

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Applicant's Comments on Commission Policy Statement on Conduct of Adjudicatory Proceedings," dated August 10, 1998, were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 10th day of August 1998.

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