

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, LLC)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel)	
Storage Installation))	August 10, 1998

**STATE OF UTAH'S COMMENTS ON BOARD'S JUNE 29, 1998
SCHEDULING ORDER IN LIGHT OF CLI-98-12**

The State of Utah hereby files its comments in response to the Licensing Board's July 31, 1998, Memorandum and Order (Opportunity for Comments on Commission Policy Statement on Conduct of Adjudicatory Proceedings). The Board's order invites the parties to comment on the Board's June 29, 1998, scheduling order in light of the Commission's policy statement in CLI-98-12, Statement of Policy on Conduct of Adjudicatory Proceedings (July 29, 1998).

In general, the Licensing Board's scheduling order appears to be consistent with the directives of CLI-98-12. There are some exceptions, however. The Commission discourages the use of summary disposition. CLI-98-12 at 4. It also states that:

any evidentiary hearing should not commence before completion of the staff's Safety Evaluation Report (SER) or Final Environmental Statement (FES) regarding an application, unless the presiding officer finds that beginning earlier, e.g., by starting the hearing with respect to safety issues prior to issuance of the SER, will indeed expedite the proceeding, taking into account the effect of going forward on the staff's

ability to complete its evaluation in a timely manner.

Id. at 6. The schedule for this case, where the Board focuses on the date of the completion of the Staff's review rather than the issuance of the SER, may not expedite the proceeding, given the potential effect of going forward on the Staff's ability to complete its technical review.

The Commission states that only a single round of discovery should be allowed against the Staff. CLI-98-12. The State believes that, given the complexity of issues in this case, a single round of discovery against the Staff is likely to be insufficient to allow thorough exploration of the basis for the Staff's conclusions regarding the adequacy of the application and its compliance with NEPA. The Staff is a major party to the case, whose views on the PFS license application will be entered in the record and weighed with the other evidence. It would violate the Intervenors' right to a meaningful hearing and be inconsistent with the Federal Rules of Civil Procedure if the Staff were permitted to present evidence which Intervenors had not had an adequate opportunity to uncover in the discovery process. Moreover, the Commission's guidance is to "ensure a prompt yet fair resolution of contested issues in adjudicatory proceedings." CLI-98-12 at 4. Only one round of discovery against the Staff relating to the voluminous and complex final EIS and SER that will be developed in this case will not meet the foregoing objectives.

Another troubling aspect of the Commission's guidance is that, except for

establishment of the case file, Licensing Boards generally should "suspend discovery against the staff until the staff issues its review documents regarding the application." CLI-98-12 at 9. Whether or not it has reached a conclusion regarding the application, the Staff is likely to have important documents and information, in addition to the case file, that should be disclosed to the other parties as early in discovery as possible. The informal discovery process established by this Licensing Board allows such discovery without putting an onerous burden on the Staff. The State believes that in this particular case the approach taken by the Board is more expeditious and is likely to encourage a more meaningful hearing than the general approach suggested by the Commission.

DATED this 10th day of August, 1998.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of STATE OF UTAH'S COMMENTS ON BOARD'S JUNE 29, 1998 SCHEDULING ORDER IN LIGHT OF CLI-98-12 were served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class (unless otherwise noted), this 10th day of August, 1998:

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