

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
ASMP

ATOMIC SAFETY AND LICENSING BOARD

'98 DEC 23 P2:10

Before Administrative Judges:

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

OF
ADJUTANT

SERVED DEC 23 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

December 23, 1998

MEMORANDUM AND ORDER
(Revised General Schedule)

The Board has before it (1) the December 1, 1998 request of intervenor State of Utah (State) to extend the informal discovery period; and (2) the proposals of applicant Private Fuel Storage, L.L.C., (PFS) and the NRC staff to revise the June 29, 1998 general schedule as discussed during the December 11, 1998 prehearing conference, Tr. at 1007-48 & exh. 1. For the reasons set forth below, we grant the requested informal discovery extension and revise the general schedule for this proceeding. A new version of that schedule is included as Attachment A to this issuance.

Administrative Judge
G. Paul Bollwerk, III, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

I. BACKGROUND

In support of its informal discovery extension request, the State cited a November 24, 1998 joint discovery status report, which noted that the applicant's responses to the seismic portion of the staff's April 1, 1998 requests for additional information (RAI) was being delayed from mid-December 1998 to mid-January 1999, and a November 24, 1998 staff letter to the Board in which the staff indicated it would be issuing second round RAIs relating to some of the issues in Group I and Group II, as those contention groups were established in the June 1998 general schedule. Thereafter, in its December 7 response to the State's motion, PFS declared that as a result of discussions among counsel, it appeared that for the scheduled August 1999 hearing on Group I issues, the staff would be prepared to go to hearing on only one or two contentions. While expressing its desire to move forward expeditiously, the applicant nonetheless declared it made more sense to postpone the hearing until a greater number of contentions could be heard. PFS further advised that counsel were discussing an alternative schedule and requested that the matter of revising the June 1998 general schedule be discussed at the already-scheduled December 11, 1998 prehearing conference.

On December 10, both PFS and the staff circulated by e-mail versions of a revised schedule, which the Board and the parties discussed at some length during the prehearing conference the next day. The matters in controversy included the timing of any informal discovery cutoff relative to the applicant's RAI responses; the timing for filing summary disposition motions; and the contentions to be included in Group I and Group II.

II. DISCUSSION

Under the informal discovery cutoff date established in the revised schedule, the intervenors should have some opportunity for informal discovery relative to applicant responses to all outstanding staff RAIs. There is the possibility that applicant responses to these pending RAIs will be delayed or the staff will issue further RAIs that require additional responses. If that occurs, the parties are free to request appropriate relief from the Board.¹

¹ Also with respect to discovery, when we previously requested party comments on the impact of the Commission's July 28, 1998 policy statement on expediting the hearing process, CLI-98-12, 48 NRC 18 (1998), the staff recognized but posed no objection to discovery regarding its draft environmental impact statement (DEIS), declaring that "the net result could be to expedite the proceeding" NRC Staff's Comments on the Schedule in Light of the Commission's Policy Statement on the Conduct of Adjudicatory Proceedings (CLI-98-12) (Aug. 10, 1998) at 6. Now, citing that same policy statement, the staff asserts that such discovery would not be useful. See Tr. at 1033-34.

(continued...)

In connection with the timing of summary disposition, we adopt the applicant's proposed schedule relative to the Group I contentions. Formal discovery against all parties except the staff closes on May 28, 1999. From our discussions with the parties, it appears that only the applicant and the staff are likely to seek summary disposition. See Tr. at 1024-25. They should be able to do so within thirty days of the end of formal discovery against the intervening parties, the time period established under the original schedule. (In fact, with the incentives we have established for early filing, see Licensing Board Memorandum and Order (Additional General Schedule Guidance and Informal Discovery Status Conference Schedule) (Aug. 20, 1998) at 5-8, PFS or the staff may wish to seek summary disposition well before that date.) Further, because discovery will still be ongoing against the staff, an intervenor may utilize that opportunity to gather information necessary to oppose any dispositive motion. We thus see no compelling reason why the applicant's summary

¹(...continued)

We have retained the schedule's provisions for DEIS-related discovery. Given the policy statement's recognition that discovery may commence prior to issuance of a final EIS if it would expedite the proceeding, CLI-98-12, 48 NRC at 24, we believe further justification is needed to support rescinding DEIS-related discovery in toto. Nonetheless, to avoid DEIS-related discovery interfering with other ongoing activities, we have now confined it to a period in the spring of 2000.

disposition schedule, and the dates that flow from it relative to pre-filed testimony and hearing dates, should not be adopted.²

Finally, concerning the contentions to be litigated in Group I and Group II, we see no reason at this juncture to change the original designation of issues jointly proposed by the parties. The scheduling changes in this instance are the result of events relating to the staff review process, not intervenor actions. We perceive no compelling justification for imposing the additional preparation burden this change seemingly would entail, particularly when it is not apparent that the time frame allotted under the revised schedule for the litigation of Group II issues is inadequate

² The staff has suggested that an important factor in setting this schedule is the planned October 30, 1999 date for issuance of the draft PFS site Safety Evaluation Report (SER). See Tr. at 1025-26. Because the staff will already have taken a position on, and been subject to discovery regarding, the Group I SER-related matters at issue in this proceeding, we see no basis for entailing the nearly two-month delay that would accrue awaiting issuance of that document.

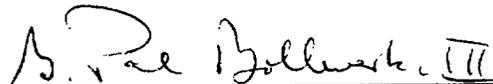
Regarding the applicant's summary disposition schedule, we are cognizant that it may involve an intervenor in simultaneous endeavors -- taking discovery against the staff and responding to a dispositive motion. That, however, is a possibility even under the staff's proposed schedule because there is no stricture on how early a party may move for summary disposition.

to accommodate all the issues originally designated in that group. See Tr. at 1038-40.

For the foregoing reasons, it is this twenty-third day of December 1998, ORDERED, that:

1. The State's December 1, 1998 motion to extend the informal discovery period is granted in accordance with the revised general schedule set forth in Attachment A to this order.
2. The general schedule for this proceeding is revised as set forth in Attachment A to this order.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD³



G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

December 23, 1998

³ Copies of this order were sent this date by Internet e-mail transmission to counsel for (1) the applicant PFS; (2) intervenors Skull Valley Band of Goshute Indians, Ohngo Gaudadeh Devia, Confederated Tribes of the Goshute Reservation, Castle Rock Land and Livestock, L.C./Skull Valley Company, LTD., and the State; (3) petitioner Southern Utah Wilderness Alliance; and (4) the staff.

ATTACHMENT A

EVENT	GROUP I ¹	GROUP II ²	GROUP III ³
Informal Discovery Begins -- All Parties	May 19, 1998	May 19, 1998	May 19, 1998
Informal Discovery Closes -- All Parties	February 28, 1999	February 28, 1999	February 28, 1999
Staff Position on Contentions	June 15, 1999	October 15, 1999	DEIS -- October 30, 1999 FEIS -- September 30, 2000
Formal Discovery Begins -- All Parties	March 1, 1999	March 1, 1999	March 1, 1999, except (1) DEIS-related discovery against Staff -- March 6, 2000; and (2) FEIS-related discovery against Staff -- begins on FEIS issuance date
Formal Discovery Ends -- All Parties Except Against Staff	May 28, 1999	May 28, 1999	May 28, 1999
Formal Discovery Ends -- Against Staff	August 13, 1999	May 15, 2000	DEIS -- May 15, 2000 FEIS -- November 30, 2000
Summary Disposition Motions Final Filing Date	June 28, 1999	March 31, 2000	December 1, 2000
Summary Disposition Motion Responses Final Filing Date	July 28, 1999	May 1, 2000	January 2, 2001
Board Summary Disposition Decision	August 30, 1999	May 31, 2000	February 1, 2001
Pre-filed Testimony Submitted	October 1, 1999	June 30, 2000	March 2, 2001
In Limine Motions Due	October 15, 1999	July 14, 2000	March 16, 2001
Hearings (including limited appearance sessions as appropriate)	November 1 - December 31, 1999	July 31 - September 1, 2000	April 2 - May 31, 2001
Findings of Fact (Simultaneous filings)	February 1, 2000	October 2, 2000	July 2, 2001
Findings of Fact Responses (Simultaneous filings)	March 2, 2000	November 1, 2000	August 1, 2001
Initial Decision	May 1, 2000	December 31, 2001	October 1, 2001

¹ The contentions in Group I include Utah B; Utah C; Utah F/Utah P; Utah G; Utah K/Castle Rock 6/Confederated Tribes B; Utah M; Utah N; Utah R; Security-A; Security-B; and Security-C.

² The contentions in Group II include Utah E/Castle Rock 7/Confederated Tribes F; Utah H; Utah L; Utah S/Castle Rock 7; Utah GG.

³ The contentions in Group III include Utah O/Castle Rock 8 and 10; Utah T/Castle Rock 10, 12, and 22; Utah U; Utah V; Utah W; Utah Z; Utah AA/Castle Rock 13; Utah DD/Castle Rock 16; Castle Rock 17; Castle Rock 20; Castle Rock 21; and OGD O.

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PRIVATE FUEL STORAGE, LLC

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (REV'D GENERAL SCHEDULE 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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Washington, DC 20555

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**Docket No.(s)72-22-ISFSI
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**Dated at Rockville, Md. this
23 day of December 1998**


Office of the Secretary of the Commission