

June 11, 1999

**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-ISFSI
	)	
(Private Fuel Storage Installation)	)	ASLBP No. 97-732-02-ISFSI

**APPLICANT'S MOTION FOR SUMMARY DISPOSITION  
OF CONTENTIONS UTAH SECURITY-A AND  
SECURITY-B, AND PARTIAL SUMMARY DISPOSITION  
OF CONTENTION UTAH SECURITY-C**

**I. INTRODUCTION**

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") files this motion for summary disposition pursuant to 10 C.F.R. § 2.749 of Contentions Utah Security-A and Security-B, and partial summary disposition of Contention Utah Security-C, all alleging failure of Tooele County to properly approve a cooperative agreement providing the Tooele County sheriff's office with law enforcement authority on the Skull Valley Goshute Reservation. Summary disposition is warranted on the grounds that there exists no genuine issue as to any material fact relevant to these contentions and therefore, under the applicable Commission regulations, the Applicant is entitled to a decision as a matter of law. This motion is supported by a Statement of Material Facts as to which PFS asserts there is no genuine dispute and certified copies of the Cooperative Law

Enforcement Agreement ("CLEA"),<sup>1</sup> the Tooele County resolution approving the agreement,<sup>2</sup> and the minutes of the Tooele County Board of Commissioners meeting at which the resolution was approved.<sup>3</sup>

## II. STATEMENT OF THE ISSUES

On August 5, 1998, the Atomic Safety and Licensing Board ("Licensing Board" or "Board") admitted Contentions Utah Security-A and Security-B, and part of Contention Utah Security-C,<sup>4</sup> all alleging failure of Tooele County to properly approve the CLEA providing the Tooele County sheriff's office with law enforcement authority on the Skull Valley Goshute Reservation. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-17, 48 NRC 69, 76-77 (1998). The basis for all three contentions, as admitted by the Board, is that "Utah Code Annotated section 11-13-5 requires that a public agency entering into a cooperative agreement – in this instance Tooele County – must adopt an 'appropriate resolution,'" and Tooele County has

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<sup>1</sup> Tooele County Corporation Contract #98-08-01, Cooperative Law Enforcement Agreement (CLEA) Between Tooele County, the Bureau of Indian Affairs and the Skull Valley Band of Goshute Indians (Aug. 7, 1998). The CLEA is attached to this motion as Exhibit 1, pages 7 to 10. Also attached is a copy of the June 1997 agreement. See Exh. 1 at 3-6 (Tooele County Corporation Contract #97-06-02, Cooperative Law Enforcement Agreement (CLEA) Between Tooele County, the Bureau of Indian Affairs and the Skull Valley Band of Goshute Indians (June 3, 1997)).

<sup>2</sup> Exh. 1 at 1-2 (Resolution 98-13 – A Resolution Approving and Authorizing a Cooperative Law Enforcement Agreement (CLEA) Between Tooele County, the Bureau of Indian Affairs and the Skull Valley Band of Goshute Indians (Sept. 2, 1998)).

<sup>3</sup> Exh. 1 at 11-12 (Minutes of the Regular Meeting of the Tooele County Board of Commissioners Held September 1, 1998 (Sept. 8, 1998)).

<sup>4</sup> The part of Contention Utah Security-C for which summary disposition is sought is "the purported failure of Tooele County to approve properly a June 1997 cooperative agreement that provides the Tooele County sheriff's office with law enforcement authority on the Skull Valley Band reservation." See Private Fuel Storage, LBP-98-17, supra, 48 NRC at 76.

purportedly failed to “approve properly the [CLEA]” “in the form of a written resolution . . . that . . . compl[ies] with the requirements of section 11-13-5.” Id. at 74-76 (emphasis added).<sup>5</sup> Utah Code Ann. § 11-13-5 (1997) provides that:

Adoption of appropriate resolutions by the governing bodies of the participating public agencies are necessary before any [cooperative] agreement may enter into force.”

(emphasis added). Therefore, pursuant to the Utah Code, the CLEA would “enter into force” upon Tooele County’s approval of the CLEA through an “appropriate resolution.”

Tooele County has, since the Board’s order admitting the contention, passed such an “appropriate resolution” approving a revised CLEA which the Parties to the CLEA have executed. Therefore, the CLEA is now in force and PFS is entitled to summary disposition on this issue.

### **III. APPLICANT IS ENTITLED TO SUMMARY DISPOSITION OF CONTENTIONS UTAH SECURITY-A, SECURITY-B AND PART OF SECURITY-C<sup>6</sup>**

#### **A. Material Facts Are Not In Dispute**

The material facts regarding approval of the CLEA between Tooele County, the Bureau of Indian Affairs (“BIA”) and the Skull Valley Band of Goshutes (“the Band”)

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<sup>5</sup> The issue in these contentions is the procedure used to properly approve a CLEA, rather than the substance of the CLEA itself. The substance of the CLEA was not a basis for these contentions. The Board has twice rejected the State’s attempted challenges to the substance of the CLEA, and has repeatedly determined that “nothing on the face of the cooperative agreement gives us cause to question its validity as it provides [law enforcement] jurisdiction on the Skull Valley Band’s reservation for the designated LLEA.” See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-13, 47 NRC 360, 370 n.9 (1998); see also Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-99-7, 49 NRC \_\_\_, slip op. at 9-10 n.1 (1999).

(collectively, "the Parties") are not in dispute. In June 1997, the Parties entered into a CLEA providing the Tooele County sheriff's office with the authority and responsibility to provide law enforcement services on the Skull Valley Goshute Reservation. Private Fuel Storage, LBP-98-17, supra, 48 NRC at 71. The only contention the Board admitted regarding this CLEA was "the purported failure of Tooele County to approve properly [the CLEA]." Id. at 76.

The Parties have now entered into a revised CLEA that is identical to the June 1997 CLEA, with the exception of the effective date and the cost for services. Compare Exh. 1 at 7-10 (August, 1998 CLEA) with Exh. 1 at 3-6 (June, 1997 CLEA).

Further, the revised CLEA was approved and authorized by a written resolution of the Tooele County Board of Commissioners. During the September 1, 1998 regular meeting of the Tooele County Board of Commissioners, the Board of Commissioners voted unanimously "to approve Resolution 98-13 – Approving and Authorizing the Cooperative Law Enforcement Agreement (CLEA) Between Tooele County, the Bureau of Indian Affairs and the Skull Valley Band of Goshute Indians." See Exh. 1 at 12 (Board of Commissioners Meeting Minutes). As stated in the Meeting Minutes, the County Attorney "explained that the contract is already in place, but needs to be approved by resolution." Id.

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<sup>6</sup> PFS has set forth the relevant law governing summary disposition at some length in its first motion for summary disposition, and the legal basis provided in that motion is incorporated by reference herein. See Applicant's Mot. Summ. Disp. Utah C at 4-16 (April 21, 1999).

Resolution 98-13 “accepted and approved” the CLEA “by and between the County and the Bureau of Indian Affairs and the Skull Valley Band of Goshute Indians.” See Exh. 1 at 1 (Tooele County Resolution 98-13). Resolution 98-13 explicitly refers in the “whereas” clause to the authority for public agencies and local governments “under the Utah Interlocal Cooperation Act, Utah Code Annotated 11-13-1, et seq.,” which includes Utah Code section 11-13-5, to enter into such cooperative agreements provided that the public agency/local government “shall authorize such contracts [as the CLEA] by resolution.” Exh. 1 at 1. In Resolution 98-13, the Board of Commissioners both authorized and approved the CLEA that had already been entered into between the Parties (the August 7, 1998 CLEA) and “ratified” “[a]ny action taken by the county or Board on [the CLEA] previous to this resolution, including the execution thereof.” Exh. 1 at 1. The resolution was executed for Tooele County by the Chairman of the Board of Commissioners, as provided in the resolution, on September 2, 1998. Exh. 1 at 2.

**B. CLEA Has Been Approved by Written Resolution of Tooele County Board of Commissioners, in Compliance with Utah Code Section 11-13-5**

As stated above, Utah Code section 11-13-5 requires that “[a]doption of appropriate resolutions by the governing bodies of the participating public agencies are necessary before any [cooperative] agreement may enter into force.” Utah Code Ann. § 11-13-5 (emphasis added). Utah Code section 10-3-506 requires that “[e]very resolution or ordinance [adopted by a Utah municipality] shall be in writing before the vote is taken.” Utah Code Ann. § 10-3-506. The State asserted as its basis for Contentions Utah Security-A, Security-B and Security-C that:

[W]hile PFS has provided Tooele County Commission meeting minutes indicating that within the last 14 months the commission has on two occasions reviewed and/or endorsed the June 1997 cooperative agreement, it has not demonstrated these actions were in the form of a written resolution, like the 1991 enactment, that seemingly would comply with the requirements of section 11-13-5.

Private Fuel Storage, LBP-98-17, supra, 48 NRC at 75 (emphasis added). Thus, while the CLEA does exist and has been agreed to by the Parties, the contention basis remained as to whether or not the “public agency entering into [the] cooperative agreement – in this instance Tooele County – [has] adopt[ed] an ‘appropriate resolution’” that would authorize the CLEA to enter into force pursuant to Utah Code section 11-13-5. Id. at 74.

The Tooele County Board of Commissioners, the governing body of Tooele County, has now adopted a written resolution authorizing and approving the CLEA between the County, the BIA, and the Band. Resolution 98-13, authorizing and approving the CLEA, was approved by the Tooele County Board of Commissioners on September 1, 1998, and executed by the Chairman on September 2, 1998. Therefore, pursuant to Utah Code section 11-13-5, the CLEA that provides the Tooele County sheriff’s office with law enforcement authority on the Skull Valley Goshute Reservation entered into force on September 2, 1998. (The CLEA itself states that its term commenced on April 1, 1998 for a period of one year, automatically renewed in one year increments. Exh. 1 at 9.)

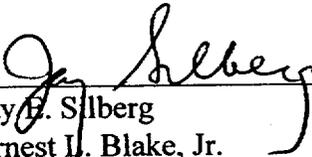
PFS is entitled to summary disposition in its favor on Contentions Utah Security-A, Security-B, and that part of Security-C, all of which are based on “the purported failure of Tooele County to approve properly a June 1997 cooperative agreement that

provides the Tooele County sheriff's office with law enforcement authority on the Skull Valley Band reservation." Private Fuel Storage, LBP-98-17, supra, 48 NRC at 76. The Tooele County Board of Commissioners has authorized and approved the CLEA for law enforcement services on the Skull Valley Goshute Reservation through a written resolution adopted pursuant to the requirements of Utah Code section 11-13-5. The Applicant has demonstrated that the basis for Contentions Utah Security-A, Security-B and part of Security-C is now without merit.

#### IV. CONCLUSION

For the forgoing reasons, the Board should as a matter of law grant PFS summary disposition and dismiss Contentions Utah Security-A and Security-B in their entirety, and dismiss part of Contention Utah Security-C that is based on the alleged failure of Tooele County to properly approve the CLEA.

Respectfully submitted,

  
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Dated: June 11, 1999

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

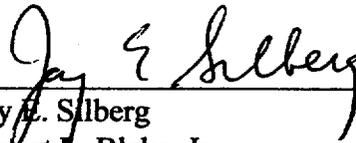
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**STATEMENT OF MATERIAL FACTS  
ON WHICH NO GENUINE DISPUTE EXISTS**

The Applicant submits, in support of its motion for summary disposition of Contentions Utah Security-A and Security-B, and partial summary disposition of Contention Utah Security-C, this statement of material facts as to which the Applicant contends that there is no genuine issue to be heard.

1. Tooele County entered into a Cooperative Law Enforcement Agreement (CLEA) with the Bureau of Indian Affairs and the Skull Valley Band of Goshute Indians on August 7, 1998. See Exh. 1 at 7-10.
2. Resolution 98-13, "A Resolution Approving and Authorizing a Cooperative Law Enforcement Agreement (CLEA) Between Tooele County, the Bureau of Indian Affairs and the Skull Valley Band of Goshute Indians," was approved by the Tooele County Board of Commissioners at the regular meeting of the Board of Commissioners held September 1, 1998. See Exh. 1 at 1-2.
3. Tooele County Resolution 98-13 approving and authorizing the CLEA was executed by the Chairman of the Tooele County Board of Commissioners on September 2, 1998. See Exh. 1 at 2.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the "Applicant's Motion for Summary Disposition of Contentions Utah Security-A and Security-B, and Partial Summary Disposition of Contention Utah Security-C" and the "Statement Of Material Facts On Which No Genuine Dispute Exists" were served on the persons listed below (unless otherwise noted) by e-mail, and Exhibit 1 to the Motion for Summary Disposition was served on the persons listed below (unless otherwise noted) by facsimile, with conforming copies by U.S. mail, first class, postage prepaid, this 11th day of June, 1999.

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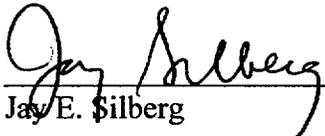
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