

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'99 SEP 20 AIG 06

Before Administrative Judges:

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

AD

SERVED SEP 20 1999

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

September 20, 1999

MEMORANDUM AND ORDER
(Revised General Schedule)

In an August 30, 1999 order, the Board provided the parties with administrative and procedural guidance for the hearing on the Group I contentions, which currently is scheduled to begin on November 1, 1999. In addition, the Board requested that the parties provide it with an estimate of the time necessary to conduct evidentiary sessions on contentions Utah K/Confederated Tribes B, Utah R, and Security-C, the three issues remaining for litigation following the Board summary disposition rulings on Group I contentions. See Licensing Board Memorandum and Order (Administrative and Scheduling Matters) (Aug. 30, 1999) at 1-2 (unpublished). As part of a September 7, 1999 joint report regarding the evidentiary hearing schedule, applicant Private Fuel Storage, L.L.C., (PFS) proposed (without

objection from the NRC staff or Group I issues lead intervenor State of Utah (State)) that the November 1999 hearings be deferred. According to PFS, postponing the hearing actually would be more efficient because of the relatively small number of hearing-ready issues; the fact the staff would not be able to take a position on a deferred portion of contention Utah K/Confederated Tribes B to permit that part to be tried in November; the need for PFS and the staff to focus their efforts on outstanding issue analyses; and the possibility a deferral would permit an earlier start for a combined hearing on Group I and Group II contentions than was contemplated for Group II issues alone. See Joint Report to the Atomic Safety and Licensing Board (Sept. 7, 1999) at unnumbered pp. 1-2.

The Board discussed this PFS proposal with the parties as part of a September 8, 1999 telephone conference. During this conference, the Board acknowledged the staff position closure problem concerning contention Utah K/Confederated Tribes B, but indicated it was interested in proceeding to hearing with contentions Utah R and Security-C. The Board was advised, however, that because of a problem with identifying PFS witnesses regarding Security-C, that issue would not be ready for hearing, leaving only contention Utah R as a candidate for a November 1999 evidentiary hearing. See Tr. at 1183-88.

In light of these developments, at the Board's request the parties that same day initiated discussions to provide a proposed revised schedule for litigation of Group I and Group II issues, which was submitted to the Board by letter from staff counsel dated September 14, 1999. After reviewing that suggested schedule, we have decided to adopt it, as is reflected in the revised general schedule included as attachment A to this issuance. This schedule also reflects our ruling today on the impact on other pending contentions of our decision in LBP-99-34, 50 NRC ____ (Aug. 30, 1999) concerning contention Utah B and the licensing of the proposed PFS Rowley Junction, Utah intermodal transfer point. See LBP-99-39, 50 NRC ____, ____ (slip op. at 7-9) (Sept. 20, 1999).

In addition, we provide the following guidance regarding the revised schedule:

1. Additional Discovery on Group I Issues. Formal discovery on the remaining Group I issues, other than for the portion of contention Utah K/Confederated Tribes B that previously was deferred by the Board, see Licensing Board Order (Granting Filing Extension Motions and Setting Schedule for Responses to Request for Admission of Late-Filed Contention) (July 27, 1999) at 2 (unpublished), closed in August 1999. Accordingly, any party wishing to obtain additional discovery concerning the nondeferred

portions of this contention or the other two Group I contentions during the additional discovery window must obtain the Board's permission. In this regard, in its motion requesting permission to reopen discovery, the party should inform the Board about the scope of any proposed additional discovery and the position of other interested parties regarding its request.

2. Interrogatory Limitation. The limitation on interrogatories specified in the Board's March 29, 1999 memorandum and order, see Licensing Board Memorandum and Order (Granting Motion for Additional Limited Discovery on Group II and Group III Contentions) (Mar. 29, 1999) at 4-6 (unpublished), is applicable to discovery on all Group I and Group II contentions during the November-January limited discovery window provided for in this issuance, subject to the following schedule revisions: absent leave of the Board (a) no more than seven interrogatories can be utilized (i) against parties other than the staff after Friday, December 10, 1999, and (ii) against the staff after Friday, December 31, 1999; and (b) no more than four interrogatories can be used (i) against parties other than the staff after Friday, December 31, 1999, and (ii) against the staff after Friday January 14, 2000.

3. Contention Security-C Evidentiary Hearing. The interested parties now apparently are in agreement that a

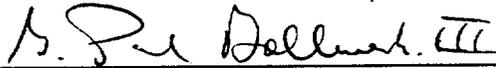
hearing on contention Security-C could involve protected safeguards information. That issue thus will be tried in the Atomic Safety and Licensing Board Panel's Rockville, Maryland hearing room where proper security can be readily maintained. On or before Monday, November 1, 1999, those parties should provide the Board with a joint report that outlines a suggested schedule for the estimated one to two day evidentiary hearing on this issue.

4. Limited Appearance Statements. The Board will defer entertaining oral limited appearance statements until the time of the evidentiary hearing on the Group I and Group II issues. Written limited appearance statements can

be provided to the Board at any time. See 63 Fed. Reg.
23,476, 23,477 (1998).

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD*



G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

September 20, 1999

* Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant PFS; (2) intervenors Skull Valley Band of Goshute Indians, Ohngo Gaudadeh Devia, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State; and (3) the staff.

ATTACHMENT A

EVENT	GROUP I	GROUPS I-II ¹	GROUP III ²
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	December 15, 1999	DEIS -- March 2000 FEIS -- February 2001
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, subject to a November 15, 1999 (against Staff - December 15, 1999) - January 31, 2000 limited discovery window	May 28, 1999, subject to a yet to be scheduled limited discovery window
Formal Discovery Ends -- Against Staff	August 13, 1999	February 15, 2000	DEIS -- May 15, 2000 FEIS -- November 30, 2000
Summary Disposition Motions Final Filing Date	June 28, 1999	February 1, 2000	December 1, 2000
Summary Disposition Motion Responses Final Filing Date	July 28, 1999	March 1, 2000	January 2, 2001
Board Summary Disposition Decision	August 30, 1999	March 31, 2000	February 1, 2001
Pre-filed Testimony Submitted	See Groups I-II	May 15, 2000	March 2, 2001
In Limine Motions Due	See Groups I-II	May 31, 2000	March 16, 2001
Hearings (including limited appearance sessions as appropriate)	See Groups I-II	June 19 - July 28, 2000	April 2 - May 31, 2001
Findings of Fact (Simultaneous filings)	See Groups I-II	August 28, 2000	July 2, 2001
Findings of Fact Responses (Simultaneous filings)	See Groups I-II	September 28, 2000	August 1, 2001
Initial Decision	See Groups I-II	December 1, 2000	October 1, 2001

¹ The contentions in Groups I-II include Utah E/Confederated Tribes F; Utah H; Utah K/Confederated Tribes B; Utah L; Utah R; Utah S; Utah GG, Security-C.

² The contentions in Group III include Utah O; Utah T; Utah U; Utah V; Utah W; Utah Z; Utah AA; Utah DD; OGD O; and SUWA B. NOTE -- As discussed in the Licensing Board's May 18, 1999 memorandum, scheduled dates under this group are subject to further revision to reflect changes in the staff DEIS and FEIS issuance dates.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O--REVISED GEN. 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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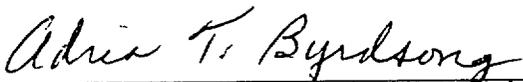
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Dated at Rockville, Md. this
20 day of September 1999


Office of the Secretary of the Commission