

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'99 AUG 30 P3:17

Before Administrative Judges:

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

OFFICE OF THE
RULEMAKING
ADJUDICATION STAFF

SERVED AUG 30 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

August 30, 1999

MEMORANDUM AND ORDER

(Administrative and Scheduling Matters)

In a series of recent decisions, the Board has made rulings on dispositive motions regarding various issues in the first group of admitted contentions, which are to be the subject of a November 1999 evidentiary hearing. As a result, three Group I issues currently are slated for litigation: Utah K/Confederated Tribes B; Utah R; and Security-C. In preparation for the upcoming hearing on these issues, the Board will hold a telephone conference with the parties to discuss a number of administrative and scheduling matters. This issuance outlines an agenda for that conference, as well as several other matters that the Board wishes to bring to the attention of the parties.

Each party should make a representative available to participate in a telephone conference beginning at 11:00 a.m. EDT (9:00 a.m. MDT) on Wednesday, September 8, 1999. Any party that is unable to have a representative available at that time should contact the other parties to obtain and provide the Board with several other mutually agreeable times for the conference. We anticipate this conference will last at least one hour.

In preparation for this prehearing conference, the Board requests that on or before 1:00 p.m. EDT (11:00 a.m. MDT) on Tuesday, September 7, 1999, the parties consult with one another and provide a joint report with an estimate of how long they believe it will take to try each one of the three issues listed above, including cross-examination and rebuttal testimony.¹ In addition, as part of that report the parties should advise the Board whether they anticipate that the evidentiary hearing regarding the contention Security-C issue of emergency response times will involve the presentation and discussion of protected safeguards information, as that information is defined in the Board's December 17, 1997 protective order.

¹ In addition, to the degree that any party is taking the position that the intermodal transfer point aspects of Group I contentions Utah K/Confederated Tribes B, Utah N, and Utah R survives our ruling in LBP-99-34, 50 NRC ____, ____, (slip op. at 19-20) (Aug. 30, 1999), the parties should provide an estimate of the time needed to litigate each of those matters as well.

Among the administrative and scheduling items that may be the subject of discussion at the telephone conference are the following:

A. Evidentiary Hearing

1. Prefiled testimony, exhibits, and stipulations.

Under the existing general schedule, prefiled testimony and premarked exhibits for a party's direct case, as well as any stipulations, are to be filed on or before Friday,

October 1, 1999, and should be accompanied by a list of all direct case witnesses and exhibits. All intervenor exhibits should be marked numerically with the name of the sponsoring party (e.g., State Exh. 1); all PFS and staff exhibits should be marked alphabetically with the sponsoring party's name (e.g., PFS Exh. A; Staff Exh. BB). Parties should make an effort to coordinate before prefiling exhibits to ensure that, in the event two parties wish introduce the same document, it has only one designation. To have an exhibit admitted into evidence at the evidentiary hearing, including those used on cross-examination, a party must (a) provide the court reporter with an original and two copies of the exhibit; and (b) to the extent they do not already have a copy, furnish a copy to each Board member and to each party that desires one. See 10 C.F.R. § 2.743(f).

In connection with the summary disposition motions that were filed by applicant Private Fuel Storage, L.L.C., (PFS)

for contentions Utah K/Confederated Tribes B and Utah R and the responses of intervenor State of Utah (State) and the NRC staff, the Board urges the parties' to utilize the supporting material facts statements as a basis for stipulations on factual matters not at issue in accordance with 10 C.F.R. § 2.753.

2. In limine motions and stipulations on admissibility of exhibits. Under the existing general schedule, party motions in limine regarding prefiled testimony and exhibits are to be filed on or before Friday, October 15, 1999. Party responses to those motions must be filed on or before Friday, October 22, 1999. The parties are encouraged to enter into stipulations regarding the admissibility of exhibits. Those stipulations will not be accepted by the Licensing Board, however, unless there is a showing in the party's prefiled testimony that clearly indicates the relevance of the particular exhibit to the contention involved.

3. Order of presentation. Although intervening parties bear the burden of going forward on their admitted contentions, applicant PFS bears the ultimate burden of proof relative to the sufficiency of its application. See 10 C.F.R. § 2.732. Nonetheless, in accordance with 10 C.F.R. § 2.731, the Board suggests that the following order of presentation be used for each contention: PFS

direct case and cross-examination; staff direct case and cross-examination; intervenor direct case and cross-examination; PFS and/or staff Rebuttal (if any); intervenor surrebuttal (if any). Any party wishing to use a different order of presentation should be prepared to advise the Board of its reasons during the September 8 prehearing conference.

4. Cross-examination. In accordance with 10 C.F.R. § 2.743(b)(2), any party wishing to cross-examine a witness (or witness panel) must have available for the Board a cross-examination plan for that witness (or panel) before the beginning of cross-examination. As is noted in that provision, all cross-examination plans requested by the Board will be held in confidence until after an initial decision on the contentions being litigated is issued.

B. Limited Appearance Sessions

As an adjunct to the evidentiary hearing, in accordance with 10 C.F.R. § 2.715(a), the Board anticipates conducting one or more sessions during which members of the public would be permitted to make oral limited appearance statements. The Board would like to do this in several sessions in the Salt Lake City and Tooele, Utah areas before beginning evidentiary witness presentations. The Board will discuss this matter further with the parties during the telephone conference.

C. Electronic Document Filing

During a previous telephone conference, the Board mentioned that the NRC was developing an electronic document interchange project that we hoped to utilize on a pilot basis in this proceeding. We have now been advised by the NRC Office of the Chief Information Officer (OCIO) that this project is ready for implementation in mid-September 1999.

We anticipate that prior to the telephone conference the parties will be provided with written information on this web-based electronic document submission project. Further, at the outset of the September 8 telephone conference we will have OCIO representatives describe the system and answer questions about how it works. Accordingly, parties may wish to have available for participation at the beginning of the conference those on their office staff who handle computer matters.

The Board would like to encourage all parties in this proceeding to participate in this pilot project, which will also result in the creation of an electronic database of documents from this proceeding that will be accessible to the parties and the general public on the agency's web site. At this juncture, we do not anticipate any change in the existing practice regarding submission of paper copies of filings, although modifications to the present filing system

could come about as a result of agency experience with the pilot project.

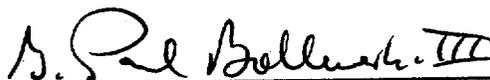
D. Other Agenda Items

Parties wishing to propose other items for the agenda of this telephone conference should advise the Board and the other parties of those matters in writing no later than 1:00 p.m. EDT (11:00 a.m. MDT) on Tuesday, September 7, 1999.

Any questions regarding the matters discussed in this issuance should be directed to the Board Chairman at (301) 415-7454.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD²



G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

August 30, 1999

² 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.

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(Independent Spent Fuel Storage
Installation)

Docket No.(s) 72-22-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O-ADMIN. & SCHED. MATTERS 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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Docket No.(s)72-22-ISFSI
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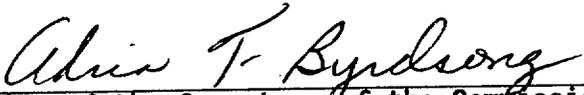
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Dated at Rockville, Md. this
30 day of August 1999


Office of the Secretary of the Commission