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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

LBP-99-36
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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

OFFICE
FOR
ADJUDICATION

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

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

(Denying Motion for Partial Summary
Disposition of Contention Utah R)

In LBP-98-7, 47 NRC 142, 196, 248, reconsideration granted in part and denied in part on other grounds, LBP-98-10, 47 NRC 288, aff'd on other grounds, CLI-98-13, 48 NRC 26 (1998), the Licensing Board admitted contention Utah R, which concerns emergency planning for the proposed 10 C.F.R. Part 72 independent spent fuel storage installation (ISFSI) of applicant Private Fuel Storage, L.L.C., (PFS) on the Utah reservation of the Skull Valley Band of Goshute Indians (Skull Valley Band). PFS now requests that we grant partial summary disposition in its favor relative to the third (and last) portion of that contention concerning the adequacy of onsite firefighting support capability. The NRC staff supports the entry of

summary disposition for PFS, albeit on a basis different from that proffered by PFS. Intervenor State of Utah (State) opposes the PFS request, asserting there are material factual disputes outstanding that preclude summary disposition.

As we explain in more detail below, we agree with the State that partial summary disposition is inappropriate relative to the third portion of contention Utah R and, accordingly, deny the PFS motion.

I. BACKGROUND

As part of its June 1997 license application for its proposed Skull Valley ISFSI, in accordance with 10 C.F.R. § 72.32(a), PFS submitted an emergency plan (EP) for the facility. In seeking to challenge the adequacy of the PFS EP, the State sought the admission of a five-part contention. See LBP-98-7, 47 NRC at 195-96. Ultimately, the Board admitted only three portions of that contention. Two of these involved the proposed Rowley Junction, Utah Intermodal Transfer Point (ITP), which is the subject of another summary disposition motion ruling this date. See LBP-99-34, 50 NRC ___, ___ (slip op. at 20) (Aug. 30, 1999). The third, which concerns the matter of onsite firefighting capability, is the subject of the pending PFS summary

disposition motion. As admitted by the Board, this portion of the contention provides:

Utah R -- Emergency Plan

CONTENTION: The Applicant has not provided reasonable assurance that the public health and safety will be adequately protected in the event of an emergency at the storage site or the transfer facility in that:

* * * * *

3. PFS has not adequately described the means and equipment for mitigation of accidents because it does not have adequate support capability to fight fires onsite.

LBP-98-7, 47 NRC at 254.

In its June 28, 1999 motion, PFS has sought summary disposition of this portion of contention Utah R. Relying on a twenty-seven item statement of material facts not in dispute and supporting affidavits (with exhibits) from BNFL Fuel Solutions design engineering manager Ram Srinivasan, Stone & Webster Engineering Corporation (S&W) licensing engineer Jeffrey Johns, Texas Tech University professor Carlton Britton, S&W project engineer Jerry Cooper, S&W lead electrical engineer Wesley Jacobs, and Holtec International president and chief executive officer Krishna Singh,¹ PFS

¹ There have been no objections by PFS, the staff, or the State to the qualifications or expertise of the various affiants whose statements are relied upon to provide support for other parties' assertions regarding the material factual matters at issue in connection with contention Utah R.

declares summary disposition is appropriate because the issues of the adequacy of the PFS facility water supply and PFS's general firefighting capability that the State seeks to raise are immaterial to any decision the agency must make regarding the adequacy of the PFS EP. Specifically, PFS asserts that its facility is designed to withstand the effects of credible fires without firefighting by response personnel or the operation of any automatic fire detection/suppression system. See [PFS] Motion for Partial Summary Disposition of Utah Contention R -- Emergency Plan (June 28, 1999) at 2-3. PFS bases this conclusion on its analysis of the impacts of credible diesel fuel fires and wildfires upon the spent fuel shipping, transfer, and storage casks,² which it concludes would not have any detrimental radiological consequences so as to be cognizable under the direction in section 72.32(a)(5) that an EP

² The PFS operational plan calls for the shipping cask holding the spent fuel canister to be moved into the canister transfer building (CTB) on a heavy-haul truck or rail car, taken off the truck or rail car by crane and moved to a canister transfer cell. There, the shipping cask lid is removed, a transfer cask with movable bottom shield doors is placed over the shipping cask by a crane and the spent fuel canister is lifted through the open shield doors into the transfer canister. The shield doors are then closed, the transfer canister is lifted by crane onto the top of a storage cask that also is located in the transfer cell, the transfer cask bottom shield doors are opened, and the spent fuel canister is lowered into the storage cask. The storage cask is then sealed with a lid and transported to the storage pads on the PFS facility using a cask transporter vehicle. See PFS Safety Analysis Report at 5.1-4 to -6 (rev. 1 & 2 May 1998 & Aug. 1998).

contain a brief description of the means of mitigating the radiological consequences of accidents, including onsite protection of workers. See id. at 6-9.

In response to the PFS motion, the staff declares its support for the result sought by PFS, i.e., summary disposition in its favor, but on somewhat different grounds than PFS puts forth to justify that result. Although the staff indicates it agrees with the PFS assertion that an applicant must describe the means of mitigating the consequences of radiological accidents at its ISFSI facility, the staff expresses its disagreement with the PFS assertion that the focus of an applicant's consideration of fire events need go no further than those that would involve significant radiological releases. Instead, the staff asserts, the focus should be on the adequacy of the PFS plans for detecting, assessing, and mitigating the consequences of facility fires. Further, relying on the supporting affidavits of NRC fire protection engineer Paul W. Lain and agency emergency preparedness specialist Randolph L. Sullivan, the staff recommends that summary disposition be granted because the PFS EP demonstrates that the PFS onsite firefighting capability and equipment, including fire brigade staffing and training, fire water tank capacity, and sprinkler systems, are adequate to respond to a fire event. See NRC Staff's Response to [PFS]

Motion for Partial Summary Disposition of Utah
Contention R -- Emergency Plan (July 28, 1999) at 10-11 &
n.16; see also NRC Staff's Statement of Position Concerning
Group I Contentions (June 15, 1999) at 20-22.

In its August 9, 1999 response to the PFS and staff
pleadings, based on a twenty-seven item statement of
material facts in dispute, which raises a specific challenge
to eight of the PFS statements of material fact, and the
supporting affidavit of Radioactive Waste Management
Associates senior associate Dr. Marvin Resnikoff, the State
declares that it disagrees with both parties' positions.

Relative to PFS's assertion that the adequacy of its
firefighting capabilities, including the water supply, is
immaterial to an NRC decision about the sufficiency of the
PFS EP, the State contends this is inconsistent with the
terms of the staff's spent fuel dry storage facility
standard review plan. According to the State, that review
plan declares the EP must describe the means of mitigating
the consequences of each type of accident and a description
of the facility equipment maintenance program and requires
this analysis to include "'any non-radiological, hazardous
material releases that could impact emergency response
efforts'" and "'events which could lead to initiation of an
alert . . . [including] fire onsite that might affect
radioactive material or systems important to safety . . .

[or compromise] ongoing security.'" [State] Response to [PFS] Motion for Partial Summary Disposition of Utah Contention R and Reply to the Staff's Response to the [PFS] Motion at 4 (quoting Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, NUREG-1567, Standard Review Plan for Spent Fuel Dry Storage Facilities at C-6, C-7 (draft Oct. 1996)) [hereinafter State Response].

Further, according to the State, PFS has failed to analyze the effects of fire to other systems, structures, and components (SSCs) that are important to safety, in particular a fire caused by spilled fuel inside the canister transfer building (CTB) at the PFS facility. A CTB fire is significant, the State asserts, because it is in this building that the canister containing the spent fuel is taken out of a shipping cask, placed in a transfer cask, and then transferred to a storage cask. Acknowledging that PFS purports to have done an analysis of a fire in the CTB resulting from a 300 gallon diesel fuel spill from a heavy-haul truck and a fifty gallon spill from a cask transporter vehicle, the State nonetheless contests the PFS assertion that none of the fuel from these accidents considered by PFS will spread beyond the CTB unloading bay into the transfer cells. According to the State, PFS has failed to show what "building designs" it proposes will prevent such a fuel movement. This is a significant

deficiency, the State declares, given that a 300 gallon fuel fire will cause temperatures inside the CTB to rise above 1200 degrees Fahrenheit, a temperature beyond what the transfer casks are designed to withstand so as to cause spent fuel cladding degradation. See State Response at 5-6. Equally important, the State indicates, is the PFS admission that a 300 gallon fire could cause the loss of electrical power to SSC's inside the CTB, because neither the PFS motion nor the safety analysis report that accompanies its application discusses how PFS will recover from a fire-related electrical loss during the critical period of canister transfer operations or protect onsite electrical repair workers needed to repair faulty or burned out CTB wiring. See id. at 7.

Also wanting, the State asserts, is the PFS analysis of locomotive fuel fires, which could involve 6000 gallons of diesel fuel and could impact on the storage, transfer, and shipping casks, and SSCs. Noting that PFS again relies upon unspecified building design to prevent spill movement as well as administrative procedures that will keep a locomotive out of the CTB, the State asserts that a material factual dispute exists by reason of the PFS failure to explain how a 200 ton cask loaded rail car will be moved into the CTB and how the unloaded car will then be moved out of the CTB. This, in turn, raises the reasonable inference

that a locomotive will be required to enter and exit the CTB to accomplish this task and creates a material deficiency in the PFS fire analysis. See id. at 8.

As to the staff's arguments that a material factual dispute has not been shown, the State finds the staff's reliance upon an onsite fire pumper truck, a Skull Valley Band reservation pumper truck, and an unsupported PFS declaration that there will be sufficient water for firefighting even though PFS has not sought State permission to withdraw groundwater are insufficient to support the staff's conclusion that PFS will have the means to provide sufficient water for firefighting. The State thus maintains that there are material factual disputes over the adequacy of PFS's firefighting capabilities. See id. at 9-10.

II. ANALYSIS

A. Legal Standard For Summary Disposition

As we have recently noted elsewhere in this proceeding, a party to an NRC proceeding is entitled to summary disposition on any or all matters

if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and affidavits, if any, show that there is no genuine issue as to any material fact and that the party . . . is entitled to a decision as a matter of law."

10 C.F.R. § 2.749(d). As with the analogous Rule 56 of the Federal Rules of Civil Procedure, the movant bears the initial burden of making the requisite showing that there is no genuine issue as to any material fact, which it attempts to do by means of a required statement of material facts in dispute and any supporting materials that accompany the dispositive motion. An opposing party must counter each adequately supported material fact with its own statement of material facts in dispute and supporting materials. If uncontroverted, the movant's facts will be deemed admitted. See Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102-03 (1993).

B. Board Ruling

As the staff points out, events involving fires clearly are within the design basis of this facility based on the fact that the PFS EP indicates that certain types of fires warrant an emergency action level of Alert, the highest accident/off normal event classifications used by PFS. See Staff Response at 11 n.16. Among these is a fire affecting a loaded storage, transfer, or shipping cask if the cask is affected by fire longer than fifteen minutes. See PFS EP at 2-15 (rev. 4 Aug. 1999). PFS declares that it has examined what it considers the only two possible (albeit not credible) large-scale fire scenarios -- a 300 gallon diesel spill from a heavy-haul tractor trailer and a fifty

gallon spill from a cask transporter vehicle. One other suggested scenario -- involving a 6000 gallon diesel spill from a locomotive -- PFS dismisses as not meriting further scrutiny because it has administrative procedures that prohibit a locomotive from entering the CTB, the area where a fuel-related conflagration is likely to be the most problematic.

As the State's arguments suggest, however, a significant link in the factual chain that must be completed to eliminate this scenario from consideration is still unaccounted for. If, as PFS declares, a locomotive is not being used to move rail cars carrying a 142-ton shipping cask into, and, once unloaded, out of, the CTB, then the obvious query is what hauling method is going to be used that does not involve an unevaluated fire hazard. Absent a response to this question, at this point we are unable to conclude there are no disputed material facts relative to contention Utah R, either as to the PFS assertion there are no radiologically significant fire hazards or the staff's claim that PFS has adequate firefighting capabilities and equipment.³

³ Given the potential size and duration of a fuel-related fire involving a locomotive, which thus far is the only PFS-identified device for moving rail cars into and out of the CTB, this unresolved factual question likewise negates the staff's conclusion about the existence of material factual disputes regarding the adequacy of the PFS
(continued...)

Accordingly, because the State has established the existence of a material factual dispute,⁴ we decline to enter summary disposition for PFS relative to the third portion of contention Utah R.

III. CONCLUSION

Albeit for somewhat different reasons, PFS and the staff assert there are no material facts in dispute in connection with the third portion of contention Utah R, Emergency Plan, which concerns the adequacy of PFS's onsite firefighting capability. The State, however, has established that a material factual dispute does exist relative to the question of fires in the CTB resulting from leakage and ignition of transportation vehicle fuel.

³(...continued)
firefighting program in detecting, assessing, and mitigating fires. We note further, however, that with our ruling today on contention Utah K/Confederated Tribes B as it concerns wildfires, see LBP-99-35, 50 NRC ____, ____ (slip op. at 40) (Aug. 30, 1999), such fires are not subject to further consideration in litigating this contention.

⁴ As was noted in the discussion above, the State has asserted that other material factual disputes exist, including questions about the effect of CTB design and water availability. Because we find a material factual dispute exists regarding this contention and can discern no ready basis for further parsing its substance, we see no need to resolve these additional State claims.

Accordingly, we deny the PFS request for partial summary disposition on this part of contention Utah R.

For the foregoing reasons, it is this thirtieth day of August 1999, ORDERED, that:

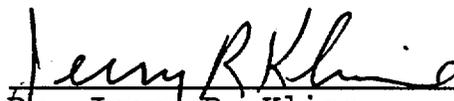
1. The NRC staff's July 28, 1999 unopposed request for a one-page extension of the page-limit for its response to the PFS summary disposition motion, see Staff Response at 1 n.1, is granted.

2. The June 28, 1999 motion of PFS for partial summary disposition of contention Utah R is denied.

THE ATOMIC SAFETY
AND LICENSING BOARD⁵



G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE



Dr. Jerry R. Kline
ADMINISTRATIVE JUDGE



Dr. Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland

August 30, 1999

⁵ 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.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

PRIVATE FUEL STORAGE, LLC

(Independent Spent Fuel Storage
Installation)

Docket No.(s) 72-22-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMO & ORDER (LBP-99-36) 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
LB MEMO & ORDER (LBP-99-36)

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Dated at Rockville, Md. this
30 day of August 1999


Office of the Secretary of the Commission

1. Pos. For Paper - schedule for comments
2. Computer Support Pos. loc - Ret. Panel
3. Discussion of ~~DOE~~
a) # of Documents
b) Funding for Interviews
4. LSM Schedule
5. Reservations for who will attend
6. meeting w/ LSM group ~~to be~~
7. Meeting w/ IG