

RAS 2136

August 29, 2000  
DOCKETED 8/30/00

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 |
|                              | ) |                        |
| (Independent Spent           | ) |                        |
| Fuel Storage Installation)   | ) |                        |

NRC STAFF'S RESPONSE TO STATE OF UTAH'S  
REQUEST FOR A CHANGE IN THE SCHEDULE  
WITH RESPECT TO CONTENTIONS UTAH K AND L

Pursuant to 10 C.F.R. § 2.730, the NRC Staff ("Staff") hereby responds to the "State of Utah's Request for a Change in the Schedule With Respect to Contentions K and L" ("Motion"), filed on August 24, 2000. While the Staff does not oppose that Motion, we believe that a clarification of certain statements contained therein is appropriate.

Under the Licensing Board's "Order (General Schedule Revision and Other Matters)" dated February 2, 2000, the following schedule, in pertinent part, was adopted for litigation of Contentions Utah K and Utah L:

|  |                             |
|--|-----------------------------|
| Formal Discovery Begins (all parties)          | March 1, 1999               |
| Formal Discovery Ends (except against Staff)   | May 28, 1999                |
| Staff Position on Contentions                  | April 28, 2000              |
| Limited Discovery Window (Utah L depositions)  | August 15 - Sept. 30, 2000  |
| Discovery Against Staff                        | Sept. 15 - October 30, 2000 |
| Summary Disposition Motions (final date)       | October 10, 2000            |
| Summary Disposition Responses (final date)     | November 10, 2000           |
| Summary Disposition Decision                   | December 11, 2000           |
| Pre-filed Testimony Submitted                  | January 15, 2001            |
| In Limine Motions                              | June 25, 2001               |
| Hearings (combined with Group III contentions) | July 9 - August 3, 2001     |

Contention Utah K (Credible Accidents)

With respect to Contention Utah K, the State indicates that the parties have agreed to a revised schedule, whereby discovery against the Staff would be conducted from

October 25 to December 11, 2000, summary disposition motions filed by December 29, 2000; summary disposition responses filed by January 30, 2001, and the Board's decision on summary disposition issued by March 1, 2001; and pre-filed testimony submitted by June 11, 2001. The State correctly indicates that the Staff does not oppose these proposed changes, and that the Staff does not oppose the Applicant's requests that it be permitted to file a summary disposition motion of up to 20 pages and to seek summary disposition on all outstanding issues (Motion at 2-3).<sup>1</sup>

The Staff believes that a modification of the schedule for litigation of Contention Utah K is appropriate, inasmuch as the Staff has not yet taken a position on the outstanding issues in this contention, which should occur before the remaining tasks for litigation of this contention may proceed. The Staff expects to state its position on this contention when it publishes its Safety Evaluation Report ("SER"), on or about September 30, 2000. The schedule proposed by the State would accommodate this scheduled date.

Contention Utah L (Geotechnical)

With respect to Contention Utah L, the State requests (a) that depositions of State witness Dr. Walter Arabasz be deferred until after it has reviewed the Staff's SER and action on the Applicant's seismic exemption request (which the Staff and Applicant oppose); (b) that the schedule for summary disposition be revised to match the schedule for Contention Utah K (which is opposed by the Applicant but not by the Staff), and (c) that testimony be deferred until June 11, 2001 (which is opposed by the Applicant but not by the Staff) (Motion at 3-4).

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<sup>1</sup> The Staff notes, however, that the State's list of outstanding issues (Motion at 3) should be modified to include outstanding issues pertaining to the Salt Lake City International Airport and cumulative risks. See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-99-35, 50 NRC 180, 189, 200 (1999).

The State correctly represents that the Staff opposes its request to defer the depositions of Dr. Arabasz (Motion at 4). In our view, no such deferral is necessary, inasmuch as the Staff fully stated its position on Contention L some four months ago.<sup>2</sup> Further, Contention Utah L essentially asserts that the Applicant has inadequately characterized the conditions present at its proposed site. We believe this issue may be litigated without regard to any Staff decision as to whether the Applicant's seismic exemption request should be granted. Accordingly, we see no reason to defer depositions on existing Contention Utah L.

While the State correctly represents that the Staff does not oppose its request to defer the time for filing summary disposition motions and testimony on Contention Utah L (*Id.*), the Staff does not believe that additional time is required to complete these tasks. As stated above, the Staff filed its position on this contention four months ago, and litigation of this contention could proceed along the previously established schedule. Nonetheless, the Staff does not oppose the State's request to modify the schedule for summary disposition and pre-filed testimony on this contention (so as to fall in phase with the schedule for litigating other outstanding contentions), because we believe this would result in greater efficiency for the litigants and the Board.<sup>3</sup>

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<sup>2</sup> See "Attachment" to "NRC Staff's Notice Concerning Contention Utah K, and Statement of Position Concerning Contention Utah L," dated April 28, 2000.

<sup>3</sup> The Staff notes, however, that it did not state that it sees "no logical reason [for] pre-filing testimony by January 15, 2001" (Motion at 4). Nor does the Staff subscribe to the State's other arguments concerning the purported benefits of filing testimony immediately prior to hearing (*Id.* at 4-5). Those statements, therefore, should be understood to represent the position of the State. The State appears to have assumed that the Staff agreed with these statements, based on the State's having sent a draft of its pleading to the Staff for review, prior to filing; unfortunately, the Staff was unable to review that draft within the time available before the State filed its Motion.

Finally, the Staff notes that none of the requested schedule changes with respect to either Contention Utah K or Utah L, agreed to herein, appears likely to result in a delay in the proceeding, inasmuch as the conclusion of this proceeding will be governed by the schedule for resolution of the Group III environmental contentions. Accordingly, the Staff does not oppose the State's proposed schedule changes to the extent set forth herein.

Respectfully submitted,

Sherwin E. Turk */RA/*  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 29th day of August 2000

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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PRIVATE FUEL STORAGE L.L.C. ) Docket No. 72-22-ISFSI  
 )  
(Independent Spent )  
Fuel Storage Installation) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO STATE OF UTAH'S REQUEST FOR A CHANGE IN THE SCHEDULE WITH RESPECT TO CONTENTIONS UTAH K AND L," in the above captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 29<sup>th</sup> day of August, 2000:

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