

RAS 2147

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 09/05/00
SERVED 09/05/00

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

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 5, 2000

MEMORANDUM AND ORDER

(General Schedule Revision, Withdrawal of Contentions
Utah H and Utah U, and Status of Contention Utah GG)

Pending with the Licensing Board is an August 24, 2000 request by intervenor State of Utah to revise the general schedule for this proceeding as it relates to the litigation of contentions Utah K/Confederated Tribes B, Inadequate Consideration of Credible Accidents, and Utah L, Geotechnical. On August 29, 2000, both applicant Private Fuel Storage, L.L.C., (PFS) and the NRC staff filed responses to the State's request that supported its schedule change suggestions relative to contention Utah K/Confederated Tribes B but voiced concerns about one or more aspects of the proposed contention Utah L revisions. Specifically, both questioned a State request to postpone the deposition of State seismic expert Dr. Walter Arabasz relative to contention Utah L. Further, PFS claims that the summary disposition filing dates and the prefiled testimony submission date for contention Utah L should not be postponed to coincide with the dates for contention Utah K/Confederated Tribes B, as the State has suggested, with the staff's acquiescence.

The State asserts that efficiency and fairness considerations support deferring the Arabasz deposition at least until the staff has acted on the pending PFS request for an exemption to use a probabilistic rather than deterministic seismic analysis and/or released its final safety evaluation report (SER) and the State then has had an opportunity to submit and get a ruling on additional late-filed contentions. Both PFS and the staff declare that contention Utah L as framed raises separate issues that can be dealt with in discovery now. We find some merit in this argument, but also find merit at this juncture in the State's concern that Dr. Arabasz's deposition not go forward until he has seen the final staff SER. Accordingly, relative to the deposition of Dr. Arabasz only, we will extend the current Utah L deposition discovery window until Monday, October 30, 2000. This should provide enough time for Dr. Arabasz to review the staff final SER but should not interfere unduly with any role he may have in advising the State relative to any late-filed contentions it wishes to lodge following issuance of the SER. His deposition would, of course, be limited to matters relevant to admitted contention Utah L.

On the matter of the summary disposition and prefiled testimony dates for contention Utah L, we will adopt the State's proposal regarding the former with the understanding that PFS can always file for summary disposition earlier if it wishes to do so. Moreover, under the revised schedule, PFS can seek summary disposition relative to any outstanding contention Utah K issues and its request to have a maximum of twenty pages for any motion filed by December 29, 2000 is granted. As to the prefiled testimony deadline, while we agree with the State and the staff that the testimony reasonably can be filed closer to the start of the hearing on those issues, we also continue to be concerned about "backloading" this proceeding. Accordingly, we will modify the State's proposal to have prefiled testimony on contentions Utah K and Utah L due in late April, which is considerably closer to the planned hearing date

but still provides a staggered filing schedule that will permit the Board to deal with any objections to that testimony as a separate matter.¹

The general schedule for this proceeding thus is revised as is reflected in attachment A to incorporate these rulings.

In addition, relative to these changes to the general schedule, we note that by submissions filed June 15, 2000, and August 24, 2000, respectively, the State has sought leave to withdraw technical contention Utah H, Inadequate Thermal Design, and the admitted portion of contention Utah H's environmental analogue, contention Utah U, Impacts of On-Site Storage, basis one. Both requests are granted and the general schedule is revised to reflect this action, as well as the Board's prehearing disposition of contention Security-C, Local Law Enforcement. See LBP-00-5, 51 NRC 64 (2000).

Finally, in May of this year the Board deferred further action on contention Utah GG, Failure to Demonstrate Cask-Pad Stability During Seismic Event for TranStor Casks, pending the issuance of the staff draft environmental impact statement (DEIS) for the PFS facility. See Tr. at 1363-69. Given the discussion on pages 2-22 and 2-23 of the staff DEIS, NUREG-1714 (June 2000), the continued efficacy of that contention appears questionable. Accordingly, we

¹ We note that if PFS files for summary disposition relative to contention Utah L substantially earlier than the date set in the schedule, the Board also would entertain a PFS request to revise the prefiled testimony submission date for that contention.

request that on or before Friday, September 15, 2000, the parties provide us with a joint report indicating what further action is appropriate relative to this issue.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD²

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

September 5, 2000

²Copies 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

PRIVATE FUEL STORAGE PROCEEDING GENERAL SCHEDULE -- As revised 9/5/00

| EVENT | GROUPS I-II/A ¹ | GROUPS I-II/B ² | GROUP III ³ |
|---|--|--|--|
| 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 | December 15, 1999 | April 28, 2000 SER -- September 29, 2000 | DEIS -- June 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 - August 15, 2000; and (2) FEIS-related discovery against Staff -- begins on FEIS issuance date |
| Formal Discovery Ends -- All Parties Except Against Staff | May 28, 1999, subject to a November 15, 1999 (against the Staff - December 15, 1999) - January 31, 2000 limited discovery window | May 28, 1999, subject to a limited window for (1) Utah L depositions (August 15 - September 29, 2000, except through October 30, 2000, for Dr. Arabasz); and (2) discovery against the Staff (begins October 25, 2000) | May 28, 1999, subject to January 16 - March 15, 2001 limited discovery window |
| Formal Discovery Ends -- Against Staff | February 15, 2000 | December 11, 2000 | DEIS -- September 29, 2000 FEIS -- April 13, 2001 |
| Summary Disposition Motions Final Filing Date | February 1, 2000 | December 29, 2000 | March 15, 2001 |
| Summary Disposition Motion Responses Final Filing Date | March 1, 2000 | January 30, 2001 | April 13, 2001 |
| Board Summary Disposition Decision | March 31, 2000 | March 1, 2001 | May 11, 2001 |
| Pre-filed Testimony Submitted | May 15, 2000 | April 27, 2001 | June 11, 2001 |
| In Limine Motions Due | May 31, 2000 | May 11, 2001 | June 25, 2001 |
| Hearings (including limited appearance sessions as appropriate) | June 19 - June 30, 2000 | July 9 - August 3, 2001 | July 9 - August 3, 2001 |
| Findings of Fact (Simultaneous filings) | July 31, 2000 | September 7, 2001 | September 7, 2001 |
| Findings of Fact Responses (Simultaneous filings) | August 28, 2000 | October 1, 2001 | October 1, 2001 |
| Initial Decision | October 30, 2000 | November 30, 2001 | November 30, 2001 |

¹ The contentions in Groups I-II/A include Utah E/Confederated Tribes F; Utah R; Utah S; and Utah GG.

² The contentions in Groups I-II/B include Utah K/Confederated Tribes B and Utah L.

³ The contentions in Group III include Utah O; Utah T; Utah V; Utah W; Utah Z; Utah AA; Utah DD; OGD O; and SUWA B.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
PRIVATE FUEL STORAGE, L.L.C.)
)
(Independent Spent Fuel Storage)
Installation))

Docket No. 72-22-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (GENERAL SCHEDULE REVISION, WITHDRAWAL OF CONTENTIONS UTAH H AND UTAH U, AND STATUS OF CONTENTION UTAH GG) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
G. Paul Bollwerk, III, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Jerry R. Kline
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Peter S. Lam
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Sherwin E. Turk, Esquire
Catherine L. Marco, Esquire
Office of the General Counsel
Mail Stop - 0-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Diane Curran, Esquire
Harmon, Curran, Spielberg
& Eisenberg, L.L.P.
1726 M Street, NW, Suite 600
Washington, DC 20036

Martin S. Kaufman, Esquire
Atlantic Legal Foundation
205 E. 42nd St.
New York, NY 10017

Joro Walker, Esquire
Land and Water Fund of the Rockies
2056 East 3300 South, Suite 1
Salt Lake City, UT 84109

Docket No. 72-22-ISFSI
 LB MEMORANDUM AND ORDER
 (GENERAL SCHEDULE REVISION
 WITHDRAWAL OF CONTENTIONS
 UTAH H AND UTAH U, AND STATUS
 OF CONTENTION UTAH GG)

Denise Chancellor, Esquire
 Assistant Attorney General
 Utah Attorney General's Office
 160 East 300 South, 5th Floor
 P.O. Box 140873
 Salt Lake City, UT 84114

John Paul Kennedy, Esquire
 Confederated Tribes of the Goshute
 Reservation and David Pete
 1385 Yale Avenue
 Salt Lake City, UT 84105

Richard E. Condit, Esquire
 Land and Water Fund of the Rockies
 2260 Baseline Road, Suite 200
 Boulder, CO 80302

William D. (Bill) Peterson
 Pigeon Spur Fuel Storage Facility
 4010 Cumberland Road
 Holladay, UT 84124

Jay E. Silberg, Esquire
 D. Sean Barnett, Esquire
 Shaw Pittman
 2300 N Street, NW
 Washington, DC 20037-1128

Richard Wilson
 Department of Physics
 Harvard University
 Cambridge, MA 02138

Danny Quintana, Esquire
 Skull Valley Band of Goshute Indians
 Danny Quintana & Associates, P.C.
 68 South Main Street, Suite 600
 Salt Lake City, UT 84101

[Original Signed By Kris Cater]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
 this 5th day of September 2000