

to
Dr. Shankman

72-22

William D. (Bill) Peterson
P&A Engineers
4010 Cumberland Road
Holladay, Utah 84124
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Monday, Oct 30, 2000

Mr. Corbin McNeill,
Chairman & Co-CEO
Exelon Corporation
c/o Joanne Kunigonis
Tel 610-765-5801
200 Exelon Way, Suite 345
Kennett Square, Pennsylvania 19348

Dear Mr. McNeil,

A part of Utah Governor Michael Leavitt's re-election platform is resistance to spent nuclear fuel in Utah. In response to the Nuclear Negotiators David Leroy and Richard Stallings, there are only two license applications - PFS (Private Fuel Storage - NRC Docket No. 72-22) in Tooele County, Utah, and the PSFSF (Pigeon Spur Fuel Storage Facility - NRC Docket No. 72-23) in Box Elder County, Utah. PFS is active in the licensing process, while PSFSF is inactive for lack of funding for the cost of processing the license. The NRC has now declared approval of the PFS preliminary EIS. This month the PFS safety evaluation report (SER) was delivered. The PFS SER is clouded requiring that an exemption from 10 CFR 72.102(f) for seismic hazard conditions. PFS is located over several known active geologic faults.

Earlier this year we petitioned to enter the PFS licensing matter as an intervener to have participation in resisting the opposition of Governor Leavitt. Since we entered he has formed three groups to resist SNF storage in Utah. Our group is the major scientific voice answering the Governor and his force's claims.

During the petitioning for our intervention, the State of Utah has raised issues of RR transportation through Utah's heaviest population - Utah's Wasatch Front area is between the Great Salt Lake and the Wasatch Mountains. The issues the effect of storage of SNF on the operations of the Hill Air Force Base, Tooele Ordinance Depot, and the Wendover Test and training range have been raised. Also, the seismic condition of the PFS site has never been resolved. The Box Elder County Commission asked us to put the Pigeon Spur issue to Hill Air Force Base last March. This month the Air Force from the Pentagon issued its finding that an airplane crash at an SNF storage facility in Utah is an "incredible event", less than one chance in a million. So the military issue is settled. The Box Elder Commission will help us after elections.

UMSSA public

The railroad and seismic issues remain unsettled. A 32 mile long RR spur will connect the PFS site to the southern Pacific Railroad. An exemption is requested for the PFS seismic conditions. In contrast, the PSFSF is at an existing railroad siding, and the PSFSF site is in an area classified as seismic zone 2 and is 26 miles away from the nearest known seismic fault. The railroad route to the PSFSF site avoids the Wasatch Front.

We have petitioned to NRC's licensing Director, Dr. Susan Shankman and the NRC Licensing Board, Judges G. Paul Bollwerk, III, Chairman, and Dr. Jerry R. Kline, and Dr. Peter S. Lam for consideration of the advantages of the PSFSF. For us to proceed with the Pigeon Spur Fuel Storage Facility we need support from the nuclear electric power industry. Both the electric power industry and the Federal Government need SNF storage. We maintain that temporary SNF storage is needed and then future reprocessing of SNF should be done to recover the 92% of U238 in SNF. Reprocessing would also reduce the amount of residue from SNF requiring long term storage by 95% to 100%. Also, reprocessing would reduce the time required for long term storage down to about 300 years*, down from 10,000 years.

Saturday I served a proceeding in the PFS-NRC Docket No. 72-22 matter which asserts for consideration of the PSFSF. In two letters, copies of which I have sent to you, Dr. Shankman has indicated what we must do to activate the PSFSF-NRC Docket No. 72-23 license application. This must be done. We have asked that you to participate with us in this. It is logical that your electric power utilities work with us rather than other sources not related to the industry. We are also seeking funding from Senator Frank Murkowski's energy committee for funding to research five related subjects that will enhance the handling and storage of SNF. Please consider this along with the previous information which I have sent to you.

Sincerely yours,



William D. (Bill) Peterson, M.S., P.E.

Pigeon Spur Fuel Storage Facility, P&A Engineers

encl.: Peterson's Reply Brief of October 28, 2000
The NRC Staff's response to Petitioner of Oct 16, 2000
The Applicant's (PFS) response of October 16, 2000

cc: Dr. Susan Shankman
Mark Deligatti

*See Max Carbon, page 52, *NUCLEAR POWER: Villain or Victim?*

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
Washington D.C. 20555-0001

ATOMIC SAFETY AND LICENSING BOARD

Before the Commission in the EIS Docket No. 72-22 matter Before Administrative Judges:

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

Before the Commission in the EIS Docket No. 72-22 matter Before Review Panel:

NRC - Susan Shankman, Mark Deligatti, Scott Flanders
BLM - Glen Carpenter, BIA - David Allison
STB - Charles Gardiner

In the Matter of

PRIVATE FUEL STORAGE, L.L.C., (PFS)

(Independent Spent Fuel Storage Installation)

Docket No. 72-22-ISFSI

Ref ASLBP No. 97-732-02-ISFSI

October 28, 2000

REPLY - APPEAL TO THE COMMISSION FOR INTERVENER STATUS

(Response to 10/16/00 Actions of the NRC Staff and PFS attorneys)

To the Commission:

Peterson has petitioned to the NRC in the EIS review process to have the advantages of

the Pigeon Spur Fuel Storage Facility (PSFSF) site proposal seen, which may warrant its selection over the PFS site. Peterson contends that the proposed PSFSF has substantial advantages over the proposed PFS facility. A copy of the original Pigeon Spur license application was sent to NRC for support of Peterson's petition. Peterson has also petitioned for NRC to include Pigeon Spur as a potential site with the other 38 sites listed in the PFS EIS. It is Peterson's understanding that his standing as only an interested party is sufficient to make his petition to have NRC review the Pigeon Spur proposal for its advantages in the EIS. Opposing representative counsel has not disputed this.

In their Oct 16, 2000 response the NRC staff recognized Peterson's petition saying the following:

NRC STAFF'S RESPONSE TO PETITIONER WILLIAM D. PETERSON'S 'APPEAL TO THE COMMISSION FOR INTERVENER STATUS'

Sherwin E. Turk, Counsel for NRC Staff
October 16, 2000

ARGUMENT

Petitioner William D. Peterson resides at some (unspecified) distance from the proposed PFS facility. He has proposed the construction of a separate independent spent Fuel storage facility ("ISFSI"), to be located at the Pigeon Spur of the Southern Pacific Railroad, in western Box Elder County, Utah. The Petitioner has not alleged that a decision concerning the licensing of the PFS facility could result in injury to him; rather, he generally asserted that his own application for an ISFSI license (for his Pigeon Spur facility) could be adversely affected by the State of Utah's policy against spent nuclear fuel storage in Utah, and (more recently, in his Second Petition) that his proposed facility should have been considered by the Staff in its DEIS as an alternate site for the PFS facility. *See generally*, First Petition at 2-6, 9-12; Second Petition at 1-3.

Likewise, on October 16, 2000 the applicant by its attorneys responded to the appeal of Peterson for intervention saying the following:

APPLICANT'S BRIEF ON APPEAL OF ORDER DENYING WILLIAM D.
PETERSON'S PETITION FOR INTERVENTION

Jay E. Silberg, Ernest L. Blake, Jr, Paul A. Gaukler, D.Sean Barnett
Counsel for the Applicant - Private Fuel Storage

On September 7, 2000, Mr. Peterson filed comments on the DEIS with the NRC asserting that a Box Elder County, Utah site that he has proposed for a spent fuel storage facility is superior to the PFSF Skull Valley site.⁴ The PFSF ER and the DEIS both considered two potential sites for the PFSF in Utah, but neither considered Mr. Peterson's Box Elder County site. Compare DEIS at 7-2 with ER Table 8.1-1. On September 15, 2000, over 80 days after the DEIS had been made available to the public, and more than three years after PFS filed its license application, Mr. Peterson filed a second petition to intervene with additional contentions that, inter alia, challenged the DEIS for failing to consider the Box Elder County site as a potential alternative for the PFSF⁵. Second Petition at 3, 5. Mr. Peterson's additional contentions also challenged actions taken by the Governor of Utah, and statements made by Utah officials and private individuals concerning spent fuel transportation and storage. Id at 3-4.

Both the applicant - Private Fuel Storage and the Nuclear Regulatory commission have recognized that Peterson has asserted to the NRC in the EIS review process to have the advantages of the Pigeon Spur Fuel Storage Facility (PSFSF) site proposal seen, which may warrant its selection over the PFS site, where the proposed PSFSF may have substantial advantages over the proposed PFS facility. A copy of the PSFSF preliminary license application has been submitted to NRC for this review. Peterson petitions that this review may be made even without his intervention. Both NRC and PFS have recognized this and have not denied this.

Peterson with his technical staff have carried the brunt of the scientific defense of storage of SNF in Utah against the opposition of the State of Utah and all other opposition. It may be desirable for Peterson and his technical board to have intervener status to contend with the State's and others wrongful contentions made in the Docket 72-22 proceedings and to require answers from the State

in the formal proceedings of Docket No. 72-22 to make the record complete. Peterson and his scientific board will continue to champion reprocessing of SNF for recovery and use of its 92% U_{238} . This is necessary to have a full solution to the SNF situation. Both NRC and PFS have recognized this and have not denied this.

Issues and conditions have arisen during the Docket No. 72-22 proceedings which makes consideration of Peterson and PSFSF's intervention out of time justified. Exceptions to the rules can be made by the Administrative Judges of NRC which makes the Petitioner's late filing allowable. Both NRC and PFS have not denied this.

Peterson moves for consideration of the PSFSF and NRC Docket No. 72-23 alternatives in any status with or without intervention. Peterson moves for consideration of intervention to better serve the objectives of storage and reprocessing of spent nuclear fuel. Note that the intervener State of Utah has not refuted any of this! This action is timely 13+1 days after October 16, 2000.

Dated this 28th day of October, 2000.



William D. (Bill) Peterson
Pigeon Spur Fuel Storage Facility
NRC Docket No. 72-23

File - D:\P\NUC\NRCL\B1028rpl.wpd

CERTIFICATE OF E-mail SERVICE / DELIVERY

Copies of this APPEAL were sent this date by Internet e-mail transmission to counsel for (1) applicant PFS; (2) interveners 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,

CERTIFICATE OF U.S. POSTAL SERVICE / DELIVERY

Copies of the included document[s] were previously sent by E-mail and this day they were sent by U.S. Postal Mail, First Class to counsel for:

Applicant: (1) PFS; Jay E. Silberg, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, D.C. 20037;

Interveners: (2) Skull Valley Band of Goshute Indians, John Paul Kennedy, Sr., Esq., and David Pete, 1385 Yale Avenue, Salt Lake City, Utah 84105;

(3) Ohngo Gaudadeh Devia, Diane Curran, Esq., Harmon, Curran, Spielberg & Eisenberg, L.L.P., 1726 M Street, N.W., Suite 600, Washington, D.C. 20036;

(4) Confederated Tribes of the Goshute Reservation, Danny Quintana, Esq., 68 South Main, Suite 600, McEntire Bldg., Salt Lake City, Utah 84101;

(5) Southern Utah Wilderness Alliance, Joro Walker, Esq., Land and Water Fund of the Rockies, 2056 East 3300 South, Suite 1, Salt Lake City, Utah 84109;

The State, (6) Daniel Moquin, Utah Attorney General's Office, 1594 West North Temple, Suite # 300, Salt Lake City, Utah 84114-0855;

(7) Denise Chancellor, Esq., Assistant Attorney General, Utah Attorney General's Office, 160 East 300 South, 5th Floor, P.O. Box 140873, Salt Lake City, Utah 84114-0873;

The Staff: (8) G. Paul Bollwerk III, Esq., Chairman Administrative Judge, Atomic Safety and Licensing Board Panel, Mail Stop T-3 F23, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001;

(9) Dr. Peter S. Lam, Administrative Judge, Atomic Safety and Licensing Board Panel, Mail Stop T-3 F23, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001;

(10) Dr. Jerry R. Kline, Administrative Judge, Atomic Safety and Licensing Board Panel, Mail Stop T-3 F23, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001;

(11) Catherine L. Marco, Esq., and Sherwin E. Turk, Esq., Office of the General Counsel, Mail Stop O-15 B18, D21, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555;

(12) Adjudicatory File, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001;

(13) Office of the Secretary - (Original and two copies) Attention: Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001

Dated this 28th day of October, 2000.



William D. (Bill) Peterson
Pigeon Spur Fuel Storage Facility
NRC Docket No. 72-23