

September 10, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

DOCKETED
USNRC

September 13, 2001 (5:48PM)

In the Matter of)
)
PRIVATE FUEL STORAGE L.L.C.) Docket No. 72-22
)
(Private Fuel Storage Facility))

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

JOINT SCHEDULING REPORT TO THE
ATOMIC SAFETY AND LICENSING BOARD

INTRODUCTION

In accordance with the Atomic Safety and Licensing Board's ("Licensing Board" or "Board") Orders of June 15, July 3, and August 1, 2001,¹ the NRC Staff ("Staff"), State of Utah ("State") and Private Fuel Storage, L.L.C. ("PFS" or "Applicant") hereby file this joint report on matters pertaining to schedule. In this report, the Staff provides the expected publication dates for the Supplemental Safety Evaluation Reports ("SSER") for aircraft crash and geotechnical issues as well as the expected publication date for the Final Environmental Impact Statement ("FEIS"). The Applicant, the Staff and the State have consulted with each other, as well as with OGD and SUWA, to develop a proposed revised general schedule based on the Staff's expected publication dates, which the parties submit herewith for the Licensing Board's consideration.

BACKGROUND

In a decision issued on June 14, 2001, the Commission affirmed the Licensing Board's ruling on the admissibility of the State's proposed modification of Contention Utah L, challenging the Applicant's seismic exemption request, and remanded this issue to the Board for

¹ See "Memorandum and Order (Requesting Joint Scheduling Report and Delineating Contention Utah L)," dated June 15, 2001 ("June 15 Order"); "Order (Granting Leave to File Additional Scheduling Status Report)," dated July 3, 2001; ("July 3 Order"); "Memorandum and Order (Revised General Schedule)" dated August 1, 2001 ("August 1 Order");

adjudication as part of Contention Utah L.² In an Order dated June 15, 2001, the Licensing Board requested that the Staff, PFS, and the State file a joint scheduling report in which they (a) outline “a proposed schedule for litigation” of the seismic exemption issue remanded by the Commission in CLI-01-12, “bearing in mind the Commission’s statement that it ‘expects the new exemption-related contentions, if they go to hearing, to be included in the hearing contemplated for other admitted issues’”; and (b) “provide an estimate of the time necessary to conduct an evidentiary hearing on the matters still in controversy relative to contention Utah K/ Confederated Tribes B,” in light of the Board’s summary disposition ruling in LBP-01-19, 53 NRC 416 (2001). June 15 Order at 1-2.

On June 29, 2001, the Staff, State and PFS provided an initial report to the Licensing Board. Therein the parties provided their view that a total of three to five days will be required for hearings on the remaining aircraft crash issues in Contention Utah K/ Confederated Tribes B. Also, the Staff reported on a revised schedule for the publication of the SSERs on aircraft crash and geotechnical issues and the FEIS, which extended into January 2002 and affected the feasibility of holding the hearing as then scheduled for November and December 2001. The parties requested an opportunity to file a further scheduling report, on or before July 26, 2001, at which time more information might be known on the Staff’s review schedule. This request was granted by the Licensing Board in its Order of July 3, 2001.

In the July 26, 2001 report, the Staff reported that it had determined that it would likely complete its review prior to January 2002, but that it did not expect its review to be done in time to take positions on the issues at the November-December hearings. Accordingly, the parties reported to the Board that they did not believe that the hearings scheduled to be held in November-December 2001 could be held at that time. Further, because the Staff had not yet announced firm dates for the publication of its FEIS or its positions on aircraft crash and

² Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC ____ (June 14, 2001), *aff’g* LBP-01-03, 53 NRC 84 (2001).

geotechnical issues, the parties requested an opportunity to provide a further report to the Licensing Board in approximately 45 days, *i.e.*, on or before September 10, 2001, in which they would attempt to provide a more precise hearing schedule proposal. Based on the parties' report, the Board in its August 1 Order cancelled the hearings then scheduled to be held in November-December 2001 and directed the parties to file a further schedule report on or before September 10, 2001.

STAFF REVIEW DATES AND PROPOSED HEARING SCHEDULE

The Staff currently anticipates publication of its review documents on or before the following dates:

Aircraft Crash SSER	November 13, 2001
Geotechnical SSER	December 21, 2001
FEIS	December 21, 2001

Based on the above Staff publication dates, the parties have consulted with each other to develop a proposed revised general schedule, which is attached hereto. The salient features of the proposed revised schedule are as follows:

- A two month period of formal discovery among the parties, including the Staff, on Utah L, Basis B, commencing September 17, 2001 and ending November 16, 2001.
- A summary disposition filing deadline for Utah L, Basis B of November 9, 2001, a final response date of December 10, 2001, and Board decision by February 8, 2002. The page limit for the motion and responses would be 20 pages.
- A one month discovery period against the Staff on new Utah K/Confederated Tribes B matters (in the SSER on aircraft crashes) commencing November 21, 2001 and ending December 21, 2001.³

³ The proposed revised schedule also has – as a placeholder – a one month discovery period against the Staff on any new Utah L matters (in the SSER on geotechnical issues) commencing January 2, 2002 and ending February 1, 2002. Although the parties agree in principle that the State should be allowed discovery on new Utah L matters in the SSER, the Staff is of the view that the SSER is unlikely to contain any new information relevant to Utah L, on which it has already taken a position in the “NRC Staff’s Response to Applicant’s Motion for Summary Disposition of Utah Contention L (Geotechnical),” dated January 30, 2001. The parties have agreed to the inclusion of the one month placeholder for discovery against the NRC Staff under which the parties agree that (1) the State can file

Footnote continued on next page

- A six week period for FEIS-related discovery against the Staff, commencing January 2, 2002 and ending February 13, 2002.
- The filing of pre-filed testimony (discussed further below) at least 4 weeks prior to hearing on the related contention.
- Hearing April 8, 2002 to April 26, 2002. (Hearing on environmental issues would begin no earlier than April 15, 2002, and therefore the hearing would commence with Group I-II/B issues.)
- Findings of fact would be filed on June 7, 2002, reply findings of fact on July 8, 2002, and Board Initial Decision on September 9, 2002.

As the Board knows, the Winter Olympics will be held in Salt Lake City in February 2002. Because it will be difficult to work in the downtown Salt Lake City area during the period of the Olympics, the State requests that pre-filed testimony not be due during period of the Olympics (which is February 8-24). Accordingly, except for one area of dispute between the parties, the filing of pre-filed testimony under the parties' proposed revised schedule is scheduled for March 2002. The area of dispute is the filing of pre-filed testimony for aircraft crashes. Since all discovery on Utah K/Confederated Tribes B matters should be completed by Christmas, the Applicant and the Staff believe that it would be feasible for all parties to file pre-filed testimony on aircraft crashes, prior to the Winter Olympics, or on February 6, 2002.⁴ This would be consistent with the Board's often-expressed concern of not back-loading the proceeding. The State requests that the due date for pre-filed testimony on aircraft crashes be the same as that proposed for the other Group I-II/B issues (March 11, 2002).

The parties are in the process of contacting witnesses to confirm their availability for an April hearing. The State is currently aware of conflicts for two of its Utah L witnesses for part of

Footnote continued from previous page

discovery during this period on new matters in the SSER that it believes are relevant to Utah L, (2) the Staff can object to such discovery, *inter alia*, on the grounds that the materials on which the State seeks discovery are not new matters relevant to Utah L in the SSER.

⁴ The Staff notes that one of its experts on aircraft crash issues will be unavailable to respond to discovery during the period of December 8-25, 2001, which could result in the need for an extension of the discovery period and of the date for filing testimony on aircraft crash issues.

the time.⁵ PFS is aware of a conflict of one of its Air Force experts for Monday April 8, 2002.⁶ The parties will, as before, work together to schedule the hearing around witness conflicts.

The revised schedule does not address the State's request for the admission of proposed Utah QQ, which is currently pending before the Licensing Board. If a Board decision were rendered in the near future admitting part or all of proposed Utah QQ, the parties would propose the litigation of Utah QQ to follow the proposed schedule for Utah L, Basis B. If that were not feasible, the parties would consult and provide a proposed schedule for the litigation of Utah QQ.

Respectfully submitted,



Jay E. Silberg

Ernest L. Blake, Jr.

Paul A. Gaukler

D. Sean Barnett

SHAW PITTMAN LLP

2300 N Street, N.W.

Washington, DC 20037

Counsel for Private Fuel Storage L.L.C.

Dated: September 10, 2001

⁵ Dr. Arabasz is unavailable April 14-20; Dr. Ostadan is unavailable April 8-15.

⁶ In preliminary discussions, the Applicant and the State have focused on starting the hearing with Utah K. Assuming that were the case, the unavailability of one of PFS's Air Force experts could delay substantive testimony on Utah K until Tuesday, April 9, 2002, but there would be preliminary matters to attend to on Monday, April 8, 2002.

PARTIES' PROPOSED REVISED GENERAL SCHEDULE FOR PRIVATE FUEL STORAGE PROCEEDING, SEPTEMBER 10, 2001

EVENT	GROUPS I-III/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	SER -- September 29, 2000 SSER -- November 13, 2001 for Utah K and December 21, 2001 for Utah L	DEIS -- June 2000 FEIS -- December 21, 2001
Formal Discovery Begins -- All Parties	March 1, 1999	March 1, 1999, except for Basis B of Utah L for which Formal Discovery will commence September 17, 2001	March 1, 1999, except (1) DEIS-related discovery against Staff - August 15, 2000; and (2) FEIS-related discovery against Staff - January 2, 2002
Formal Discovery Ends -- All Parties Except Against Staff (unless otherwise noted)	May 28, 1999, subject to a November 15, 1999 (against Staff - December 15, 1999) - January 31, 2000 limited discovery window	May 28, 1999, except for Basis B of Utah L for which Formal Discovery ends November 16, 2001, subject to limited windows for (1) Utah L Basis A depositions (August 15 - September 29, 2000, except through October 30, 2000, for Dr. Arabasz); and (2) discovery against Staff beginning (i) October 25, 2000 for Utah L Basis A, (ii) November 21, 2001 (new Utah K/Confederated Tribes B matters), and (iii) January 2, 2002 (new Utah L matters) subject to parties' understanding expressed in note 3 of the parties' September 10, 2001 Joint Scheduling Report.	May 28, 1999, subject to January 16-March 15, 2001 limited discovery window
Formal Discovery Ends -- Against Staff	February 15, 2000	(2)(i) above - December 11, 2000 (2)(ii) above - December 21, 2001 (2)(ii) above - February 1, 2002	DEIS - September 29, 2000 FEIS - February 13, 2002 (assumes FEIS receipt by the parties before January 2, 2002)
Summary Disposition Motions Final Filing Date	February 1, 2000	December 30, 2000, except for Basis B of Utah L, November 9, 2001.	(a) May 25, 2001 (20 pages); (b) June 29, 2001 (15 pages); (c) July 27, 2001 (10 pages)
Summary Disposition Motion Responses Final Filing Date	March 1, 2000	February 9, 2001, except for Basis B of Utah L, December 10, 2001	(a) June 25, 2001; (b) July 30, 2001; (c) August 27, 2001
Board Summary Disposition Decision	March 31, 2000	April 30, 2001, except Basis B of Utah L, February 8, 2002	September 28, 2001
Pre-filed Testimony Submitted	May 15, 2000	[PFS and Staff position] February 6, 2002 for Utah K/Confederated Tribes B; March 11, 2002 for Utah L. [State position is March 11, 2002 for all of Group I-II/B contentions.]	March 18, 2002
In Limine Motions Due	May 31, 2000	March 25, 2002	April 1, 2002
Hearings (including limited appearance sessions as appropriate)	June 19 - June 30, 2000	April 8-26, 2002	April 15-26 --, 2002
Findings of Fact (Simultaneous filings)	July 31, 2000	June 7, 2002	June 7, 2002
Findings of Fact Responses (Simultaneous filings)	August 28, 2000	July 8, 2002	July 8, 2002
Initial Decision	October 30, 2000	September 9, 2002	September 9, 2002

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

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

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

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
)	
(Private Fuel Storage Facility))	ASLBP No. 97-732-02-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the Joint Scheduling Report to the Atomic Safety and Licensing Board were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 10th day of September, 2001.

G. Paul Bollwerk III, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: GPB@nrc.gov

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: JRK2@nrc.gov; kjerry@erols.com

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: PSL@nrc.gov

*Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and Adjudications
Staff

e-mail: hearingdocket@nrc.gov
(Original and two copies)

Catherine L. Marco, Esq.
Sherwin E. Turk, Esq.
Office of the General Counsel
Mail Stop O-15 B18
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
e-mail: pfscase@nrc.gov

John Paul Kennedy, Sr., Esq.
David W. Tufts, Esq.
Confederated Tribes of the Goshute
Reservation and David Pete
Durham Jones & Pinegar
111 East Broadway, Suite 900
Salt Lake City, Utah 84105
e-mail: dtufts@djplaw.com

Diane Curran, Esq.
Harmon, Curran, Spielberg &
Eisenberg, L.L.P.
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
e-mail: dcurran@harmoncurran.com

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

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

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
e-mail: dchancel@state.UT.US

Joro Walker, Esq.
Land and Water Fund of the Rockies
1473 South 1100 East
Suite F
Salt Lake City, UT 84105
e-mail: lawfund@inconnect.com

Tim Vollmann, Esq.
Skull Valley Band of Goshute Indians
3301-R Coors Road, N.W.
Suite 302
Albuquerque, NM 87120
e-mail: tvollmann@hotmail.com

Paul EchoHawk, Esq.
Larry EchoHawk, Esq.
Mark EchoHawk, Esq.
EchoHawk PLLC
P.O. Box 6119
Pocatello, ID 83205-6119
e-mail: pechohawk@hollandhart.com

* By U.S. mail only



Paul A. Gaukler