

September 28, 2001

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

Before the Atomic Safety and Licensing Board

October 2, 2001 (12:07PM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of	)	
	)	
PRIVATE FUEL STORAGE L.L.C.	)	Docket No. 72-22
	)	
(Private Fuel Storage Facility)	)	ASLBP No. 97-732-02-ISFSI

**THIRD JOINT REPORT ON THE STATUS OF  
FEDERAL LAWSUIT SKULL VALLEY BAND v. LEAVITT**

Pursuant to the June 14, 2001 order of the Atomic Safety and Licensing Board ("Board"),<sup>1</sup> Applicant Private Fuel Storage, L.L.C. ("PFS"), the Skull Valley Band of Goshute Indians ("Skull Valley Band"), and the State of Utah ("State" or "Utah") jointly submit this report on the status of the federal lawsuit, Skull Valley Band of Goshute Indians v. Leavitt, Case No. 2:01CV00270C (D. Utah, filed Apr. 19, 2001).<sup>2</sup> On April 13, 2001, the State filed Contention Security-J, Law Enforcement ("Security-J"), which contended that PFS is unable to comply with the regulatory mandate that a "[d]ocumented liaison with a designated response force or local law enforcement agency (LLEA) must be established to permit timely response to unauthorized penetration or activities," 10 C.F.R. § 73.51(d)(6), because recently-adopted Utah legislation prohibits any state or local government entity from entering into such an agreement relative to the PFS facility. Order at

<sup>1</sup> Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-01-20, 53 NRC \_\_, slip op. (June 14, 2001) (Deferring Admissibility Ruling on Late-Filed Contention Security-J) ("Order").

<sup>2</sup> The parties respectfully request leave to file this report (which was due to be filed September 27, 2001) one day late. Counsel for both the Applicant and the State were busily engaged in responding to discovery and other case matters and overlooked this due date. They have proceeded expeditiously, upon becoming aware of their oversight, to prepare and file the report.

1. The Board deferred any ruling on the State's request to admit Security-J, pending resolution of the federal district court litigation in which the Skull Valley Band and PFS contest the constitutionality of the Utah legislation, or further order of the Board. Order at 2. In order to monitor that proceeding to determine whether any developments would warrant further Board action on the contention pending a court ruling, the Board requested PFS, the Skull Valley Band, and the State to file periodic joint reports on the status of the lawsuit. Id. at 9. The first report was due on June 29, 2001; subsequent reports are due every 45 days thereafter. Id.

On June 29, the parties filed their initial report on the status of the litigation as required by the Board's June 14, 2001 Order.<sup>3</sup> In that report, the parties noted that the Board had before it a copy of the federal complaint, which had been filed by PFS and the Skull Valley Band on April 19, 2001,<sup>4</sup> and that by joint stipulation the parties to the federal litigation had agreed that the State defendants had until July 18, 2001 to file their answer to the complaint.

On August 13, 2001 the parties filed their second joint report on the status of the litigation.<sup>5</sup> In that report, the parties noted that, on July 18, 2001, the State defendants filed their answer to the complaint as well as a counterclaim against PFS and a demand for a jury trial, and that on August 8, 2001 the State defendants filed an amended counterclaim adding the Skull Valley Band as a defendant to the counterclaim.

On August 27, 2001, PFS and the Band filed their reply to the Amended Counterclaim. On September 20, 2001 the State Defendants filed a Motion for Judgment on the

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<sup>3</sup> Joint Report on the Status of Federal Lawsuit Skull Valley Band v. Leavitt (June 29, 2001).

<sup>4</sup> PFS attached a copy of the Complaint to its response to Utah's request to admit Utah Security-J. See Applicant's Response to State of Utah's Request for Admission of Late-filed Contention Utah Security J—Law Enforcement, dated April 27, 2001.

<sup>5</sup> Second Joint Report on the status of Federal Lawsuit Skull Valley Band v. Leavitt (August 13, 2001).

Pleadings, pursuant to FRCP 12(c), arguing as the basis for the motion that the Nuclear Regulatory Commission lacks statutory authority to license a private, away-from-reactor spent fuel storage facility. PFS's and the Band's response to the Motion is currently due October 9, 2001.

PFS, the Skull Valley Band, and the State will submit their next joint status report to the Board on November 12, 2001.

Respectfully submitted,



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Dated: September 28, 2001

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CERTIFICATE OF SERVICE

I hereby certify that copies of the Third Joint Report on the Status of Federal Lawsuit Skull Valley Band v. Leavitt were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage pre-paid, this 28th day of September, 2001.

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