

RAS 3657

DOCKETED  
USNRC

2001 DEC 12 PM 2: 26

OFFICE OF THE SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFFUNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

Docket No. 72-22-ISFSI

PRIVATE FUEL STORAGE, LLC  
(Independent Spent Fuel  
Storage Installation)

ASLBP No. 97-732-02-ISFSI

November 6, 2001

STATE OF UTAH'S MOTION TO EXTEND DISCOVERY PERIOD ON  
CONTENTION UTAH L FOR DEPOSITIONS

The Board has scheduled a discovery window for Contention Utah L, Part B (seismic exemption) from September 17, 2001 until November 16, 2001. During this period, if a motion for summary disposition is filed, it must be done so by November 9, 2001. See Board's General Schedule as revised September 20, 2001.

By agreement, the State and the Applicant have arranged to depose witnesses for Utah L, Part B during the week of October 29<sup>th</sup> and November 12<sup>th</sup>. Although the Staff has not supplemented its response to State of Utah's First Set of Discovery Requests Directed to the NRC Staff, General Interrogatory Nos. 3 through 5 (June 10, 1999) to name witnesses and provide other relevant information on each admitted contention, the State has attempted to secure the identification and scope of testimony

<sup>1</sup>When NRC Staff is a party to a proceeding, the Executive Director for operation must designate and make available one or more witnesses for deposition. 10 CFR § 2.720(h)(2)(i).

for Staff witness(es) since October 12<sup>th</sup><sup>1</sup>. On October 23, 2001, counsel for the Staff proffered that it "anticipates" it will name John Stamatakis and also "anticipates" that it may name other witnesses. However, Staff counsel stated that due to his work load, Dr. Stamatakis is "unlikely" available for depositions the last and only available week of the discovery period (November 12<sup>th</sup>-16<sup>th</sup>). In a brief discussion yesterday, November 5, 2001, Staff counsel indicated that it hoped to name a panel of three witnesses, including Dr. Stamatakis and two un-named witnesses. Further, Staff counsel has not yet determined a deposition location where the Staff will make its witness panel available. Pending verification of availability, Staff counsel proposed to offer its witnesses on November 19<sup>th</sup> and 20<sup>th</sup>, 2001 in either Washington, D.C. or Salt Lake City.

Deposition of Staff witnesses is necessary to a proper decision in this proceeding because, as the record now stands, it is the Staff's rationale in the Safety Evaluation Report ("SER") that supports the grant of an exemption from the duly enacted regulatory standards and the use of a probabilistic approach and a 2,000 year return period earthquake. Moreover, PFS incorporated by reference and adopted the Staff's "bases [in the SER] asserted by the NRC Staff in granting Applicant's requested exemption allowing the use of a probabilistic seismic hazard analysis [ ] based on a 2,000 year return period earthquake in the seismic design of the PFSF." See Applicant's Objections and Responses to the State of Utah's Eleventh Set of Discovery

---

<sup>1</sup>When NRC Staff is a party to a proceeding, the Executive Director for operation must designate and make available one or more witnesses for deposition. 10 CFR § 2.720(h)(2)(i).

Requests Directed to the Applicant, Response to Interrogatory 15 (October 2, 2001) at 14.

The State hopes it will be able to coordinate a schedule to take depositions of Staff witnesses on or before November 21, 2001.<sup>2</sup> Therefore, the State requests an extension of the discovery period through November 21, 2001 to allow it sufficient time to depose named Staff witnesses.<sup>3</sup> The Staff and PFS do not object to an extension through November 21, 2001. If granted, this extension will not delay the schedule.

DATED this 6<sup>th</sup> day of November, 2001.

Respectfully submitted,

---

Denise Chancellor, Assistant Attorney General  
Fred G Nelson, Assistant Attorney General  
Connie Nakahara, Special Assistant Attorney General  
Diane Curran, Special Assistant Attorney General  
Laura Lockhart, Assistant Attorney General  
Attorneys for State of Utah  
Utah Attorney General's Office  
160 East 300 South, 5th Floor, P.O. Box 140873  
Salt Lake City, UT 84114-0873  
Telephone: (801) 366-0286, Fax: (801) 366-0292

---

<sup>2</sup>At this time, Staff counsel has not identified all witnesses or specified the time and location of their availability for depositions.

<sup>3</sup> Note that if necessary deposition participants are not available the week of November 21<sup>st</sup>, the State will request an additional extension to take depositions of Staff witnesses.

CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S MOTION TO EXTEND  
DISCOVERY PERIOD FOR CONTENTION UTAH L was served on the persons  
listed below by electronic mail (unless otherwise noted) with conforming copies by

United States mail first class, this 6<sup>th</sup> day of November, 2001:

Rulemaking & Adjudication Staff  
Secretary of the Commission  
U. S. Nuclear Regulatory Commission  
Washington D.C. 20555  
E-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)  
(original and two copies)

G. Paul Bollwerk, III, Chairman  
Administrative Judge  
Atomic Safety and Licensing Board  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555  
E-Mail: [gp@nrc.gov](mailto:gp@nrc.gov)

Dr. Jerry R. Kline  
Administrative Judge  
Atomic Safety and Licensing Board  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555  
E-Mail: [jrk2@nrc.gov](mailto:jrk2@nrc.gov)  
E-Mail: [kjerry@erols.com](mailto:kjerry@erols.com)

Dr. Peter S. Lam  
Administrative Judge  
Atomic Safety and Licensing Board  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555  
E-Mail: [psl@nrc.gov](mailto:psl@nrc.gov)

Sherwin E. Turk, Esq.  
Catherine L. Marco, Esq.  
Office of the General Counsel  
Mail Stop - 0-15 B18  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
E-Mail: [set@nrc.gov](mailto:set@nrc.gov)  
E-Mail: [clm@nrc.gov](mailto:clm@nrc.gov)  
E-Mail: [pfscase@nrc.gov](mailto:pfscase@nrc.gov)

Jay E. Silberg, Esq.  
Ernest L. Blake, Jr., Esq.  
Paul A. Gaukler, Esq.  
Shaw Pittman, LLP  
2300 N Street, N. W.  
Washington, DC 20037-8007  
E-Mail: [Jay\\_Silberg@shawpittman.com](mailto:Jay_Silberg@shawpittman.com)  
E-Mail: [ernest\\_blake@shawpittman.com](mailto:ernest_blake@shawpittman.com)  
E-Mail: [paul\\_gaukler@shawpittman.com](mailto:paul_gaukler@shawpittman.com)

John Paul Kennedy, Sr., Esq.  
David W. Tufts  
Durham Jones & Pinegar  
111 East Broadway, Suite 900  
Salt Lake City, Utah 84111  
E-Mail: [dtufts@djplaw.com](mailto:dtufts@djplaw.com)

Joro Walker, Esq.  
Land and Water Fund of the Rockies  
1473 South 1100 East, Suite F  
Salt Lake City, Utah 84105

E-Mail: [utah@lawfund.org](mailto:utah@lawfund.org)

Larry EchoHawk  
Paul C. EchoHawk  
Mark A. EchoHawk  
EchoHawk PLLC  
140 North 4<sup>th</sup> Street, Suite 1  
P.O. Box 6119  
Pocatello, Idaho 83205-6119  
E-mail: [paul@echohawk.com](mailto:paul@echohawk.com)

Tim Vollmann  
3301-R Coors Road N.W. # 302  
Albuquerque, NM 87120  
E-mail: [tvollmann@hotmail.com](mailto:tvollmann@hotmail.com)

James M. Cutchin  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
E-Mail: [jmc3@nrc.gov](mailto:jmc3@nrc.gov)  
(*electronic copy only*)

Office of the Commission Appellate  
Adjudication  
Mail Stop: O14-G-15  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555

---

Connie Nakahara  
Special Assistant Attorney General  
State of Utah