

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 3693

DOCKETED 12/26/01
SERVED 12/26/01

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Michael C. Farrar, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

In the Matter of

PRIVATE FUEL STORAGE, LLC

(Independent Spent Fuel
Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

December 26, 2001

PREHEARING MEMORANDUM AND ORDER

As noted in our companion opinion issued today (LBP-01-39, 54 NRC ____, ____) (slip op. p. 19, fn. 22), the Commission's policy directives concerning hearing management¹ encourage us, as we put it, "to use all available tools in order to achieve the goals of producing an informed adjudicatory record in a reasonable, disciplined time frame while providing a fair hearing process." To that end, we think that given the complexity of some of the issues before us here there is need -- and room -- for more than the usual creativity in managing the process leading up to the hearing.² Thus, whether or not they would be appropriate in other proceedings, we

¹See Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981), and Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18 (1998).

² The express provisions of 10 CFR § 2.714(f) give us some latitude in this regard: "An order . . . directing a hearing may be conditioned on such terms as the . . . designated atomic safety and licensing board may direct in the interests of: (1) restricting irrelevant, duplicative, or repetitive evidence and argument, . . . and (3) retaining authority to determine priorities and control the compass of the hearing." Similarly, 10 C.F.R. § 2.718 expressly gives us "all powers necessary" to "conduct a fair and impartial hearing" and "to avoid delay."

have determined that, in the circumstances of this case, the measures we now announce are necessary to achieve those ends.

Accordingly, we are now advising the parties that, in addition to the steps and deadlines already scheduled, we are putting in place, not only for the geotechnical issue but, unless otherwise noted, for all other contentions being heard, the following procedures and timetables for implementation between now and the start of the hearing:

1. For the geotechnical issue only, the parties are to confer promptly and to file, by January 31, 2002, either a joint statement of the facts (at whatever level) not in dispute or a similar stipulation of matters which are not in controversy.
2. When the parties pre-file their direct testimony (according to the established schedule or any modification thereof), they are at the same time to file a concise outline of the key determinations that (as best they can foretell) they will be asking us to make post-hearing. This outline shall be brief, not exceeding page limitations which we will set for each contention, depending upon its complexity.
3. The written pre-filed testimony of each witness is to be prefaced by a brief outline (no more than one page long), prepared by counsel, of what the party hopes to prove through that witness.
4. After the pre-filed testimony is in hand, each party who wishes to cross-examine another party's witness shall provide ***to the Board members only*** a cross-examination plan that will enable us both to better understand where the questioning is headed and to limit the questioning if it goes afield (see 10 CFR § 2.743(a),(b)(2)). This is to be done in two stages -- a preliminary version two weeks in advance of the hearing of the contention, and a more detailed version the day before the witness is scheduled to testify.

From time to time as circumstances demand, we may adopt other measures of a similar nature.

The main purposes for most of the above measures,³ as might be surmised, are (1) to narrow the issues to the extent feasible and (2) to provide us with as much insight as possible, as early as possible, into the key aspects of the hearing. That insight will enable us to study the pre-filed testimony having in mind, on the one hand, its underlying purpose and strengths as seen by the testimony's proponent and, on the other hand, its weaknesses as perceived by those who will challenge it, as well as an appreciation of where the respective parties want their presentations to take us. We expect that this insight will aid materially in preparing us for the hearing, as well as put us in better position to ensure that the hearing itself sets the stage completely for our final decision.

Although we are willing to consider any serious objections the parties might have to the above procedures, such objections should be based on factors we may have overlooked, not on disagreement with the purposes we seek to achieve.⁴ And we will not entertain any such objection that is not accompanied by an alternative proposal that will accomplish substantially equivalent purposes. Of course, any scheduling problems the procedures create, serious or otherwise, should be brought to our attention.

Better yet, alternative approaches should represent the product of the parties having conferred to develop and to present proposals in which they all concur (and which, again, will serve our purposes). In that regard, we expect to continue to receive the parties' cooperation in adopting and following procedures that promote thoroughness, efficiency and fairness.

³ The purpose of the first requirement should be obvious to those who have been involved in the now-resolved controversy over the framing of the geotechnical issue: we expect that a diligent effort toward a comprehensive stipulation might well reduce significantly the extent of the testimony that would otherwise have to be prepared regarding baseline facts.

⁴ We do recognize the potential for conflict between (1) providing us early insight and (2) prematurely revealing trial strategy to a party's opponent. One solution would be to have the material called for by Items 2 and 3 served only on the Board, not on the other parties. At the mid-January prehearing teleconference, the parties will have the opportunity to express their views regarding this matter.

Accordingly, it is this 26th day of December, 2001, ORDERED that the foregoing pre-hearing measures are ADOPTED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael C. Farrar
ADMINISTRATIVE JUDGE

/RA/

Jerry R. Kline
ADMINISTRATIVE JUDGE

/RA/

Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 26, 2001

Copies 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, OGD, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State of Utah; and (3) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
PRIVATE FUEL STORAGE, L.L.C.) Docket No. 72-22-ISFSI
)
(Independent Spent Fuel Storage)
Installation))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing PREHEARING MEMORANDUM AND ORDER 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
Michael C. Farrar, 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

Joro Walker, Esquire
Director, Utah Office
Land and Water Fund of the Rockies
1473 South 1100 East, Suite F
Salt Lake City, UT 84105

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

Docket No. 72-22-ISFSI
PREHEARING MEMORANDUM AND ORDER

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

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

John Paul Kennedy, Sr., Esquire
David W. Tufts, Esquire
Confederated Tribes of the Goshute
Reservation and David Pete
Durham Jones & Pinegar
111 East Broadway, Suite 900
Salt Lake City, UT 84105

Richard Wilson
Department of Physics
Harvard University
Cambridge, MA 02138

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

Tim Vollmann, Esquire
3301-R Coors Road N.W., #302
Albuquerque, NM 87120

Paul C. EchoHawk, Esquire
ECHOHAWK LAW OFFICES
151 North 4th Avenue, Suite A
P.O. Box 6119
Pocatello, ID 83205-6119

Marlinda Moon, Chairman
Sammy Blackbear, Sr., Vice-Chairman
Miranda Wash, Secretary
Skull Valley Band of Goshute Indians
P.O. Box 511132
Salt Lake City, UT 84151-1132

[Original signed by Emile L. Julian]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 26th day of December 2001