

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF'S UNOPPOSED MOTION  
TO MODIFY THE SCHEDULE FOR  
FILING BRIEFS ON APPEAL FROM THE  
LICENSING BOARD'S DECISION IN LBP-02-08

Pursuant to 10 C.F.R. § 2.730, the NRC Staff ("Staff") hereby requests a two-day modification of the schedule for filing briefs on appeal from the Licensing Board's decision in LBP-02-08, concerning the litigation of environmental justice issues in this proceeding, to permit initial briefs to be filed on April 5, 2002. In support of this request, the Staff states as follows:

1. The Licensing Board issued its decision in LBP-02-08 on February 22, 2002.<sup>1</sup> Therein, the Board (a) granted summary disposition in favor of Private Fuel Storage, L.L.C. ("PFS" or "Applicant") with respect to Bases 5 and 6 of Contention OGD O ("Environmental Justice"), and (b) denied the Applicant's summary disposition motion with respect to Basis 1 of the contention, and set that matter (as defined by the Board) for hearing.

2. On March 4, 2002, Intervenor Skull Valley Band of Goshute Indians ("Skull Valley Band") filed a motion seeking directed certification of the Licensing Board's decision in LBP-02-08.<sup>2</sup>

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<sup>1</sup> *Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation)*, LBP-02-08, 55 NRC \_\_\_\_ (2002).

<sup>2</sup> See "Intervenor Skull Valley Band's Motion for Directed Certification for Review of Memorandum and Order (LBP-02-08) of the Atomic Safety and Licensing Board," dated March 4, 2002.

Also on March 4, 2002, the Staff filed a request to stay the Licensing Board's decision, and indicated that it planned to file an interlocutory appeal from the Licensing Board's decision.<sup>3</sup>

3. On March 7, 2002, the Commission issued a decision in CLI-02-08,<sup>4</sup> in which it granted the Skull Valley Band and Staff motions, undertook review of the decision in LBP-02-08, and established a schedule for filing briefs on appeal. Pursuant to that schedule, (1) parties seeking reversal of LBP-02-08 are to file their initial briefs by April 3, 2002; (2) responsive briefs are to be filed by April 30, 2002; (3) reply briefs are to be filed by May 10, 2002; and (4) any *amicus curiae* brief filed by the Bureau of Indian Affairs is due by April 15, 2002. *Id.*, slip op. at 4.

4. As noted by the Commission in CLI-02-08, the parties in this proceeding are preparing for hearings to be held during the period of April 8 - May 11, 2002. This involves the preparation of direct testimony, exhibits, cross-examination plans, motions *in limine*, and various other required filings. More specifically, testimony on aircraft crash issues, hydrology and the proposed rail line corridor has been filed within the past several weeks, while testimony on geotechnical/seismic issues is due to be filed on Monday, April 1, 2002. These activities have involved the efforts of numerous individuals, including all Staff Counsel assigned to this proceeding.

5. The litigation tasks described in Paragraph 4 are expected to consume all of Staff Counsel's available time until April 1, 2002. For this reason, an insufficient amount of time is available to prepare and file the Staff's brief on appeal from LBP-02-08, two days after the date on which testimony on geotechnical/seismic issues is due to be filed.

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<sup>3</sup> See "NRC Staff's Request for a Stay Pending the Commission's Consideration of Any Requests for Interlocutory Review of the Licensing Board's Decision in LBP-02-08 Concerning Contention OGD O (Environmental Justice), dated March 4, 2002 ("Stay Request"). The Staff noted that the Skull Valley Band, the Staff, and the Applicant were each preparing to file motions seeking directed certification or interlocutory review of the Board's decision. *Id.* at 2 n.3.

<sup>4</sup> *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-08, 55 NRC \_\_\_\_ (2002).

6. Accordingly, the Staff finds it necessary to request an additional period of two days in which to prepare and file its brief on appeal from the Board's decision in LBP-02-08. The Staff respectfully submits that this brief extension of time will not adversely affect the schedule for litigation of this or any other contention in this proceeding.

7. Staff Counsel has discussed this request with all parties involved in the litigation of Contention OGD O who are potentially affected by the Board's decision in LBP-02-08. Specifically, the Staff has discussed this matter with Counsel for the Applicant, Counsel for the Skull Valley Band, and Counsel for Ohngo Gaudadeh Devia ("OGD"). None of those parties object to the Staff's request. Further, Counsel for the Applicant and Counsel for the Skull Valley Band request that their briefs on appeal also be permitted to be filed on April 5, 2002; neither the Staff nor OGD object to that request.

WHEREFORE, the Staff hereby requests that the schedule for filing initial briefs on appeal from the Licensing Board's decision in LBP-02-08 be modified by two days, to allow such briefs to be filed on or before April 5, 2002.

Respectfully submitted,

**/RA/**  
Sherwin E. Turk  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 26th day of March 2002

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S UNOPPOSED MOTION TO MODIFY THE SCHEDULE FOR FILING BRIEFS ON APPEAL FROM THE LICENSING BOARD'S DECISION IN LBP-02-08," in the above captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 26th day of March, 2002:

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