

RAS 4333

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 04/18/02

Before Administrative Judges:

SERVED 04/18/02

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

April 18, 2002

ORDER

(Regarding Pending In Limine Motions)

The Licensing Board has before it several in limine motions regarding both the environmental issues scheduled to be heard next week and the seismic issues scheduled to be heard thereafter. The respective replies to the environmental issue motions are in hand; the replies to the seismic issue motions are due next Monday, April 22. This order addresses the merits of the former and certain procedural matters as to the latter.

1. Environmental Issues. Both the applicant Private Fuel Storage, L.L.C., (PFS) and the NRC Staff are seeking the exclusion of certain evidentiary material prefiled by the Southern Utah Wilderness Alliance in connection with Contention SUWA B (rail-line alternatives). The applicant is also requesting that we strike certain portions of the pre-filed direct testimony of a witness of intervenor State of Utah (State) regarding Contention Utah O (hydrology). Our action on the motions is described below, accompanied by an indication of our reasoning.

a. SUWA B. The arguments raised by PFS and the Staff are best considered and explored not at this point, but as the challenged evidence is being tested in the hearing process. At the conclusion of that process, we should be in better position to evaluate the legitimacy,

value and weight of the challenged evidence. Accordingly, the pending motions are at this juncture CARRIED WITH THE CASE, subject to renewal at an appropriate time.

b. Utah O. The applicant's point is well-taken to the extent that we have previously ruled that, as to this contention, only the issue of possible non-radiological pollution remains before us. But the State's point -- that the witness' mention of matters dealing with radiological pollution is intended only to provide context or background for the non-radiological matters -- appears legitimate, and on that understanding the motions are DENIED. Again, after cross-examination is concluded, motions to strike renewing this point may be appropriate; we suspect, however, such motions will prove unnecessary.

2. Seismic Issues. In addition to, or in lieu of, the methods of service ordinarily prescribed, the parties are to serve their replies to the pending motions (due Monday, April 22) upon the Board and each other at the start of the hearing on environmental issues next Tuesday, April 23. Depending on the nature of those replies, the Board may wish to hear oral argument on the motions on Thursday, April 25, following the conclusion of the argument on another subject already set for that date.

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Accordingly, on this 18th day of April, 2002, it is ORDERED that the pending motions in limine be treated as indicated in the foregoing.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA by G. Paul Bollwerk, III Acting For/*

Rockville, Maryland  
April 18, 2002

\_\_\_\_\_  
Michael C. Farrar, Chairman  
ADMINISTRATIVE JUDGE

\_\_\_\_\_  
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

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (REGARDING PENDING IN LIMINE MOTIONS) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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LB ORDER (REGARDING PENDING IN LIMINE MOTIONS)

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[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 18<sup>th</sup> day of April 2002