

**RAS 4485**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**DOCKETED 05/31/02**

BEFORE THE COMMISSION

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

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NRC STAFF'S RESPONSE TO "UTAH'S MOTION FOR AN  
ORDER ALLOWING REPLY BRIEFS AND/OR ORAL ARGUMENT  
REGARDING UTAH'S SUGGESTION OF LACK OF JURISDICTION"

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May 30, 2002

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On May 15, 2002, the staff of the Nuclear Regulatory Commission (Staff) filed its Brief in Response to CLI-02-11, concerning the Commission's authority under federal law to license a privately owned, away-from-reactor spent fuel storage facility, in response to the State of Utah's (State's) "Suggestion of Lack of Jurisdiction" (Suggestion) dated February 11, 2002. Briefs addressing this issue were simultaneously filed by the Skull Valley Band of Goshute Indians (Skull Valley Band) and Private Fuel Storage, L.L.C. (PFS or Applicant), and a supplemental brief was filed by the State. On May 22, 2002, the State submitted its "Motion for an Order Permitting Reply Briefs and/or Oral Argument Regarding Utah's Suggestion of Lack of Jurisdiction" (Motion). For the reasons set forth below, the Staff submits that the State's Motion should be denied.

First, the Staff submits that the issue raised by the State in its Suggestion has already been adequately briefed by the parties. The State first raised the issue of the Commission's authority under federal law to license privately owned, away-from-reactor spent fuel storage facilities in Contention Utah A, filed in November 1997.<sup>1</sup> The Staff and Applicant responded to Contention

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<sup>1</sup> See "State of Utah's Contentions on the Construction and Operating Licence Application by Private Fuel Storage, LLC for an Independent Spent Fuel Storage Facility" (November 23,

Utah A with arguments similar to those presented in their responses to CLI-02-11,<sup>2</sup> and the State was afforded an opportunity to reply to those arguments, both in writing and in oral argument,<sup>3</sup> prior to issuance of the Board's ruling on the admissibility of that contention.<sup>4</sup> Similarly, the State raised the issue of the Commission's authority to license privately owned, away-from-reactor spent fuel storage in federal district court litigation with PFS and the Skull Valley Band in 2001, where the issue was extensively briefed and argued.<sup>5</sup> Most recently, the State raised this issue in its "Suggestion of Lack of Jurisdiction," filed on February 11, 2002. In sum, since Contention Utah A was first filed in 1997, the parties have extensively briefed the issues raised in the State's Suggestion. Thus, the State has been on notice for several years as to the other parties' positions on the State's jurisdictional arguments, and no further briefing of the issue is necessary.

Moreover, the State's Motion provides no justification that would warrant the diversion of resources that could be caused by scheduling further briefs or oral argument on this issue. Significantly, while the State alleges that the Applicant's and Staff's briefs "are filled with new arguments relative to new material," and that "a substantial number of the new arguments and materials . . . are misleading" (Motion at 1, 2), it altogether fails to point to any specific portion of the Applicant's or Staff's briefs that it believes contain new facts or arguments, or any statements that it believes are misleading and must be clarified or corrected. Further, the State's argument

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1997), at 3-9.

<sup>2</sup> See (1) "NRC Staff's Response to Contentions . . ." (December 24, 1997), at 6-14; and (2) "Applicant's Answer to Petitioners' Contentions" (December 24, 1997), at 22-25.

<sup>3</sup> See "[State] Reply to the NRC Staff's and Applicant's Response to [State] Contentions A Through DD" (January 16, 1998), at 9-15; and Transcript of Prehearing Conference (January 27, 1998), at 45-64.

<sup>4</sup> See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 183-84 (1998).

<sup>5</sup> See *Skull Valley Band of Goshute Indians v. Leavitt*, Case No. 2:01V0027OC (D. Utah April 19, 2001).

that it has not had a “fair shot” at the bases underlying the arguments presented in the Applicant’s or Staff’s briefs (*Id.* at 1), is entirely without merit, since the State has known of the other parties’ positions on this issue for quite some time. Similarly, the State’s argument that reply briefs are necessary to ensure a correct resolution of this matter (*Id.* at 2), is without merit, since the Commission already has before it extensive and sufficient information and argument to draw upon in reaching a decision.

Finally, it should be noted that the Commission’s Rules of Practice do not provide for the filing of reply briefs or oral argument on matters such as the State’s Suggestion of Lack of Jurisdiction, nor is such an opportunity afforded by the Commission’s Memorandum and Order in CLI-02-11, dated April 3, 2002. Accordingly, in the absence of any particularized showing by the State that a reply brief or oral argument is required in this instance, the State’s Motion should be denied.

CONCLUSION

For the reasons set forth above, the Staff respectfully submits that the State’s Motion should be denied.

Respectfully Submitted,

***/RA/***

Jared K. Heck  
Sherwin E. Turk  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 30<sup>th</sup> day of May, 2002

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO 'UTAH'S MOTION FOR AN ORDER ALLOWING REPLY BRIEFS AND/OR ORAL ARGUMENT REGARDING UTAH'S SUGGESTION OF LACK OF JURISDICTION,'" 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 31st day of May, 2002:

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