

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 FOR EXTENSION OF TIME
TO RESPOND TO APPLICANTS' MOTION FOR
SUMMARY DISPOSITION OF UTAH CONTENTION SECURITY J

Pursuant to 10 C.F.R. § 2.730, the NRC Staff ("Staff") hereby requests that the Atomic Safety and Licensing Board (a) grant the Staff an extension of time until July 22, 2002, in which to respond to "Applicant's Motion for Summary Disposition of Utah Contention Security J - Law Enforcement" ("Applicant's Motion"), dated April 30, 2002, and (b) extend the time in which the State of Utah ("State") may reply to that response, until August 9, 2002. In support of this request, the Staff states as follows:

1. Utah Contention Security J concerns the Utah legislature's recent enactment of various statutory provisions which would prohibit persons and entities within the State of Utah from cooperating with Private Fuel Storage, L.L.C. ("PFS" or "Applicant") in connection with its application for an NRC license for an independent spent fuel storage installation ("ISFSI") in Skull Valley, Utah.¹ Such legislation, *inter alia*, would prohibit Tooele County from providing law enforcement services to PFS as a "local law enforcement authority ("LLEA"), as contemplated under the PFS Physical Security Plan.

¹ See "State of Utah's Request for Admission of Late-Filed Contention Utah Security J (Law Enforcement)," dated April 13, 2001; *see also* (1) "Applicant's Response to State of Utah's Request for Admission of Late-Filed Contention Utah Security J - Law Enforcement," dated April 27, 2001, and (2) "NRC Staff's Response to State of Utah's Request for Admission of Late-Filed Contention Utah Security J," dated April 27, 2001.

2. The Licensing Board initially deferred ruling on the admissibility of Utah Contention Security J, pending developments in related federal district court litigation in which this issue was raised. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-20, 53 NRC 565 (2001). On February 22, 2002, however, the Board admitted the contention and directed the parties to propose a schedule for filing motion(s) for summary disposition thereon. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-02-07, 55 NRC 167, 169 (2002). In doing so, the Licensing Board recognized that the parties were involved in preparing for evidentiary hearings on other issues, and therefore set only one schedule “constraint”:

[A]ll filings, including any State reply to a staff response supporting a PFS dispositive motion, must be filed no later than 15 days after the filing of the parties’ final responsive findings of fact and conclusions of law relative to the matters being heard in the upcoming evidentiary hearings.

Id. at 169.

3. On March 1, 2002, the parties filed a joint scheduling proposal, in which they proposed the following schedule: (a) Applicant’s motion for summary disposition to be filed on or before May 10, 2002; (b) State’s response to the Applicant’s motion (and any cross-motion) for summary disposition to be filed by May 31, 2002; (c) Staff’s response to the Applicant’s and State’s motion(s) to be filed by June 24, 2002;² and (d) State’s reply to the Staff’s response to be filed by July 12, 2002. See “Proposed Schedule for Summary Disposition Filings on Utah Contention Security J,” dated March 1, 2002.

4. On March 8, 2002, the Licensing Board adopted the parties’ scheduling proposal. See “Order (Summary Disposition Briefing Schedule for Contention Security-J),” dated March 8, 2002. The Board observed that the schedule was developed based upon the schedule for filing

² The proposed schedule also provided for the filing of an Applicant response to any State cross-motion for summary disposition, to be filed by June 24, 2002; this is no longer applicable, in that the State did not file a cross-motion for summary disposition of this contention.

proposed findings of fact and conclusions of law as set forth in the September 2001 general schedule for the proceeding, and that this filing schedule “may need to be amended if those dates are revised so as to avoid overlapping deadlines. Within seven days of such a change the parties should provide the Board with a joint submission outlining any proposed filing date revisions.” *Id.* at 2; emphasis in original.

5. In accordance with this approved schedule, on April 30, 2002, the Applicant filed its motion for summary disposition of Utah Contention Security J, and on May 31, 2002, the State filed its response to that Motion.³ Further, the Staff’s response to the Applicant’s Motion is now due to be filed on Monday, June 24, 2002, and the State’s reply is due to be filed on Friday, July 12, 2002.

6. In the period since this schedule was adopted, evidentiary hearings have proven to involve considerably more testimony and time than was previously anticipated, such that hearings are not anticipated to conclude before July 3, 2002.⁴ As a result, the parties will not be able to file their proposed findings of fact and conclusions of law under the existing schedule -- which had contemplated the filing of proposed findings on June 7, with reply findings to be filed on July 8, 2002.⁵ While a revised schedule has not yet been adopted, the Staff anticipates that proposed findings of fact and conclusions of law will be due for filing no sooner than late August, with replies to be filed in September 2002.

7. The extension of evidentiary hearings has resulted in the need for the Staff to devote more time to those hearings than was initially anticipated, and has significantly reduced the amount

³ See “Utah’s Opposition to PFS’s Motion for Summary Disposition of Utah Contention Security J - Law Enforcement” (“State’s Response”), dated May 31, 2002.

⁴ Evidentiary hearings commenced on April 8, 2002, and (except for certain brief interludes) have continued up to the present. On June 8, 2002, the evidentiary hearings went into recess, and are scheduled to resume for three additional weeks, from June 17 to July 3, 2002. In contrast, the schedule that existed when the parties filed their proposed briefing schedule assumed that hearings would be concluded by April 26, 2002.

⁵ See “Order (General Schedule Revision),” dated September 20, 2001 (“Attachment”).

of time available to respond to the Applicant's motion for summary disposition of Utah Contention Security-J. Also, whereas the original schedule allowed the Staff to respond to the Applicant's Motion two months after the conclusion of evidentiary hearings, expansion of the hearings has resulted in a requirement that the Staff file its response in the midst of those hearings. These factors cause the Staff to require an additional period of time to respond to the Applicant's Motion.

8. The Staff anticipates that it will require a period of about two weeks after the close of evidentiary hearings to prepare its response -- *i.e.*, until Monday, July 22, 2002. Under the allotment of time provided in the original schedule, the State would be allowed to file its reply to the Staff's response by Friday, August 9, 2002. Such an extension of time would satisfy the Licensing Board's requirement that "all filings, including any State reply to a Staff response . . . , must be filed no later than 15 days after the filing of the parties' final responsive findings of fact and conclusions of law," in that all briefs on Utah Contention Security-J would be filed well before the deadline set by the Licensing Board for such filings.

9. Counsel for the Staff has contacted Counsel for the State and Counsel for the Applicant, who advised the Staff that they do not oppose this request for an extension of time.

WHEREFORE, the Staff requests that the schedule for filing responses to the "Applicant's Motion for Summary Disposition of Utah Contention Security J - Law Enforcement" be modified to allow the filing of the Staff's response by July 22, 2002, and the State's reply by August 9, 2002.

Respectfully submitted,

/RAI

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 13th day of June 2002

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO RESPOND TO APPLICANTS' MOTION FOR SUMMARY DISPOSITION OF UTAH CONTENTION SECURITY J," 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 13th day of June, 2002:

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