

RAS 5022

DOCKETED
USNRC

November 25, 2002 (11:28AM)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

) Docket No. 72-22-ISFSI

PRIVATE FUEL STORAGE, LLC
(Independent Spent Fuel
Storage Installation)

) ASLBP No. 97-732-02-ISFSI

) November 7, 2002

STATE OF UTAH'S MOTION FOR PRODUCTION OF COMMISSION ORDER
RELATING TO SAFEGUARDS UNDER A PROTECTIVE ORDER AND FOR
OPPORTUNITY TO FILE CONTENTIONS

On October 23, 2002 the Commission issued an order to "all 10 CFR Part 72 licensees who currently store or have near term plans to store spent fuel in an ISFSI under the specific license provisions of 10 CFR Part 72." See 67 Fed. Reg. 65152-54 (2002) (copy attached hereto). In its order, the Commission imposed certain interim safeguard and security measures on ISFSI licensees. These interim measures, set forth in Attachment 2 to the order, are considered safeguards information and were not released to the public. Pursuant to 10 CFR § 2.744(a) and (e), the State of Utah hereby requests the Board to order the Executive Director for Operations to provide to the State a copy of Attachment 2 to the Commission's October 23, 2002 Order under such protective terms and conditions as are appropriate.¹ The State further requests that any contentions related to the requirements

¹On November 21, 1997, the Licensing Board granted the State access to PFS's security plan for the purpose of litigating the plan's adequacy (Memorandum and Order (Ruling on State of Utah's Motion for Protective Order)), and under a protective order provided requirements for obtaining access and handling protected information in its December 17, 1997 Order (Memorandum and Order (Protective Order and Schedule for Filing Security Plan Contentions)).

Template=SECY-041

SECY-02

specified in Attachment 2 be filed within 45 days from actual receipt of Attachment 2. The State is requesting more than the usual 30 days to file any contentions because of the procedural requirements necessary to qualifying and obtaining Board approval for an expert to be afforded access to Attachment 2. *See infra*.

The basis of the Commission's order relates to the terrorist attacks on September 11, 2001 and potential threats to nuclear facilities. 67 Fed. Reg. at 65152. Under NRC regulatory framework, the Commission determined that additional security measures must be embodied in an order. Under the order all specific licenses issued pursuant to 10 CFR § 72.40 to identified licensees were deemed modified to include the requirements identified in attachment 2 of the Order. Applicant, Private Fuel Storage, L.L.C ("PFS"), is not subject to the Commission's October 23, 2002 Order, but if licensed, PFS would be issued a specific license pursuant to 10 CFR § 72.40.

A site specific ISFSI licensing decision in the PFS matter could occur shortly, thus changing PFS's status from applicant to licensee who has near term plans to store spent fuel. It is unknown whether the Commission will impose Attachment 2 of its Order as a license condition on any license issued to PFS as a licensee. Unless and until the State can review Attachment 2 to the Commission's Order, the State cannot evaluate whether or not it needs to file any contentions in the PFS proceeding on the adequacy of PFS's security plan or whether PFS could comply with the requirements in Attachment 2. Furthermore, as Attachment 2 relates to terrorism, the State also would like the opportunity to review Attachment 2 to determine whether it needs to take action on Contention Utah RR, Suicide

Mission Terrorism.²

The basis for the State's motion is to permit the State to review the Commission's requirements, determine their applicability to the proposed PFS site, and evaluate the need to file contentions on the Security Plan under appropriate procedures and safeguards. The issue of whether there are adequate security and safeguard procedures is germane to this proceeding, given the fact that the Applicant is a private entity without any demonstrated record in the safeguards area who will be receiving a substantial number of spent fuel shipments (up to 200 shipments per year) from nuclear reactors located throughout the United States. See FEIS³ at xli. To deny the State the opportunity to file contentions on PFS's Security Plan or to modify Utah RR after reviewing the Commission's order in its entirety would impair the State's procedural rights to bring safeguards concerns before the Licensing Board.

Accordingly, the State has good cause to request that the Board order the Executive Director for Operations to produce Attachment 2 to the Commission's Order to the State under such protective conditions as are necessary to safeguard the information. In this regard, the State suggests that the safeguards procedures established in the December 17, 1997 Order may provide the appropriate safeguards procedural protection for Attachment 2. Under the December 17, 1997 Order the Board afforded certain State personnel access to

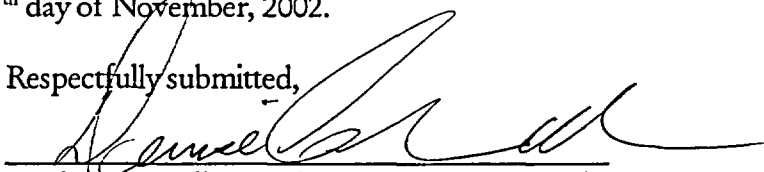
²Filed on October 10, 2001, Utah RR was rejected by the Board and referred to the Commission; briefing was complete by March 12, 2002.

³NUREG-1714, *Final Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah* (December 2001).

safeguards information, for the purpose of preparing and/or responding to contentions.
Order at 4. Relevant to this Motion the State requests that Denise Chancellor, Fred G Nelson, Connie Nakahara, Jean Braxton and Karma Pathakis, identified in the Board's December 17, 1997 Order, be considered qualified to be afforded access to Attachment 2. The State would submit a separate request to the Board for any expert to be afforded access to Attachment 2. Were the Board to grant the State's Motion, the designated State persons would treat Attachment 2 as safeguards material and abide by the safeguards procedures established in the December 17, 1997 memorandum or any order issued by the Licensing Board.

DATED this 7th day of November, 2002.

Respectfully submitted,



Denise Chancellor, Assistant Attorney General
Fred G Nelson, Assistant Attorney General
Connie Nakahara, Special Assistant Attorney General
Diane Curran, Special Assistant Attorney General
Laura Lockhart, Assistant Attorney General
Attorneys for State of Utah
Utah Attorney General's Office
160 East 300 South, 5th Floor, P.O. Box 140873
Salt Lake City, Utah 84114-0873
Telephone: (801) 366-0286, Fax: (801) 366-0292

CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S MOTION FOR PRODUCTION OF COMMISSION ORDER RELATING TO SAFEGUARDS UNDER A PROTECTIVE ORDER AND FOR OPPORTUNITY TO FILE CONTENTIONS was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 7th day of November, 2002:

Rulemaking & Adjudication Staff
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington D.C. 20555
E-mail: hearingdocket@nrc.gov
(*original and two copies*)

Michael C. Farrar, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-Mail: mcf@nrc.gov

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555
E-Mail: jrk2@nrc.gov
E-Mail: kjerry@erols.com

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555
E-Mail: psl@nrc.gov

Sherwin E. Turk, Esq.
Catherine L. Marco, Esq.
Office of the General Counsel
Mail Stop - 0-15 B18
U.S. Nuclear Regulatory Commission
Washington, DC 20555
E-Mail: set@nrc.gov
E-Mail: clm@nrc.gov
E-Mail: pfscase@nrc.gov

Jay E. Silberg, Esq.
Paul A. Gaukler, Esq.
Shaw Pittman, LLP
2300 N Street, N. W.
Washington, DC 20037-8007
E-Mail: Jay_Silberg@shawpittman.com
E-Mail: paul_gaukler@shawpittman.com

John Paul Kennedy, Sr., Esq.
David W. Tufts
Durham Jones & Pinegar
111 East Broadway, Suite 900
Salt Lake City, Utah 84111
E-Mail: dtufts@djplaw.com

Joro Walker, Esq.
Land and Water Fund of the Rockies
1473 South 1100 East, Suite F
Salt Lake City, Utah 84105
E-Mail: utah@lawfund.org
(*electronic copy only*)

Larry EchoHawk
Paul C. EchoHawk
Mark A. EchoHawk
EchoHawk Law Offices
151 North 4th Street, Suite A
P.O. Box 6119
Pocatello, Idaho 83205-6119
E-mail: paul@echohawk.com

Tim Vollmann
3301-R Coors Road N.W. # 302
Albuquerque, NM 87120
E-mail: tvollmann@hotmail.com

James M. Cutchin
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-Mail: jmc3@nrc.gov
(*electronic copy only*)

Office of the Commission Appellate
Adjudication
Mail Stop: O14-G-15
U. S. Nuclear Regulatory Commission
Washington, DC 20555

A handwritten signature in black ink, appearing to read "Denise Chancellor", written over a horizontal line.

Denise Chancellor
Assistant Attorney General
State of Utah

[Federal Register: October 23, 2002 (Volume 67, Number 205)]
[Notices]
[Page 65152-65154]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr23oc02-134]

NUCLEAR REGULATORY COMMISSION

[Docket Nos. (as shown in Attachment 1) EA-02-104]

Order Modifying Licenses (Effective Immediately)

In the matter of: all 10 CFR part 72 licensees who currently store or have near term plans to store spent fuel in an ISFSI under the specific license provisions of 10 CFR part 72.

I

The licensees identified in Attachment 1 to this Order have been issued a specific license by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing storage of spent fuel in an independent spent fuel storage installation (ISFSI) in accordance with the Atomic Energy Act of 1954, and 10 CFR part 72. This Order is being issued to all licensees who currently store spent fuel or have identified near term plans to store spent fuel in an ISFSI under the specific license provisions of 10 CFR part 72. Commission regulations at 10 CFR 72.184(b) require these licensees to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.51 or 73.55, as applicable.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at

licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent,

[[Page 65153]]

interim measures, to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 \1\ of this Order, on all licensees who currently store spent fuel or have identified near term plans to store spent fuel in an ISFSI under the specific license provisions of 10 CFR part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect pending notification from the Commission that a significant change in the threat environment has occurred, or the Commission determines that other changes are needed.

\1\ Attachment 2 contains SAFEGUARDS information and will not be released to the public.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued advisories or on their own. It is also recognized that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the additional security measures implemented by the licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that the security measures must be embodied in an Order, consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all specific

licenses issued pursuant to 10 CFR 72.40 to the licensees identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that in the circumstances described above, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 72 and 73, it is hereby ordered, effective immediately, that all specific licenses identified in Attachment 1 to this Order are modified as follows:

A. All licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the licensee's security plan. The licensees shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by April 16, 2003, or the first day that spent fuel is initially placed in the ISFSI, whichever is later.

B.1. All licensees shall, within 20 days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensees' justification for seeking relief from or variation of any specific requirement.

2. Any licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact the safe storage of spent fuel must notify the Commission, within 20 days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C.1. All licensees shall, within 20 days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 2.

2. All licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding the provisions of 10 CFR 72.186, all measures implemented or actions taken in response to this Order shall be maintained pending notification from the Commission that a significant change in the threat environment has occurred, or the Commission determines that other changes are needed.

Licensee responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 72.4. In addition, licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

IV

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either

by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).\2\

\2\ The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

For the Nuclear Regulatory Commission.

Dated this 16th day of October, 2002.

Margaret V. Federline,
Deputy Director, Office of Nuclear Material Safety and Safeguards.

Attachment 1--Address List

Steve Redeker, Manager, Plant Closure & Decommissioning, Rancho Seco,
Docket No. 72-11, Sacramento Municipal Utility District, 14440 Twin
Cities Road, Herald, CA 95638

Stephen M. Quennoz, Vice President Power Supply/Generation, Trojan
Nuclear Plant, Docket No. 72-17, Portland General Electric Company, 121
South West Salmon Street, Portland, OR 97204

Mr. Warren Bergholz, Acting Manager, Idaho Operations Office, Docket
Nos. 72-9 and 72-20, U.S. Department of Energy, 850 Energy Drive, Idaho
Falls, ID 83401

Michael B. Sellman, President and CEO, Prairie Island Nuclear
Generating Plant, Docket No. 72-10, Nuclear Management Company, LLC,
700 First Street, Hudson, WI 54016

Charles Cruse, Vice President--Nuclear Energy, Calvert Cliffs Nuclear
Power Plant, Docket No. 72-8, Constellation Energy Group, Inc., 1650
Calvert Cliffs Pkwy, Office 2-OTF, Lusby, MD 20657

David Christian, Sr. Vice President Nuclear and Chief Nuclear Officer,
North Anna Power Station, Docket No. 72-16, Virginia Electric & Power
Company, 5000 Dominion Blvd., Glen Allen, VA 23060-6711

David Christian, Sr. Vice President Nuclear and, Chief Nuclear Officer,
Surry Power Station, Docket No. 72-2, Virginia Electric & Power
Company, 5000 Dominion Blvd., Glen Allen, VA 23060-7611

C.S. (Scotty) Hinnant, Senior Vice President and Chief Nuclear Officer,
H.B. Robinson Steam Electric Plant, Docket No. 72-3, Progress Energy,
Inc., 410 South Wilmington St., Raleigh, NC 27601

Michael S. Tuckman, Executive Vice President Nuclear Generation, Oconee
Nuclear Station, Docket No. 72-4, Duke Energy Corporation, 526 South
Church St, Mail Code EC 07 H, Charlotte, NC 28242

[FR Doc. 02-26987 Filed 10-22-02; 8:45 am]

BILLING CODE 7590-01-P