

February 2002. That denial constitutes final agency action subject to immediate appellate review. (Utah does not petition for review of the Order to the extent the Order resolves Utah's Suggestion of Lack of Jurisdiction filed 11 February 2002 in the licensing proceeding known as In the Matter of Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), Docket No. 72-22-ISFSI, ASLBP No. 97-732-02-ISFSI.)

Venue is proper in this Court pursuant to 28 U.S.C. § 2343.

Relief is sought on these grounds: Pursuant to 10 CFR 2.802(a), the State of Utah ("Utah") petitioned the Nuclear Regulatory Commission ("the Commission" or "the NRC") to amend its regulations governing independent spent fuel storage installations ("ISFSIs"), 10 CFR Part 72, to the extent those regulations may be deemed to relate to a privately owned, away-from-reactor, spent nuclear fuel storage facility. Specifically, Utah petitioned that the Commission amend the ISFSI regulations to make clear that licensing is allowed only for federally owned and operated away-from-reactor, spent nuclear fuel ("SNF") storage facilities and not for an away-from-reactor storage facility when privately owned. The requested amendment is necessary to bring the Part 72 regulation into conformity with governing federal law, the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. §§ 10101 *et seq.* The Order denied Utah's Petition to Initiate Rulemaking.

Utah prays for an order from this Court directing that the Commission add the following language, or an appropriate equivalent, to 10 CFR Part 72 as section 72.2(d):

Notwithstanding any other provision in this Part, this Part does not authorize the licensing of any privately owned, away-from-reactor, spent nuclear fuel storage facility. Under federal law, storage of spent nuclear fuel from commercial nuclear power plants at an away-from-reactor storage facility is not allowed except in a Monitored Retrievable Storage facility owned and operated by the federal government pursuant to the Nuclear Waste Policy Act of 1982, as amended. An away-from-reactor, spent nuclear fuel storage facility is any ISFSI not located on, or adjacent to, a reactor site.

Dated: 11 February 2003

MONTE N. STEWART
Special Assistant Attorney General
HELEN A. FROHLICH
Assistant Attorney General
MARK L. SHURTLEFF
Utah Attorney General
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of February, 2003, I served a true and correct copy of the foregoing **PETITION FOR REVIEW** via United States first-class mail, postage prepaid, to each of the following:

Tim Vollmann
3301-R Coors Road N.W., Suite 302
Albuquerque, NM 87120
*Counsel for the Skull Valley Band
of Goshute Indians*

Jay E. Silberg
Ernest L. Blake, Jr.
Shaw Pitman
2300 N Street, N.W.
Washington, D.C. 20037
*Counsel for Private Fuel
Storage, L.L.C.*

James A. Holtkamp
Leboeuf, Lamb, Greene & MacRae
136 S. Main Street, Suite 1000
Salt Lake City, UT 84111
*Counsel for the Skull Valley Band
of Goshute Indians*

Val R. Antczak
J. Michael Bailey
H. Douglas Owens
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, UT 84145-0898
*Counsel for Private Fuel
Storage, L.L.C.*
