

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 6353

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 04/29/03

SERVED 04/29/03

Before Administrative Judges:
Michael C. Farrar, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

In the Matter of

Private Fuel Storage, L.L.C.

(Independent Spent Fuel
Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

April 29, 2003

NOTICE OF ORAL ARGUMENT
(on Applicant's Motion for Reconsideration)

As noted in our April 4 Memorandum and Order, pending before us is the Applicant's March 31 Motion for Reconsideration of an aspect of our March 10 Partial Initial Decision (LBP-03-04) regarding the intervenor State of Utah's "Credible Accidents" contention. The Applicant asks (Motion, p. 1) that we authorize its sought-after license (to build and operate a temporary storage facility for spent nuclear fuel) "subject to a condition that the size of the facility is limited such that the aircraft crash hazard would remain below the Commission's safety criterion." As the Applicant envisions the downsized facility (Motion, p. 3), storage would be limited -- at least temporarily, pending the outcome of other aircraft-crash aspects of the proceeding¹ -- to 336 casks rather than the 4000 the application contemplated (Motion, p. 9).

¹ At the same time it filed the Motion for Reconsideration with us, the Applicant filed two other pleadings which bear on the ultimate resolution of its original application. The first was a Petition for Review with the Commission, seeking reversal of our ruling in LBP-03-04 that the 4000-cask facility cannot now be licensed because the probability of an accidental F-16 crash exceeds the applicable risk criterion. The second was a Report to this Board indicating that the Applicant does wish to proceed to attempt to prove, in a further evidentiary hearing before us, that even if an F-16 crash into the facility took place, there would be no appreciable radiation dose consequences. If *either* of those two approaches (the appeal to the Commission or the hearing before us) ultimately proves successful, and if the Applicant obtains a favorable outcome on the several non-aircraft issues -- involving seismic, rail-line and financial matters -- now awaiting decision, there would then be no adjudicatory matters pending that would preclude the issuance of a license for the proposed 4000-cask facility.

In our April 4 memo (p. 3), we expressed the thought “that the resolution of the pending Motion [for Reconsideration] may well benefit from oral argument by counsel (see 10 CFR § 2.730(d)).” At that juncture, we alerted the parties that “for planning purposes, . . . such an argument, if held, may be conducted in Salt Lake City during the latter part of the week that begins on May 12, 2003.”

1. Scheduling. Based upon our subsequent review of the April 21 responses to the Applicant’s Motion filed by the State and by the NRC Staff, it now appears that, as we anticipated, oral argument is indeed needed to aid our resolution of the matters raised by that motion. Considering all the circumstances, however, we have now determined that argument should be held at a different time and location than originally contemplated.

Specifically, oral argument will be held on Thursday, May 29, 2003, in our NRC Headquarters hearing room in Rockville, Maryland. Argument will begin at 3:00 PM EDT. In accordance with the time allotments set out on page 4 below, the argument should conclude around 5:30 PM.

The factors that led us to change the argument location (and date) include the following. We had originally hoped to conjoin the Salt Lake travel of two Board Members and Board staff with their anticipated participation in another proceeding in California scheduled for the beginning of the next week. With that coordination having since proved infeasible, the balance of travel convenience (especially in light of the relative brevity of the oral argument compared to an evidentiary hearing) clearly favors the D.C. area: located here are Board members and staff, and counsel for the Applicant and the NRC Staff, with only State counsel in Salt Lake.

To be sure, agency policy favors holding NRC proceedings near the site of a proposed facility. See 10 CFR Part 2, Appendix A. But given the concern that because of proprietary data the argument might have to be conducted in closed session (see p. 3 below), the public interest reasons underlying that policy become potentially less compelling. And, giving the

Applicant's videoconferencing suggestion (see letter dated April 9) such weight as it is due, it is possible to use videoconferencing capabilities to enable State counsel to avoid traveling and thus to make the argument available for viewing in Salt Lake as well (see below). For these reasons, holding this particular argument at NRC Headquarters seems to best accommodate and reconcile all interests.

2. Logistics. In line with the Applicant's letter request that we employ our videoconferencing capabilities, we leave it to counsel for the State to decide whether to appear at NRC headquarters in person or to participate in the argument through videoconference. Counsel should advise us no later than Friday, May 9, of the State's election in that regard. Counsel may be assured that we will draw no negative implications from a decision to appear via videoconference; after all, the underlying idea of proceeding in this fashion (albeit in different circumstances) was the Applicant's.

Given the extremely sparse public attendance at last year's Salt Lake hearings, the Board is not inclined, in the event State counsel chooses to participate in person at NRC Headquarters, to undertake the establishment of a videoconference site in Salt Lake City. Counsel for the parties may wish, however, to address this matter.

Notwithstanding the need to preserve certain proprietary data, the Board strongly prefers that the argument be held in open rather than closed session. To that end, the Board requests the parties to confer about structuring the argument -- perhaps by counsel agreeing to make only indirect references to the proprietary material, such as by citing to, rather than restating from, the portions of their briefs in which it appears -- so that the argument may be conducted in open session. The parties are to let us know by joint report by the end of this week (Friday, May 2) of their views in that regard.

3. Argument. The time allotments for the argument will be as follows. As the moving party, the Applicant will have 45 minutes to open. The Staff, whose position differs somewhat from both the Applicant's and the State's, will then have 20 minutes. The State will have one hour and 10 minutes, after which the Applicant will have 15 minutes to close. In addition to covering the matters raised in our April 4 Memo, the parties should be prepared to devote particular attention to the question of the process that would need to be followed to resolve the parties' competing substantive views on the third question we posed in our April 4 memo, i.e., whether, and to what extent, the downsized facility would "implicate or call into question any other safety, environmental or financial issues or findings."

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael C. Farrar, Chairman
ADMINISTRATIVE JUDGE

/RA/

Jerry R. Kline
ADMINISTRATIVE JUDGE

/RA/

Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 29, 2003

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, Ohngo Gaudadeh Devia, 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

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB NOTICE OF ORAL ARGUMENT (ON APPLICANT'S MOTION FOR RECONSIDERATION) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Michael C. Farrar, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Jerry R. Kline
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Peter S. Lam
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Sherwin E. Turk, Esquire
Catherine L. Marco, Esquire
Office of the General Counsel
Mail Stop - 0-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Diane Curran, Esquire
Harmon, Curran, Spielberg
& Eisenberg, L.L.P.
1726 M Street, NW, Suite 600
Washington, DC 20036

Joro Walker, Esquire
Director, Utah Office
Land and Water Fund of the Rockies
1473 South 1100 East, Suite F
Salt Lake City, UT 84105

Martin S. Kaufman, Esquire
Atlantic Legal Foundation
205 E. 42nd St.
New York, NY 10017

Docket No. 72-22-ISFSI
LB NOTICE OF ORAL ARGUMENT (ON APPLICANT'S
MOTION FOR RECONSIDERATION)

Denise Chancellor, Esquire
Assistant Attorney General
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, UT 84114

Jay E. Silberg, Esquire
D. Sean Barnett, Esquire
Shaw Pittman
2300 N Street, NW
Washington, DC 20037-1128

John Paul Kennedy, Sr., Esquire
David W. Tufts, Esquire
Confederated Tribes of the Goshute
Reservation and David Pete
Durham Jones & Pinegar
111 East Broadway, Suite 900
Salt Lake City, UT 84105

Richard Wilson
Department of Physics
Harvard University
Cambridge, MA 02138

Tim Vollmann, Esquire
3301-R Coors Road N.W., #302
Albuquerque, NM 87120

Paul C. EchoHawk, Esquire
ECHOHAWK LAW OFFICES
151 North 4th Avenue, Suite A
P.O. Box 6119
Pocatello, ID 83205-6119

Marlinda Moon, Chairman
Sammy Blackbear, Sr., Vice-Chairman
Miranda Wash, Secretary
Skull Valley Band of Goshute Indians
P.O. Box 511132
Salt Lake City, UT 84151-1132

Stephen L. Simpson, Esquire
Office of the Solicitor
Department of the Interior
Division of Indian Affairs
1849 C Street, NW, Mailstop 6456-MIB
Washington, DC 20240

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 29th day of April 2003