

June 17, 2003 (1:52PM)

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

BEFORE THE COMMISSIONERS

In the Matter of:

) Docket No. 72-22-ISFSI

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

) ASLBP No. 97-732-02-ISFSI

) June 9, 2003

**STATE OF UTAH'S MOTION TO FILE PETITION FOR REVIEW AFTER  
BOARD HAS RULED ON APPLICANT'S MOTION FOR RECONSIDERATION  
AND  
REQUEST TO SUPPLEMENT ITS PETITION ON  
PROCEDURAL ISSUES PENDING BEFORE THE BOARD  
(CONTENTIONS UTAH E AND UTAH S)**

On May 27, 2003 the Bollwerk Licensing Board issued its Partial Initial Decisions on Contention Utah E/Confederated Tribes F (Financial Assurance) and Contention Utah S (Decommissioning), as well as its ruling on Applicant's motion for summary disposition on matters remanded by CLI-00-13.<sup>1</sup> The State requested and was granted leave to petition the Commission by June 30 for review of those decisions, and other issues relating to Contentions Utah E and S. On June 6, 2003 the Applicant filed a motion for reconsideration of the Board's partial initial decision relating to contention Utah E and the Board's summary disposition remand ruling; party responses are due by June 16, 2003. As the Commission ruled earlier in this case, it will delay considering a petition for review until

---

<sup>1</sup> Partial Initial Decision (Contention Utah E/Confederated Tribes F, Financial Assurance); Partial Initial Decision (Contention Utah S, Decommissioning); and Memorandum and Order (Rulings on Summary Disposition Motion and Other Filings Relating to Remand from CLI-00-13) ("summary disposition remand ruling") (May 27, 2003).

after the Board has ruled on a motion for reconsideration. CLI-01-1, 53 NRC 1, 3 (2001).

Under 10 CFR § 2.786(b(1), “[w]ithin fifteen (15) days after service of a full or partial initial decision by the presiding officer, and within fifteen (15) days after service of any other decision or action by the presiding officer with respect to which a petition for review is authorized by this part, a party may file for petition for review with the Commission . . .”

PFS’s Motion for Reconsideration of the Board’s recently issued decisions relates to the wording of the financial assurance license conditions and funding of decommissioning costs. A decision on these issues will affect the way in which the State frames part of its petition for review of contentions Utah E and Utah S.

WHEREFORE, in consideration of the foregoing, the State requests the opportunity to file its petition for review by June 30 or within 10 days of the Board’s decision on PFS’s motion for reconsideration, whichever is later, under the same conditions as described in the Commission’s order of June 4, 2003.

The second issue relates to the Board’s determination of what information should be included in the public record and what information, if any, should be withheld as confidential and not available to public scrutiny. Briefing on this matter will be completed by June 30. The Commission in its Order of December 12, 2000 (CLI-00-24, 52 NRC 351) clarified that the State should appeal all issues relating to a specific contention at the one time. However, it is highly unlikely the Board will have ruled on those procedural matters by the petition filing date.

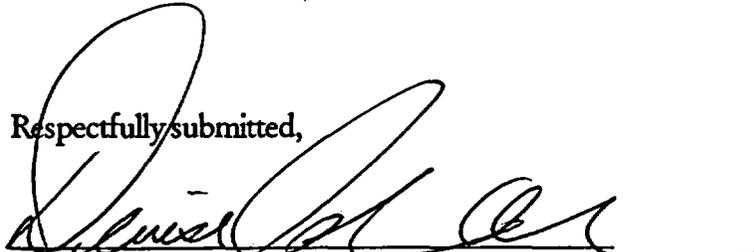
WHEREFORE, the State requests the opportunity to file, within seven days of the Board’s ruling, a seven page supplement to its petition on the procedural matters pending

before the Board.

The State has contacted counsel for the Applicant and the Staff, neither of whom oppose the two requests contained in the State's Motion, provided they may file up to a seven page response to any supplemental petition filed by the State.

DATED this 9<sup>th</sup> day of June, 2003.

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, UT 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 TO FILE PETITION FOR REVIEW AFTER BOARD HAS RULED ON APPLICANT'S MOTION FOR RECONSIDERATION AND REQUEST TO SUPPLEMENT ITS PETITION ON PROCEDURAL ISSUES PENDING BEFORE THE BOARD (CONTENTIONS UTAHE AND UTAHS) was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 30<sup>th</sup> day of May, 2003:

Emile L. Julian, Assistant for  
Rulemakings and Adjudications  
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)*

Nils J. Diaz, Chairman  
U.S. Nuclear Regulatory Commission  
Mail Stop O-16 G15  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852-2738  
e-mail: chairman@nrc.gov

Edward McGaffigan, Jr., Commissioner  
U.S. Nuclear Regulatory Commission  
Mail Stop O-16 G15  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852-2738  
e-mail: cmrmcgaffigan@nrc.gov

Greta J. Dicus, Commissioner  
U.S. Nuclear Regulatory Commission  
Mail Stop O-16 G15  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852-2738  
e-mail: cmrdicus@nrc.gov

Jeffrey S. Merrifield, Commissioner  
U.S. Nuclear Regulatory Commission  
Mail Stop O-16 C1  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852-2738  
e-mail: cmrmerrifield@nrc.gov

G. Paul Bollwerk, III, Chairman  
Administrative Judge  
Atomic Safety and Licensing Board  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555  
E-Mail: gpb@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  
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

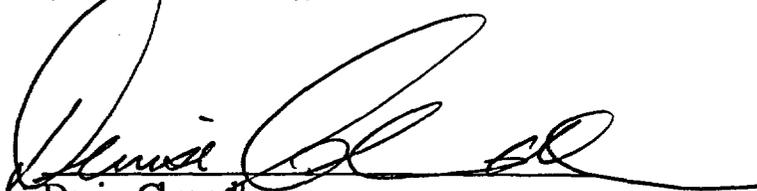
Joro Walker, Esq.  
Land and Water Fund of the Rockies  
1473 South 1100 East, Suite F  
Salt Lake City, Utah 84105  
E-Mail: utah@lawfund.org  
(*electronic copy only*)

Larry EchoHawk  
Paul C. EchoHawk  
Mark A. EchoHawk  
EchoHawk Law Offices  
151 North 4<sup>th</sup> Avenue, 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: 16-G-15 OWFN  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555  
(*United States mail only*)

  
Denise Chancellor  
Assistant Attorney General  
State of Utah