

RAS 6671

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 07/31/03

SERVED 07/31/03

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

In the Matter of

PRIVATE FUEL STORAGE, LLC

(Independent Spent Fuel  
Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

July 31, 2003

SCHEDULING MEMORANDUM AND REPORT

Earlier this week, the Board held a telephone conference call to discuss with the parties, among other things, the re-scheduling of the activities that remain to be conducted in this proceeding, which involves the issue of the consequences of a potential accidental crash of military aircraft into the spent nuclear fuel storage facility proposed by the Applicant PFS. In that regard, the Board, with the assistance of the parties, had earlier set an aggressive schedule for the pre-hearing and hearing phases that would have allowed the Board to issue its decision by year-end. Under that earlier schedule, the Board would have been able to meet the decisional timeframe the Commission had established on May 28, 2003 (in its decision [CLI-03-05, 57 NRC \_\_\_\_ ] declining at that time to review the Board's March 10, 2003, Partial Initial Decision [LBP-03-04, 57 NRC 69] that held that the probability of such an accidental crash was too high to permit licensing the facility without some further showing regarding design safety).

Under that earlier schedule, the Applicant had committed to file its expert reports within a month, i.e., by June 30. As it turned out, the number and complexity of the reports exceeded the Applicant's expectations, so that, although some of the reports were filed earlier, the last such report was not filed until three weeks after the anticipated date, i.e., on July 21.

In this week's conference call (July 28, Tr. 14011-76), the Board pointed out that the Applicant had, in effect, found it necessary to take 75% longer than predicted to prepare its expert reports. Thus, not only had the schedule been set back by the three week delay thereby encountered, but that delay also foretold the possibility that, because of the complexity of the matter, the times previously allotted for other pre-hearing steps might prove too abbreviated. This concern was exacerbated by the Staff's announcement that it was likely that the Applicant's expert reports, submitted with a preliminary "Safeguards" classification, would indeed be given a permanent classification of that nature, with the result that the State of Utah's interaction with its own experts would likely be conducted more inefficiently than it would if the reports were not so classified.

As to the hearing itself, the Board expressed the concern that the length and complexity of the reports also foretold a longer hearing than first anticipated. The ramifications this had on scheduling, and the options for working around a Board member's scheduling conflicts, were discussed in full. Also discussed was the significance of the Safeguards classification on the hearing itself: because the hearing would thus in any event have to be closed to the public and the press, and because Safeguards material can be more readily protected in NRC headquarters space than in hotel meeting space, it is nearly certain that the consequences hearing will be held at our DC-area hearing room, not in Salt Lake City.

The Board was informed that the Staff and Applicant had scheduled an August 7 meeting (which the State was invited to attend) to discuss the substance and timing of the set of Requests for Additional Information (RAIs) that the Staff is formulating in response to the Applicant's expert reports. Rather than set a new schedule during the conference call, then, it was agreed that another conference call would take place on Tuesday, August 12 (at 1:00 PM EDT, 11:00 AM MDT), during which additional information about the time expected to be consumed by the RAI process could be factored into the establishment of a new schedule.

While it remains, then, to establish a precise schedule, it was clear to all that -- because of events that took place, and understanding that was gained, after the Commission issued its expected timetable -- it is most likely to prove infeasible to meet the Commission's year-end expectations. The Applicant's inability to meet its own time commitments, though not blameworthy, does speak eloquently to the specific timetable issue, as well as to the general complexity of the matters before us. In the circumstances, it would be unfair to try to make up the time lost by shortening the time originally allotted to the other parties; if anything, to assure equality of treatment, consideration may have to be given to lengthening their time as well.

In the two previous prehearing conferences (one in person, one by phone) dealing with scheduling this consequences proceeding, the Board stressed the importance of meeting the Commission's expectations as to timing. Events leading to and discussed at the third conference earlier this week have undercut those expectations. By this Memorandum, the Board is reporting to the Commission that (1) for the reasons stated, its precise expectations of a year-end result do not appear feasible to meet but that (2) its general expectations as to expedition will remain in the forefront of the scheduling and management of the proceeding. An alternate target date for the Board's decision will be established following the August 12 conference call, during which the parties should be prepared to address the appropriateness of any measure, including those suggested by the Commission on May 28 (see CLI-03-05, slip op. at 7), that might shorten the decisional timeframe.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA/*

---

By Michael C. Farrar, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
July 31, 2003

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 SCHEDULING MEMORANDUM AND REPORT 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. 42<sup>nd</sup> St.  
New York, NY 10017

Docket No. 72-22-ISFSI  
LB SCHEDULING MEMORANDUM AND REPORT

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 31<sup>st</sup> day of July 2003