

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 6710

DOCKETED
08/15/03

ATOMIC SAFETY AND LICENSING BOARD

SERVED 08/15/03

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

August 15, 2003

SCHEDULING MEMORANDUM AND REPORT

On August 12, the Board held the latest in a series of telephone conference calls with the parties to discuss further the scheduling of the hearing-related 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. As we have previously observed, 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 post-hearing decision on this matter by year-end.

In our most recent Memorandum on this subject, issued on July 31, we reported on progress to date and noted that the NRC Staff and the Applicant had scheduled an August 7 meeting (which the State of Utah was invited to attend) to discuss the substance and timing of the set of Requests for Additional Information (RAIs) that the Staff was formulating to enable it to perform its regulatory functions in response to the Applicant's expert reports. We noted then that, rather than set a new schedule during the July 28 conference call, it was agreed that another conference call would take place on August 12, 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.

During the August 12 call, we were informed at the outset about the nature and outcome of the August 7 RAI planning meeting, and about the Staff's plan to propound the final version of the RAI's by August 15 (Tr. 14081-82, 14085-87). We were also informed by the Applicant that it hoped to be able to respond to what it understood to be the contemplated RAIs by August 29 but that until it had a chance to review the final version it would not be in a position to state accurately how long it would take to respond (Tr. 14088-89). For that reason, the Applicant requested that the setting of a precise schedule be deferred approximately a week (from August 12 to August 20), at which time it expected to be able, in another conference call, to provide an accurate assessment of its projected RAI response time (Tr. 14089-90; see also Tr. 14139-40).

When the Board suggested that we proceed to set a tentative schedule even in the absence of precise RAI response time, the Applicant demurred (Tr. 14090). The Board then suggested that the remainder of the teleconference be spent discussing (1) the general approach to scheduling that should be taken with respect to the remaining prehearing steps (Tr. 14091, 14101), and (2) the applicability of various measures, including those suggested by the Commission on May 28 (see CLI-03-05, slip op. at 7), that might shorten the decisional timeframe (see July 31 Order, p. 3, and Tr. 14092).

Those discussions were held. Rather than summarize them here, we simply direct attention to the relevant pages of the Transcript particularized in the margin.¹

Following those discussions, the parties were again charged with (1) preparing a consensus schedule for the future course of the proceeding that was efficient, timely and fair in all the circumstances, bearing in mind the Commission's desires,² and (2) presenting that schedule, or competing versions of it, during the next prehearing teleconference. That call will take place on Wednesday, August 20, and is scheduled to begin at 1:00 PM EDT (11:00 AM MDT) and to run for two hours (Tr. 14089, 14090, 14130, 14143).

The upshot is that the scheduling of the consequences proceeding has been retarded not only by (1) the previously-mentioned and fully-justified inability of the Applicant to meet its commitment to file its expert reports by June 30 (see July 31 Order, pp. 1-2), but also by (2) the Staff-driven RAI process, which seeks additional information from the Applicant to enable the Staff to make a judgment about the legitimacy of the Applicant's position and which may yet involve a second round of requests (Tr. 14140-41). In the interim, the State has brought on additional counsel from the private sector to assist in its preparation of the case, and has assured us that those counsel will not be seeking any start-up delays to gain familiarity with the proceeding (Tr. 14141-42).³

¹ See Tr. 14092-95 re foregoing a formal Staff evaluation; Tr. 14095-98 re precluding summary disposition motions; Tr. 14099 re hearing location; Tr. 14101-08 re limiting number of witnesses; Tr. 14108-16 re the timing of the State's filings; Tr. 14116-22 re foregoing or limiting depositions; Tr. 14122-24 re including oral rebuttal as part of the initial live testimony of a witness; and Tr. 14124-28 re questioning the need for, and deciding on the timing of, in limine motions and responses. (The frequent transcript references to "extra reports" should, of course, be read as "expert reports." Other transcript inaccuracies can similarly be correctly interpreted in context.)

² The parties were to begin those discussions immediately following the conference call with the Board (Tr. 14100-01, 14143).

³ In line 14 of Tr. 14142, the word "him" is inaccurate -- the word spoken was "myself."

In the circumstances, the Board -- having expressed its views on the various aspects of scheduling -- believed it had no choice, given the Applicant's desire to prepare its case fully, other than to await further word from the parties on a proposed new schedule that would apply those views to the changed circumstances now presented. Thus, it again remains to establish a precise schedule.

Given the developments outlined above, it also remains most likely to prove infeasible to meet the Commission's year-end expectations (compare July 31 Order, p. 3). An alternate target date for the Board's decision will be established following the August 20 conference call.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

By Michael C. Farrar, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 15, 2003

Copies of this Memorandum and Order were sent this date by Internet e-mail transmission to counsel for (1) Applicant PFS; (2) intervenor State of Utah; and (3) the NRC Staff.

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NUCLEAR REGULATORY COMMISSION

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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.

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LB SCHEDULING MEMORANDUM AND REPORT

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Dated at Rockville, Maryland,
this 15th day of August 2003