

RAS 7281

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 01/30/04

SERVED 01/30/04

Before Administrative Judges:

G. Paul Bollwerk, III, 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

January 30, 2004

MEMORANDUM AND ORDER
(Dismissing Petition to License Pigeon Spur
Interim Spent Nuclear Fuel Storage Facility)

Pending with this Licensing Board is a January 20, 2004 petition directed to it by William D. Peterson requesting that this Board, among other things:

license [the] Pigeon Spur 300-year intermediate storage [facility].
Or if not now possible, [Peterson] petition[s] that the [Department
of Energy (DOE)] provide funds . . . to complete the Pigeon Spur
license application, ref NRC Docket No. 72-23.

In response to a January 21, 2004 Board order affording the parties to this proceeding an opportunity to respond to this petition,¹ the NRC staff and applicant Private Fuel Storage, L.L.C., (PFS) filed pleadings on January 27 and 28, 2004, respectively, declaring that the petition should be dismissed. The staff maintains that the petition should be rejected because (1) Mr. Peterson is not a party to this proceeding and so lacks standing to request any action from the Board; (2) the Board lacks jurisdiction to consider Mr. Peterson's petition because it relates to a facility other than the PFS facility that is the subject of this proceeding; and (3)

¹ Although it was not reflected in that issuance, the order was provided to Mr. Peterson by e-mail on January 21, 2004.

Board lacks authority to provide the relief requested in the petition. PFS likewise declares the petition should be dismissed because it has nothing to do with licensing of the PFS facility.

Mr. Peterson, who has identified himself as the applicant for a 10 C.F.R. Part 72 license to construct and operate the proposed Pigeon Spur away-from-reactor independent spent fuel storage installation (ISFSI) in Box Elder County, Utah,² already has been before this Board on an earlier occasion. Initially, he submitted a June 2000 petition to intervene in this proceeding on a variety of issues. Then, in September 2000, he submitted a second petition requesting that the Board reconsider its denial of his first petition and that he be granted leave to intervene in this proceeding on the additional ground that the draft environmental impact statement for the PFS facility was inadequate for failing to consider his proposed Pigeon Spur facility site as an alternative location for the proposed PFS ISFSI. The Board declined to grant either request, see LBP-00-23, 52 NRC 114 (2000); Memorandum and Order (Denying Motion for Reconsideration/Intervention Petition) (Sept. 25, 2000) (unpublished), determinations that subsequently were affirmed by the Commission, see CLI-00-21, 52 NRC 261 (2000).

Mr. Peterson's current petition must suffer a similar fate. To be sure, Mr. Peterson's petition presents a myriad of questions regarding (1) his standing to participate in this proceeding and the ability of his petition to meet the late-filing and contention admission standards of 10 C.F.R. § 2.714; and (2) whether the hearing rights afforded under section 189a of the Atomic Energy Act, 42 U.S.C. § 2239(a), accrue to an applicant who wishes to challenge

² As the staff points out in its January 27 filing, see NRC Staff's Response to William D. Peterson's "Petition to Board For License of Pigeon Spur Interim SNF Storage" (Jan. 27, 2004) at 2 n.1, Mr. Peterson applied for a license for his proposed Pigeon Spur facility in October 1998 and was assigned Docket No. 72-23. However, in January 1999 the staff rejected that application and terminated its review, finding that the application was substantially deficient. Moreover, in September 1999 the staff further advised Mr. Peterson that it would not undertake any further review activities with respect to his proposed facility until he submitted a new application that complied with NRC regulatory requirements and paid outstanding fees for the staff's review of his initial application.

either (a) staff license application docketing determinations based on purported technical and/or fee payment deficiencies, see New England Power Co. (NEP, Units 1 & 2), LBP-78-9, 7 NRC 271, 280 (1978), or (b) another federal agency's funding determinations. We need not concern ourselves with any of those issues, however, for as both PFS and the staff have argued, Mr. Peterson's request is wholly outside the scope of this Board's jurisdiction (and seemingly that of the co-existing Licensing Board chaired by Administrative Judge Michael C. Farrar) relative to this proceeding, which concerns whether a Part 72 license should be granted to PFS to construct and operate its proposed Skull Valley, Utah ISFSI facility. As such, this Board is without authority to entertain Mr. Peterson's petition.

Accordingly, the January 20, 2004 "Petition to BOARD for License of Pigeon Spur Interim SNF Storage" filed by William D. Peterson is dismissed. In the accordance with the

provisions of 10 C.F.R. § 2.714a(a), to the degree this memorandum and order rules upon an intervention petition, it may be appealed to the Commission within ten days after it is served.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD³

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

/RA/

Dr. Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland

January 30, 2004

³ Copies of this memorandum and order were sent this date by Internet e-mail transmission to petitioner William D. Peterson and 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 staff.

Judge Kline was unavailable to participate in the review and issuance of this memorandum and order.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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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 MEMORANDUM AND ORDER (DISMISSING PETITION TO LICENSE PIGEON SPUR INTERIM SPENT NUCLEAR FUEL STORAGE FACILITY) 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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Docket No. 72-22-ISFSI
LB MEMORANDUM AND ORDER (DISMISSING
PETITION TO LICENSE PIGEON SPUR INTERIM
SPENT NUCLEAR FUEL STORAGE FACILITY)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 30th day of January 2004