

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**RAS 7654**

**DOCKETED 04/23/04**

ATOMIC SAFETY AND LICENSING BOARD  
Before Administrative Judges:

**SERVED 04/23/04**

Michael C. Farrar, Chairman  
Dr. Peter S. Lam  
Dr. Paul B. Abramson

In the Matter of

PRIVATE FUEL STORAGE, LLC

(Independent Spent Fuel Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

April 23, 2004

SCHEDULING ORDER

During a telephone conference call earlier this week, the Board set a schedule for the conduct of prehearing activities and the start of the hearing on the last issue remaining in this proceeding. (That issue involves a look at the possible consequences of an accidental military jet crash into the Applicant's proposed facility for the temporary storage of spent nuclear fuel from the nation's electric generating reactors.) Under that schedule, the hearing will convene on Monday, August 9, and continue in session that week and the next one.

That is as far as we can now take the schedule for, as explained below, forecasting the need for, and scheduling the time of, additional sessions in that late Summer time frame must await further developments. As will be seen, with a total of four months after the hearing's close (whenever that occurs) to be allowed for (1) the filing of the parties' two sets of post hearing briefs and (2) the preparation of the Board's decision, that decision now appears likely to be issued no later than January 2005.

1. Following up on our earlier directive as to the limited scope of the proceeding, the parties submitted competing versions of a schedule prior to the prehearing conference call held this past Monday, April 19, 2004. During that call, there was full discussion of the various factors that needed to be considered in arriving at a schedule (all as reflected in the Transcript of the call, at 14736-827).

Based on that discussion, and acting on the assumption that the NRC Staff would file its “speeds and angles” report the next day (which it did) and the remainder of its report on the previously-promised date of Tuesday, May 11, and allowing time for the parties and their experts to analyze that report, the Board adopted the following schedule <sup>1</sup>:

- Taking of expert depositions (in Washington, DC, and Salt Lake City) --  
Monday, May 24 to Friday, June 18 (4 weeks)
- Submission of pre-filed direct testimony <sup>2</sup> --  
Monday, July 12 (3 weeks after depositions concluded)
- Filing of proposed “Key Determinations” --  
Wednesday, July 21
- Submission of pre-filed rebuttal testimony --  
Thursday, July 29 (also last day for filing any motions in limine <sup>3</sup> )
- Filing of responses to any motions in limine --  
Wednesday, August 4
- Issuance of Board decision on motions in limine --  
Thursday, August 5 (if can be done without oral argument [which will be impracticable to hold at that point given the travel and logistical demands on the parties]; otherwise after oral argument at start of hearing)
- Convening of evidentiary hearing --  
Monday, August 9, continuing in session for 2 weeks.

The parties indicated that they would attempt, during the prehearing phases, to reach agreement on certain aspects of the case, thus allowing for the elimination of certain of the 15

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<sup>1</sup> The reasons for adopting the specified dates appear throughout the Transcript of the call but are perhaps best summarized in the observations of the three Board members at 14816-20.

<sup>2</sup> Although styled as “direct” testimony, all have agreed that an expert’s written testimony at this stage should include not only the justification for the expert’s views but an indication of why the expert believes the views of the opposing side’s experts (to the extent then known) are not justified. We expect that by thus including in the written “direct” testimony significant elements of what would otherwise await “rebuttal” filings, and handling the witnesses’ live appearance the same way, trial preparation and hearing efficiency will be enhanced.

<sup>3</sup> As has been discussed on more than one occasion, our expectation is that motions in limine will be few in nature and will be filed as soon as practicable after a party concludes that another party’s pre-filed testimony is outside the scope of the proceeding, thus allowing early determinations (in advance of the start of the hearing) on such questions where possible. See, e.g., Tr. at 14774-76.

or so witnesses (or panels of witnesses) that they previously indicated would need to testify. Of course, reaching such agreement -- and thus eliminating the need for certain witnesses -- could have a dramatic impact both on the length of the hearing and, given scheduling conflicts, on its concluding date.

2. In that regard, and as reflected during the call, the Board is not yet persuaded that -- even employing the innovative techniques for limiting and controlling the time of cross-examination that have been discussed previously -- a hearing of the scope now contemplated can be conducted in less than four weeks. That being the case, and given the scheduling conflicts previously adverted to, the Board indicated that the hearing would be in recess the weeks of August 23 and 30 and resume after Labor Day. In light of the federal and religious holidays, holding week-long sessions the weeks of September 6 and 13 will be precluded. Because of that fact and taking account of a post-conference communication, the Board will await determining precisely when the hearing can most efficiently be concluded until it is more clear which issues and witnesses remain to be heard and how long that may take.

In that regard, the Board will be holding periodic conference calls on the status and progress of prehearing activities (the first of which will be on Tuesday, May 18 at 1:30 PM EDT [11:30 AM MDT]). As soon as a better prediction as to the number of witnesses or witness panels emerges, we will revisit the expected length of the hearing and the most efficient way to schedule any brief or lengthy sessions that may be needed beyond the first two week session ending on Friday, August 20.

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At nearly every stage of the "consequences" proceeding, its complexity has led to brief slippage or extensive delay in the ability of the parties -- most notably the Applicant and the Staff -- to meet their expected scheduling commitments. That being so, it is not appropriate at this juncture to set any specific post-hearing filing dates. In general, however, the Board is in

agreement with the parties' suggestion that they should be allocated 5 weeks after the close of the hearing for the filing, by all parties simultaneously, of their proposed "Findings of Fact and Conclusions of Law," and 3 weeks thereafter for the simultaneous filing of their respective reply briefs. Given the standard expectation that a Board decision should be issued within 60 days of the last party filing, our decision would thus be rendered within 4 months after the hearing concludes.

We do not foresee any reason why that expectation cannot be met in the circumstances inherent in this proceeding. This would yield a decision no later than January, 2005, if the schedule specified herein (all premised on the May 11 filing of the Staff report) is not disrupted by unavoidable developments.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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Michael C. Farrar, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
April 23, 2004

Copies of this Order were sent this date by Internet e-mail transmission to counsel for (1) Applicant PFS; (2) Intervenors Southern Utah Wilderness Alliance, Skull Valley Band of Goshute Indians, OGD, Confederated Tribes of the Goshute Reservation, and the State of Utah; and (3) the NRC Staff.

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NUCLEAR REGULATORY COMMISSION

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(Independent Spent Fuel Storage )  
Installation) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB SCHEDULING ORDER 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  
Paul B. Abramson  
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  
Laura C. Zaccari, 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  
Western Resource Advocates  
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

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LB SCHEDULING ORDER

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

Joseph R. Egan, Esquire  
Martin G. Malsch, Esquire  
Egan Fitzpatrick & Malsch, PLCC  
7918 Jones Branch Dr., Suite 600  
McLean, VA 22102

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]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 23<sup>rd</sup> day of April 2004