

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 7694

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 04/30/04

SERVED 04/30/04

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

April 30, 2004

MEMORANDUM

(Notice Regarding Issuance of Decision Concerning Motions for Stay/Reconsideration/Clarification In Connection With Disclosure/Redaction of Evidentiary/Decisional Materials and Cross-Examination Plans Relating to Contentions Utah E/Confederated Tribes F and Utah S)

In a decision this date, the Licensing Board has made rulings on several requests by applicant Private Fuel Storage, L.L.C., (PFS) for (1) a stay of the implementation of the Licensing Board's unpublished March 31, 2004 memorandum and order dealing with proprietary information contained in the evidentiary and decisional materials relating to contentions Utah E/Confederated Tribes F and Utah S; (2) reconsideration of the Licensing Board's unpublished March 31, 2004 memorandum and order that forwarded the parties' June 2000 evidentiary hearing cross-examination plans to the Secretary of the Commission for inclusion in the public record of this proceeding; and (3) clarification of a Board ruling on the redaction and disclosure of certain contention Utah E/Confederated Tribes F evidentiary material.¹ In its

¹ Evidentiary materials include the hearing transcript, exhibits, and the parties' pre-filed testimony. Decisional materials include earlier issuances relating to contentions Utah E/Confederated Tribes F, Financial Assurance, and contention Utah S, Decommissioning, including Licensing Board Memorandum and Order (Rulings on Summary Disposition Motion and Other Filings Relating to Remand from CLI-00-13 (May 27, 2003) (unpublished pending review of proprietary information); Partial Initial Decision (Contention Utah E/Confederated

decision today, the Board finds sufficient justification to warrant a stay, pending Commission review, of the implementation of the Board's March 31, 2004 memorandum and order that redacted in part and disclosed in part portions of the evidentiary and decisional materials as proprietary information. The Board also finds that the PFS request for reexamination of the Board's March 31, 2004 memorandum and order dealing with the parties' cross-examination plans meets the applicable legal standards and grants the PFS reconsideration motion in that it redacts in part and discloses in part the parties' cross-examination plans. Finally, the Board clarifies and revises its Disposition and Remarks for the first proposed redaction listed in Appendix I to the Board's March 31, 2004 disclosure/redactions memorandum and order.

The Board's decision and the accompanying appendices are being treated as not subject to public release. Accordingly, copies are being provided only to PFS, intervenor State of Utah (State), and the NRC staff.²

The Board will withhold the cross-examination plans it has determined contain proprietary information, pending Commission review of the Board's March 31, 2004 disclosure/redaction rulings, and will forward to the Secretary the cross-examination plans that can be disclosed in their entirety. At such time as the cross-examination plans are actually placed in the public record of this proceeding, the Board will advise the parties by an additional issuance.

Tribes F, Financial Assurance) (May 27, 2003) (unpublished pending review of proprietary information); Partial Initial Decision (Contention Utah S, Decommissioning) (May 27, 2003) (unpublished pending review of proprietary information); and Licensing Board Memorandum and Order (Granting in Part and Denying in Part Motion for Reconsideration and/or Clarification of Financial Qualifications Decisions) (Jan. 5, 2004) (unpublished pending review of proprietary information).

² In accordance with the Board's orders on dissemination of documents containing proprietary information, PFS, the State, and the staff are being sent copies of the decision by Internet e-mail.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD³

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

April 30, 2004

³ Copies of this memorandum were sent this date by Internet e-mail transmission 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; and (3) the staff.

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Installation))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM (NOTICE REGARDING ISSUANCE OF DECISION CONCERNING MOTIONS FOR STAY/RECONSIDERATION/CLARIFICATION IN CONNECTION WITH DISCLOSURE/REDACTION OF EVIDENTIARY/DECISIONAL MATERIALS AND CROSS-EXAMINATION PLANS RELATING TO CONTENTIONS UTAH E/CONFEDERATED TRIBES F AND UTAH S) 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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Washington, DC 20555-0001

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Docket No. 72-22-ISFSI
LB MEMORANDUM (NOTICE
REGARDING ISSUANCE OF DECISION CONCERNING
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IN CONNECTION WITH DISCLOSURE/REDACTION OF
EVIDENTIARY/DECISIONAL MATERIALS AND
CROSS-EXAMINATION PLANS RELATING TO CONTENTIONS
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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

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