

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

March 9, 2005

DOCKETED
USNRC

Before the Commission

March 15, 2005 (3:35pm)

In the Matter of)
)
PRIVATE FUEL STORAGE L.L.C.)
)
(Private Fuel Storage Facility))

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF
Docket No. 72-22-ISFSI
ASLBP No. 97-732-02-ISFSI

**APPLICANT'S OPPOSITION TO STATE MOTION FOR ENLARGEMENT OF TIME
TO FILE PETITION FOR REVIEW OF AIRCRAFT ACCIDENT CONSEQUENCES
PARTIAL INITIAL DECISION**

On March 7, 2005, the State of Utah ("State") filed with the Commission a motion for enlargement of time to file a petition for review¹ of the Atomic Safety and Licensing Board's ("Board") Partial Initial Decision on potential aircraft crash consequences at the Private Fuel Storage Facility.² The State requests an enlargement of time until 15 days after the Board rules on the motion for reconsideration of the Final PID³ that the State filed with the Board simultaneously with its motion for enlargement of time. Motion at 1. Applicant Private Fuel Storage, L.L.C. opposes the State's motion.

The State should be granted no more time to file a petition for review. At the outset, the Applicant offered not to oppose a State request for a one-week enlargement of time, but the State declined the Applicant's offer. In any event, the State's motion for reconsideration with the Board raises no instances of overlooked or misapprehended law or evidence. Rather, the State simply repeats arguments it made before the Board or, in one case, presents an entirely new argument that is wholly unsupported by the evidentiary record. Thus, contrary to the State's claim, neither the Commission nor the parties would obtain any benefit from delaying the receipt of the

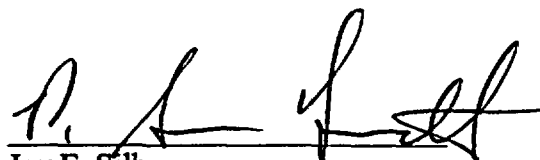
¹ State of Utah's Motion for Enlargement of Time to File a Petition for Review of the Final Partial Initial Decision Regarding F-16 Aircraft Accident Consequences (Mar. 7, 2005) ("Motion").

² Final Partial Initial Decision - Safeguards Version (Regarding F-16 Aircraft Accident Consequences) (Feb. 24, 2005) ("Final PID").

³ State of Utah's Motion for Reconsideration of Final Partial Initial Decision Regarding F-16 Aircraft Accident Consequences (Mar. 7, 2005).

State's petition for review until after the Board rules on the reconsideration motion. While the State cites Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-659, 14 NRC 983 (1981) to support its request, in that case the Appeal Board delayed briefing of the exceptions to the Licensing Board's decision that the appellant had already filed, not the initial filing of exceptions. See id. at 985. Here, by contrast, the State has not yet filed a petition for review with the Commission. Furthermore, there the Appeal Board noted that it was likely, upon considering the motion for reconsideration, that the Licensing Board would elaborate upon or "refine in some significant respect" its decision below. Here, again by contrast, the State's reconsideration motion merely reiterates several stale arguments and inappropriately raises one for the first time that is yet wholly unsupported by the record. The State also cites Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-235, 8 AEC 645 (1974). However, in that case the appellant's motion for reconsideration "brought to the Licensing Board's attention for the first time the fact that the applicant [was] suing [the plant architect/engineer] on allegations of deficient performance in constructing another nuclear facility." Id. at 648. Here, the State's reconsideration motion raises no issue of such weight. The State relies on no other authority for obtaining an enlargement of time to file its petition for review. Thus, there is no reason for the Commission to delay the receipt of the State's petition and hence the State's motion for enlargement should be denied.

Respectfully submitted,



Jay E. Silberg
Paul A. Gaukler
D. Sean Barnett
SHAW PITTMAN, LLP
2300 N Street, N.W.
Washington, DC 20037
Counsel for Private Fuel Storage L.L.C.

March 9, 2005

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of)	
)	
PRIVATE FUEL STORAGE L.L.C.)	Docket No. 72-22
)	
(Private Fuel Storage Facility))	ASLBP No. 97-732-02-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the Applicant's Opposition to State Motion for Enlargement of Time to File Petition for Review of Aircraft Accident Consequences Partial Initial Decision were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. Mail, first class, postage prepaid, this 9th day of March, 2005.

Nils J. Diaz, Chairman
U.S. Nuclear Regulatory Commission
Mail Stop: O-16 G15
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
e-mail: Chairman@nrc.gov

Jeffrey S. Merrifield, Commissioner
U.S. Nuclear Regulatory Commission
Mail Stop: O-16 C1
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
e-mail: cmrmerrifield@nrc.gov

Edward McGaffigan, Jr., Commissioner
U.S. Nuclear Regulatory Commission
Mail Stop: O-16 G15
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
e-mail: cmrmcgaffigan@nrc.gov

Gregory B. Jaczko, Commissioner
U.S. Nuclear Regulatory Commission
Mail Stop: O-16 C1
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
e-mail: cmrjaczko@nrc.gov

Peter B. Lyons, Commissioner
U.S. Nuclear Regulatory Commission
Mail Stop: O-16 C1
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
e-mail: cmrlyons@nrc.gov

Michael C. Farrar, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: MCF@nrc.gov

Dr. Paul B. Abramson
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: pba@nrc.gov

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail:

Sherwin E. Turk, Esq.
Office of the General Counsel
Mail Stop O-15 B18
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
e-mail: pfscase@nrc.gov

Denise Chancellor, Esq.
Assistant Attorney General
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, Utah 84114-0873
e-mail: dchancellor@utah.gov

Diane Curran, Esq.
Harmon, Curran, Spielberg &
Eisenberg, L.L.P.
1726 M Street, N.W., Suite 600
Washington, DC 20036
e-mail: dcurran@harmoncurran.com

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: PSL@nrc.gov

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and Adjudications
Staff
e-mail: hearingdocket@nrc.gov
(Original and two copies)

* Adjudicatory File
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

John Paul Kennedy, Sr., Esq.
David W. Tufts, Esq.
Confederated Tribes of the Goshute
Reservation and David Pete
Durham Jones & Pinegar
111 East Broadway, Suite 900
Salt Lake City, Utah 84105
e-mail: dtufts@djplaw.com

Tim Vollmann, Esq.
Skull Valley Band of Goshute Indians
Suite 302
Albuquerque, NM 87120
e-mail: tvollmann@hotmail.com

Paul EchoHawk, Esq.
Larry EchoHawk, Esq.
Mark EchoHawk, Esq.
EchoHawk PLLC
P.O. Box 6119
Pocatello, ID 83205-6119
e-mail: paul@echohawk.com

Joro Walker, Esq.
Land and Water Fund of the Rockies
1473 South 1100 East
Suite F
Salt Lake City, UT 84105
e-mail: lawfund@inconnect.com

* By U.S. mail only


D. Sean Barnett