

**RAS 9646**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**DOCKETED 03/29/05**  
**SERVED 03/29/05**

ATOMIC SAFETY AND LICENSING BOARD  
Before Administrative Judges:  
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

March 29, 2005

MEMORANDUM REGARDING ORAL ARGUMENT

On March 22, we advised the parties that our analysis and resolution of the pending State of Utah Motion for Reconsideration of our February 24 Partial Initial Decision would be aided by having counsel appear before us for oral argument. In that regard, we scheduled oral argument for Wednesday, April 6 (beginning at 1:00 PM and lasting as long as three hours) in our Rockville, Maryland hearing room at NRC Headquarters. At that juncture, we informed the parties that “as soon as a determination can be made, we will also advise them as to whether the argument is to be conducted without explicit reference to Safeguards-protected matters, so that it can be open to public observation.” March 22 Scheduling Memorandum and Order, p. 2. See also March 16 Scheduling Memorandum, last sentence.

Having evaluated the matters at issue, the Board has since determined that it is indeed possible to open the oral argument to public observation. In order for that argument to be conducted without compromising Safeguards Information, counsel will need to structure their presentations so as to refer obliquely rather than explicitly to such information, in effect “talking around” the specific record information underlying the general concepts that will be argued.

This may be done, for example, by referring to the “bounding speed which the Board found” (in the non-public version of our February 24 opinion) rather than to the numerical speed itself, or by referring to other pieces of information by directing attention to where they are reflected in particular pages or sections of the (non-public) pleadings the parties have filed with

us on the pending motion. And as to the question, for example, of which historical crashes should be included for purposes of predicting hypothetical potential crash speeds in Skull Valley, arguments as to their exclusion or inclusion, and the significance thereof, can be made without explicit reference to the crash speed in question, or to how much lower or higher it is than the bounding speed.

Given the experience of counsel for the State, the Applicant PFS, and the NRC Staff, and the prudence all have exhibited throughout this proceeding, the Board is confident that the argument can be conducted as now planned. The Board will, however, be obtaining the services of a court reporter who is Safeguards-cleared. Thus, if it turns out that any matters cannot be fairly presented without explicit reference to Safeguards Information, counsel will be free to ask that any such matters be deferred to the latter stages of the argument. If necessary, the hearing room can be cleared at that time of those not entitled to be present for Safeguards-related discussions and the argument concluded under Safeguards procedures. In this fashion, opening the hearing to public observation will not compromise any party's right to be fully heard.

We had also previously indicated that we would be advising the parties as to whether there are any specific areas upon which their oral presentations should particularly focus. That advice will be forthcoming shortly.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA/*

Michael C. Farrar, Chairman  
ADMINISTRATIVE JUDGE

*/RA/*

Peter S. Lam  
ADMINISTRATIVE JUDGE

*/RA/*

Paul B. Abramson  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
**March 29, 2005**

Copies of this Memorandum Regarding Oral Argument were sent this date by Internet e-mail transmission to counsel for Applicant PFS, Intervenor State of Utah, and the NRC Staff.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
)  
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 REGARDING ORAL ARGUMENT 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  
Laura C. Zaccari, Esquire  
John T. Hull, 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

Docket No. 72-22-ISFSI  
LB MEMORANDUM REGARDING ORAL ARGUMENT

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 & Cynkar, PLLC  
The American Center at Tysons Corner  
8300 Boone Boulevard, Suite 340  
Vienna, VA 22182

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]

---

Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 29<sup>th</sup> day of March 2005