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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'00 MAR 24 P1:26

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman  
Dr. Jerry R. Kline  
Dr. Peter S. Lam

OFFICE OF THE  
ADMINISTRATIVE JUDGES  
ADJUDICATION

**SERVED MAR 24 2000**

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

March 24, 2000

MEMORANDUM AND ORDER

(Denying Motion to Delay  
Hearing Schedule and  
Requesting Scheduling Information)

On March 10, 2000, the Licensing Board issued a decision that (1) granted partial summary disposition in favor of applicant Private Fuel Storage, L.L.C., (PFS) on significant portions of contention Utah E/Confederated Tribes F, Financial Assurance; and (2) referred that dispositive motion ruling to the Commission. See LBP-00-06, 51 NRC \_\_, \_\_ (slip op. at 72-76) (Mar. 10, 2000). By motion dated March 17, 2000, intervenor State of Utah (State) has requested that we delay the scheduled June 2000 hearing on the remaining portions of that issue pending a Commission ruling on the referral. In their respective March 21 and 22, 2000 responses, PFS and the NRC staff assert that the State's motion should be denied.

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For the reasons set forth below, we deny the State's motion to delay. In addition, in light of this ruling, we request information from the parties relative to the conduct of the scheduled June 2000 evidentiary hearing.

In LBP-00-06, in referring our ruling on the PFS summary disposition motion to the Commission, we noted that "the Board does not contemplate that the pendency of the referral should cause any delay in the litigation of contention [Utah E/Confederated Tribes F] subparts five, six, and ten that are not resolved here. See 10 C.F.R. § 2.730(g)." LBP-00-06, 51 NRC at \_\_\_ n.13 (slip op. at 74 n.13). The provision of the agency's rules of practice cited there, section 2.730(g), states:

Unless otherwise ordered, neither the filing of a motion nor the certification of a question to the Commission shall stay the proceeding or extend the time for the performance of any act.

Strictly speaking, this provision refers to the filing of a motion for interlocutory review or a Board directive certifying a question to the Commission, both of which are somewhat different procedural constructs from our referred ruling at issue before the Commission.<sup>1</sup> Nonetheless, the clear import of its terms, as well as the agency's general

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<sup>1</sup> In fact, in contrast to a section 2.718(i) certified question, our referred ruling arguably presents a less compelling basis for a stay because we have already addressed the merits of the matter at issue, as opposed to seeking the answer to a question.

policy, is that stays relating to interlocutory matters are disfavored.<sup>2</sup> See Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-94-9, 40 NRC 1, 6 (1994).

The State's central argument in favor of a stay is that it may have to expend additional resources if the Commission ultimately accepts the Board's referral and reverses or otherwise revises any of its rulings. As the Commission has already recognized, however, this generally is the case with any interlocutory appeal and does not provide the basis for a stay. See id. at 6. Nor do we find compelling in this context the State's concerns about a unified presentation. Overshadowing whatever administrative efficiencies might have been realized by trying all the aspects of this contention at the same time is the Board's merits ruling on most aspects of contention Utah E/Confederated Tribes F, none of which are so intertwined with the still-to-be-determined issues as to cause some unusual or irreparable injury. Moreover, notwithstanding the State's assertion that there will be no overall delay in the proceeding by waiting until the Commission has acted on the referral, we have already expressed our concern about "backloading" too many aspects of this proceeding into what is now the final scheduled hearing session in mid-2001. See

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<sup>2</sup> Although the State seeks to label its request one for a "delay" rather than a stay, in this context it is essentially the same thing.

Tr. at 1204. In light of our ruling on the PFS motion, we see no reason to add this contention to that already lengthy list. As a consequence, we deny the State's March 17, 2000 motion to delay the hearing schedule.

With this ruling, the Board is ready to proceed with final preparations for the June 2000 hearing. Previously, the Board has asked the parties for estimates of the number of days of hearing they believed would be needed as to each of the Group I-II/A contentions and was given the following information:

Contention Utah E 2 to 3 days (Proprietary)

Contention Utah H 1 to 2 days

Contention Utah R 0.5 to 1 day

Contention Utah S 1 to 2 days (Proprietary, in part)

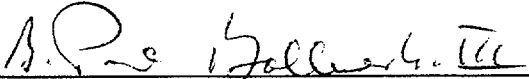
We request that the parties review these figures again and provide the Board with a joint update, if needed, on hearing day estimates on or before Wednesday, March 29, 2000.

Additionally, the Board would like to advise the parties that it intends to hold a telephone prehearing conference to discuss administrative matters relating to the June hearing

beginning at 11:00 a.m. EDT (9:00 a.m. MDT) on Monday,  
May 8, 2000.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>3</sup>

  
G. Paul Bollwerk, III  
ADMINISTRATIVE JUDGE

This memorandum and order is issued pursuant to the authority of the Chairman of the Atomic Safety and Licensing Board designated for this proceeding.

Rockville, Maryland

March 24, 2000

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<sup>3</sup> Copies of this memorandum and order 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.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Installation)

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Docket No. 72-22-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (DENYING MOTION TO DELAY HEARING SCHEDULE AND REQUESTING SCHEDULING INFORMATION) have been served upon the following persons by deposit in the U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Docket No. 72-22-ISFSI  
LB MEMORANDUM AND ORDER  
(DENYING MOTION TO DELAY  
HEARING SCHEDULE AND  
REQUESTING SCHEDULING INFORMATION)

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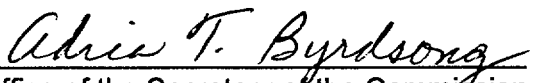
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Dated at Rockville, Maryland,  
this 24<sup>th</sup> day of March 2000