

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

98 JUN -8 10:27

Before Administrative Judges:

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

OFFICE OF SECRETARY
NUCLEAR REGULATORY COMMISSION
ADJUDICATION STAFF

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

June 8, 1998

SERVED JUN - 8 1998

MEMORANDUM AND ORDER

(Request for Election Regarding Oral
Argument on Security Plan Contentions)

In CLI-98-7, 47 NRC ____ (June 5, 1998), the Commission reversed an order of the Chief Administrative Judge establishing a separate Licensing Board with jurisdiction over issues relating to the physical security plan for the proposed facility of applicant Private Fuel Storage, L.L.C. (PFS). As a result of the Commission's directive, the pending physical security plan contentions of intervenor State of Utah (State) have been returned to this Board for a ruling on their admissibility.

The parties have fully briefed the question of the admissibility of the State's nine physical security plan contentions.¹ With the agreement of the parties, the now

¹ In addition, during its January 1998 initial
(continued...)

discontinued physical security plan Licensing Board had established a date and beginning time -- Wednesday, June 17, 1998, at 9:00 a.m. EDT -- for a prehearing conference at the Licensing Board Panel's hearing room in Rockville, Maryland, to allow the parties to present oral argument concerning the admissibility of those contentions. Although this Board could rule on the admissibility of the State's physical security plan contentions based on the parties' written submissions, we nonetheless are willing to hear oral argument on that date under the previously established schedule if the State, as the proponent of the contentions and the party whose counsel must travel cross-country to attend the conference, still wishes to make such a presentation. The Board anticipates that oral argument on these contentions would not require more than one day.

Therefore, the Board requests that counsel for the State advise us on or before Wednesday, June 10, 1998, whether the State wishes to make an oral presentation on the admissibility of its security plan contentions. This written election should be served on the Board, the Office of the Secretary, and counsel for the other participants by

(...continued)
prehearing conference this Board provided the parties an opportunity to make oral presentations, which did not involve any discussion of nonpublic safeguards information, on the question of the expertise of the witness sponsoring the State's physical security plan contentions. See Tr. at 442-65.

facsimile transmission, e-mail, or other means that will ensure receipt by close of business (4:30 p.m. EDT) on the day of filing. See Licensing Board Memorandum and Order (Initial Prehearing Order) (Sept. 23, 1997) at 5-6 (unpublished); Licensing Board Memorandum and Order (Additional Guidance on Service Procedures) (Nov. 19, 1997) (unpublished).

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD²



G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

June 8, 1998

² Copies of this memorandum and order were sent this date to counsel for the applicant PFS, and to counsel for petitioners Skull Valley Band of Goshute Indians, Ohngo Gaudadeh Devia, Confederated Tribes of the Goshute Reservation and David Pete, Castle Rock Land and Livestock, L.C., et al., and the State by Internet e-mail transmission; and to counsel for the NRC staff by e-mail through the agency's wide area network system.

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of

PRIVATE FUEL STORAGE, LLC

**(Independent Spent Fuel Storage
Installation)**

Docket No.(s) 72-22-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (REQ. FOR ELECTION...) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

**Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555**

**Administrative Judge
G. Paul Bollwerk, III, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555**

**Administrative Judge
Jerry R. Kline
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555**

**Administrative Judge
Peter S. Lam
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555**

**Sherwin E. Turk, Esq.
Catherine L. Marco, Esq.
Office of the General Counsel
Mail Stop - 0-15 B18
U.S. Nuclear Regulatory Commission
Washington, DC 20555**

**Diane Curran, Esq.
Harmon, Curran, Spielberg & Eisenberg
2001 S Street, N.W., Suite 430
Washington, DC 20009**

**Martin S. Kaufman, Esq.
Atlantic Legal Foundation
205 E. 42nd St.
New York, NY 10017**

**Joro Walker, Esq.
Land and Water Fund of the Rockies
165 South Main, Suite 1
Salt Lake City, UT 84111**

Docket No.(s)72-22-ISFSI
LB M&O (REQ. FOR ELECTION...)

Denise Chancellor, Esq.
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, Esq.
Shaw, Pittman, Potts and Trowbridge
2300 N Street, NW
Washington, DC 20037

John Paul Kennedy, Esq.
Confederated Tribes of the Goshute
Reservation and David Pete
1385 Yale Avenue
Salt Lake City, UT 84105

Clayton J. Parr, Esq.
Castle Rock, et al.
Parr, Waddoups, Brown, Gee & Loveless
185 South State Street, Suite 1300
Salt Lake City, UT 84111

Danny Quintana, Esq.
Skull Valley Band of Goshute Indians
Danny Quintana & Assocs., P.C.
50 West Broadway, Fourth Floor
Salt Lake City, UT 84101

Richard Wilson
Department of Physics
Harvard University
Cambridge, MA 02138

Dated at Rockville, Md. this
8 day of June 1998

Adria T. Byrdson
Office of the Secretary of the Commission