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ASLB-98-8

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '98 APR 23 P4:35

ATOMIC SAFETY AND LICENSING BOARD PANEL
Before the Chief Administrative Judge:

B. Paul Cotter, Jr.

SERVED APR 24 1998

In the Matter of

PRIVATE FUEL STORAGE, L.L.C.

(Independent Spent Fuel
Storage Installation)

Docket Nos. 72-22-ISFSI
72-22-ISFSI-PSP

ASLBP Nos. 97-732-02-ISFSI
97-732-02-ISFSI-PSP

April 23, 1998

MEMORANDUM AND ORDER

(Denying Motion for Reconsideration)

Applicant Private Fuel Storage, L.L.C. (PFS), has filed a motion, supported by the NRC staff, requesting reconsideration of the Chief Administrative Judge's March 26, 1998 notice creating a separate Atomic Safety and Licensing Board to consider and rule upon all matters concerning the physical security plan for PFS's proposed Skull Valley, Utah independent spent fuel storage installation. See 63 Fed. Reg. 15,900 (1998). For the

reasons set forth below, PFS's motion for reconsideration is denied.

The long-standing authority of the Chief Administrative Judge to establish two or more licensing boards to hear and decide discrete portions of a proceeding so that the proceeding can be resolved in the most effective, efficient, and expeditious manner is well-established. The Chief Administrative Judge's authority in this regard previously has been upheld and the use of multiple boards specifically approved. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-916, 29 NRC 434, 438 (1989); see Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-902, 28 NRC 423, 430 & n.11, petition for review denied as moot, CLI-88-11, 28 NRC 603 (1988); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); ALAB-901, 28 NRC 302, 306-08, petition for review denied, CLI-88-11, 28 NRC 603 (1988). Further, the exercise of the Chief Administrative Judge's authority to establish multiple boards is subject to review only for an abuse of discretion. See Shoreham, ALAB-901, 28 NRC at 307. Here, PSF does not even suggest, much less demonstrate, that the

establishment of a second licensing board in this proceeding was an abuse of discretion.

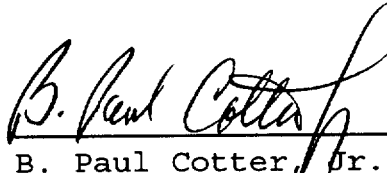
PFS also argues that, regardless of the Chief Administrative Judge's authority to establish multiple boards in the same proceeding, the Chief Judge has no authority to terminate the jurisdiction of a duly established board over any aspect of the proceeding once that initial board is created. PFS's argument is meritless. Any time that a second board is created subsequently to hear and decide a portion of the proceeding, the jurisdiction of the initial board as to those matters assigned to the second board necessarily is terminated as to the matters assigned to the second board. See Seabrook, ALAB-916, supra, 29 NRC at 437-38. Indeed, as even PFS apparently concedes, there appears never to have been an instance in which multiple boards were established simultaneously at the outset of a proceeding; hence the authority to terminate a portion of the initial board's jurisdiction is inherent in the Chief Administrative Judge's already-recognized authority to establish multiple boards.

Finally, and contrary to PFS's assertions, it is the judgment of the Chief Administrative Judge that the Panel's docket can be most effectively managed and that this proceeding can be more efficiently and expeditiously resolved by establishing a second licensing board to hear and decide any issues concerning the PFS physical security plan.

For all the foregoing reasons, it is this 23rd day of April 1998

ORDERED

That Applicant's Request for Reconsideration of Establishment of a Separate Licensing Board for Security Plan Matters shall be, and it hereby is, denied.*


B. Paul Cotter, Jr.
CHIEF ADMINISTRATIVE JUDGE

Rockville, Maryland

*Copies of this memorandum and order were sent this date to counsel for the parties 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 (LBP-98-8) DENYING MOT. 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.

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Docket No.(s)72-22-ISFSI
LB M&O (LBP-98-8) DENYING MOT.

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Dated at Rockville, Md. this
24 day of April 1998


Office of the Secretary of the Commission

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of
PRIVATE FUEL STORAGE, LLC
(Physical Security Plan)

Docket No.(s) 72-22-ISFSI-PSP

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