

July 22, 1998

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

**APPLICANT'S RESPONSE TO STATE OF UTAH'S MOTION FOR  
RECONSIDERATION OF RULING ON PHYSICAL SECURITY  
CONTENTIONS**

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") hereby responds to the "State of Utah's Motion for Reconsideration of the Board's Ruling on State of Utah Physical Security Contentions" ("State's Motion"), dated July 10, 1998.<sup>1</sup> In its Motion the State requests the Atomic Safety and Licensing Board ("Board") to reconsider its denial of basis (3) of Contention Security-C, which alleges the "lack of jurisdiction and law enforcement authority by the LLEA on the Skull Valley Band's Reservation." State's Motion at 3. The State's request for reconsideration is based on its claim that Cooperative Law Enforcement Agreement between Tooele County, the Bureau of Indian Affairs and the Skull Valley Band of Goshute Indians is invalid because Tooele County

---

<sup>1</sup> Because this pleading contains no safeguards information, it is being filed as non-safeguards-protected pleading.

did not pass a resolution in accordance with Utah Code Ann. 11-13-5. Id. at 2-3. The State also requests the Board to find "Security-A and Security-B admissible to the extent that the Board rejected any and all of the bases for those two contentions based on the perceived existence of a valid law enforcement agreement . . . ." Id. at 4.

The Applicant opposes the State's request for reconsideration. At the outset, as observed by the Board in its Memorandum and Order, "nothing on the face of the cooperative agreement gives . . . cause to question its validity." LBP-98-13, slip op. at 16, n.9. The agreement is duly signed by each of the named parties, including the Chairman of the Tooele County Commission. Further, the agreement is "approved as to form" by both the Tooele County Attorney and the Tooele County Sheriff. Additionally, as noted by both the Board and the parties at the June prehearing conference, Tooele County is actively providing law enforcement services on the Skull Valley Reservation pursuant to the agreement. See Tr. S-13, S-33. Notwithstanding these facts, the State now blithely asserts that it "has shown that the cooperative agreement . . . is not in force and thus Tooele County is not authorized . . . to conduct law enforcement activities on the Skull Valley Reservation." State's Motion at 3 (emphasis added).

The Board should not allow the State's collateral attack in this licensing proceeding against the authority of the County to conduct law enforcement activities on the Skull Valley Reservation. The NRC is not the forum in which to challenge the authority of an existing, functioning cooperative law enforcement agreement. Cf. Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8

NRC 702, 715 (1978) ("NRC may not undercut EPA by undertaking its own analyses and reaching its own conclusions on water quality issues already decided by EPA");

Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2) LBP-82-43A, 15 NRC 1423, 1469 (1982) ("the DRBC's role in determining the uses for water in the basin . . . bars [the NRC] from reevaluating the DRBC decision to allocate water to the Limerick facility . . ."). Here, the parties to the cooperative agreement -- including the responsible federal agency, the Bureau of Indian Affairs -- clearly believe that the County is authorized to conduct law enforcement activities on the Skull Valley Reservation, for they are acting on that basis.

In any event, Tooele County has officially approved the agreement. The Tooele County Commission formally approved the cooperative agreement in an open meeting on June 3, 1997. See Exhibit 1, Minutes of the Regular Meeting of the Tooele County Board of Commissioners held June 3, 1997, Item 1. The minutes reflect that the Commissioners discussed the agreement with the County Deputy Sheriff and thereafter unanimously voted to approve the agreement. Id. In addition, just within the last month the County Commission has agreed to the extension of the current cooperative agreement with the Bureau of Indian Affairs and the Skull Valley Band. See Exhibit 2, Minutes of the Regular Meeting of the Tooele County Board of Commissioners held June 23, 1998, Item 9.<sup>2</sup>

---

<sup>2</sup> Paragraph 14 of the cooperative agreement provides that it "shall renew automatically . . . for one year increments until such time as it is terminated . . ." See Cooperative Agreement, Exhibit 1 to the State's

Moreover, the current agreement is just the latest in a series of similar cooperative agreements beginning in 1991 that have been entered by Tooele County with the Bureau of Indian Affairs and the Skull Valley Band. As reflected in Exhibit 1 to the NRC's Staff's Response to the State's Motion, Tooele County did enact a formal resolution before entering into the initial 1991 agreement. Thus, the County Commission did adopt a formal resolution before it began providing law enforcement services under the series of cooperative agreements that have been in place since 1991.

The Board should not delve into the issue raised by the State's Motion of whether the above approvals are sufficient under Utah Code Ann. 11-13-5, which requires "[a]doption of appropriate resolutions by the governing bodies of the participating public agencies . . . before any [cooperative] agreement may enter into force." See Exhibit 2 to the State's Motion (emphasis added). Those questions are not appropriate for NRC consideration or resolution. See Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-85-12, 21 NRC 644, 899-900, affirmed, ALAB-818, 22 NRC 651, reversed on other grounds, CLI-86-13, 22 NRC 22 (1985); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-88-13, 27 NRC 509, 564-67 (1988).

---

Motion. Item 9 of the June 23, 1998 Tooele County Commission Meeting Minutes, entitled "Contract Review," states in part that "Contract #97-06-02 -- Cooperative Law Enforcement -- Skull Valley Goshutes" will be "reviewed again next year," which reflects that the County Commission has allowed the automatic extension of the agreement for another year.

Thus, the Board should reject the State's motion to reconsider its denial of basis (3) of Contention Security-C concerning the alleged lack of jurisdiction and law enforcement authority of Tooele County on the Skull Valley Reservation. It should similarly reject the State's request to reconsider the admissibility of Contentions Security-A and Security-B admissible.<sup>3</sup> Any other result would have the Commission challenging the authority of another governmental body.

Respectfully submitted,



Jay E. Silberg

Ernest L. Blake, Jr.

Paul A. Gaukler

SHAW, PITTMAN, POTTS &

TROWBRIDGE

2300 N Street, N.W.

Washington, DC 20037

(202) 663-8000

Counsel for Private Fuel Storage L.L.C.

Dated: July 22, 1998

---

<sup>3</sup> Moreover, the Board should reject the State's request to reconsider the admissibility of Contentions Security-A and Security-B even if it were, upon reconsideration, to admit basis (3) of Contention Security-C. The Board has listed multiple grounds for the rejection of those contentions in addition to the State's failure to provide adequate legal or factual support for its claim of Tooele County's lack of jurisdiction and law enforcement authority on the Skull Valley Reservation. See LBP-98-13, slip op. at 12-14. See also id. at 6, n.2 ("The Board's use of the conjunctive 'and/or' in connection with its rulings . . . is intended to reflect that a failure relative to any one of the requirements of section 2.714(b) is sufficient grounds for dismissal of a contention.")

**UNITED STATES OF AMERICA**  
**NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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 Response to State of Utah's Motion for Reconsideration of Ruling on Physical Security Contentions," dated July 22, 1998, 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 22nd day of July 1998.

G. Paul Bollwerk III, Esq., Chairman  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
e-mail: GPB@nrc.gov

Dr. Jerry R. Kline  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
e-mail: JRK2@nrc.gov

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

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

Catherine L. Marco, Esq.  
Sherwin E. Turk, Esq.  
Robert M. Weisman, 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, 5<sup>th</sup> Floor  
P.O. Box 140873  
Salt Lake City, Utah 84114-0873  
e-mail: dchancel@state.UT.US

John Paul Kennedy, Sr., Esq.  
Confederated Tribes of the Goshute  
Reservation and David Pete  
1385 Yale Avenue  
Salt Lake City, Utah 84105  
e-mail: john@kennedys.org

Clayton J. Parr, Esq.  
Castle Rock, et al.  
Kimball, Parr, Waddoups, Brown & Gee  
185 S. State Street, Suite 1300  
P.O. Box 11019  
Salt Lake City, Utah 84147-0019  
e-mail: karenj@pwlaw.com

Diane Curran, Esq.  
Harmon, Curran, Spielberg &  
Eisenberg, L.L.P.  
2001 S Street, N.W.  
Washington, DC 20009  
e-mail: DCurran.HCSE@zzapp.org

\* Charles J. Haughney  
Acting Director, Spent Fuel Project Office  
Office of Nuclear Material Safety and  
Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Joro Walker, Esq.  
Land and Water Fund of the Rockies  
165 South Main, Suite 1  
Salt Lake City, UT 84111  
e-mail: joro61@inconnect.com

Richard E. Condit, Esq.  
Land and Water Fund of the Rockies  
2260 Baseline Road, Suite 200  
Boulder, CO 80302  
e-mail: rcondit@lawfund.org

Danny Quintana, Esq.  
Skull Valley Band of Goshute Indians  
Danny Quintana & Associates, P.C.  
50 West Broadway, Fourth Floor  
Salt Lake City, Utah 84101  
e-mail: quintana@xmission.com

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

Martin S. Kaufman, Esq.  
Senior Vice President/General Counsel  
Atlantic Legal Foundation  
205 E. 42nd Street  
New York, NY 10017  
e-mail: mskaufman1@earthlink.net

Richard Wilson  
Department of Physics  
Harvard University  
Cambridge, MA 02138  
e-mail: wilson@huhepl.harvard.edu

\* By U.S. mail only

  
Paul A. Gaukler



# **EXHIBIT 1**

# **MINUTES OF THE REGULAR MEETING OF THE TOOELE COUNTY BOARD OF COMMISSIONERS HELD JUNE 3, 1997**

The Chairman of the Board of County Commissioners called the meeting to order at 3:00 p.m. The Clerk called the roll which showed Commissioners Teryl Hunsaker, Chairman; Lois McArthur present. Commissioner Gary Griffith was excused. The time, place and agenda of the meeting had been provided to the Transcript Bulletin and to each member of the governing body by delivering copies of the notice and agenda at least two days before to each of them.

Also present were Douglas Ahlstrom, Attorney and Dennis Ewing, Clerk.

1. **1997 COOPERATIVE LAW ENFORCEMENT AGREEMENT BETWEEN TOOELE COUNTY, THE BUREAU OF INDIAN AFFAIRS AND THE SKULL VALLEY BAND OF GOSHUTE INDIANS.** Tom Adams, Chief Deputy Sheriff, discussed this with the Commission. Commissioner McArthur moved to approve the 1997 Cooperative Law Enforcement Agreement Between Tooele County, The Bureau of Indian Affairs and the Skull Valley Band of Goshute Indians. Commissioner Hunsaker seconded the motion. All concurred.
2. **ACCEPTANCE OF BID FOR ROAD MIX ON FAUST ROAD.** Rod Thompson, Roads Department, discussed this with the Commission. He asked that the bid from Pacific West be approved since it was the only bid received. Commissioner McArthur moved to accept the bid from Pacific West for \$11.90 per ton for road mix for Faust Road for a total of \$420,000.00. Commissioner Hunsaker seconded the motion. All concurred.
3. **ACCEPTANCE OF BID FOR EXCAVATION ON FAUST ROAD.** Rod Thompson, Roads Department, discussed this with the Commission. He asked that the bid from England Construction be approved since it was the low bid. Commissioner McArthur moved to approve the bid submitted by England Construction for Excavation of Faust Road for \$54,290.08. Commissioner Hunsaker seconded the motion. All concurred.
4. **STATE BRAND INSPECTION CONTRACT.** Tom Adams, Chief Deputy Sheriff, discussed this with the Commission. Commissioner McArthur moved to approve the State Brand Inspection Contract with the Department of Agriculture & Food and Tooele County. Commissioner Hunsaker seconded the motion. All concurred.
5. **PROPOSAL TO CONSTRUCT ITEMS AT THE DESERET PEAK COMPLEX. TO ENTER INTO A CONTRACT WITH KORKY WARREN TO PROVIDE USED EQUIPMENT, BLEACHERS, GRAND STANDS, RAILS, ETC.** Attorney Ahlstrom discussed this with the Commission. The proposal is to construct items at the Deseret Peak Complex and to enter into a contract with Korky Warren to provide used equipment, bleachers, grand stands, rails, etc. Attorney Ahlstrom stated that this would be considered a sole source since it is used equipment. Commissioner McArthur moved to approve construction of items at the Deseret Peak Complex and to enter into a contract with Korky Warren to provide used equipment for the Deseret Peak Complex. To waive the bidding procedures and declare it a sole source project for these items. Commissioner Hunsaker seconded the motion. All concurred.
6. **BOARD APPOINTMENTS - LIBRARY BOARD.** Commissioner McArthur moved to appoint Amalia Ayala to fulfill the unexpired term of Katie Wilson and to appoint Ann Allen to fulfill the unexpired term of Karma Wright. Commissioner Hunsaker seconded the motion. All concurred.
7. **BIT & SPUR RODEO DONATION.** Commissioner Hunsaker moved to donate to the Bit & Spur Rodeo \$2,000 for the 4th of July Rodeo. Commissioner McArthur seconded the motion. All concurred.

8. **FRONT END LOADER - LANDFILL.** Stan Engh, Landfill, asked that he be authorized to purchase another loader for the Landfill. Commissioner Hunsaker moved that the Landfill be authorized to either purchase or lease a front end loader for \$95,845. Commissioner McArthur seconded the motion. All concurred.
9. **INVOICES.** Commissioner McArthur moved to approve warrants issued on May 30, 1997 in the amount of \$312,955.23 - #972717 thru #972869. Commissioner Hunsaker seconded the motion. All concurred.
10. **ADJOURN.** Commissioner McArthur moved to adjourn the meeting. Commissioner Hunsaker seconded the motion. All concurred.

APPROVED JUNE 17, 1997

BY 

# EXHIBIT 2

# MINUTES OF THE REGULAR MEETING OF THE TOOELE COUNTY BOARD OF COMMISSIONERS HELD JUNE 23, 1998

The Chairman of the Board of County Commissioners called the meeting to order at 3:00 p.m. The Clerk called the roll which showed Commissioners Teryl Hunsaker, Chairman; Gary Griffith and Lois McArthur present. The time, place and agenda of the meeting had been provided to the Transcript Bulletin and to each member of the governing body by delivering copies of the notice and agenda at least two days before to each of them.

Also present were Douglas Ahlstrom, Attorney and Laurel Gordin, Deputy Clerk. Dennis Ewing, Clerk, was excused.

1. **MINUTES.** Commissioner McArthur moved to approve the minutes of the Tooele Commission meeting held June 16, 1998. Commissioner Hunsaker seconded the motion. All concurred.
2. **PERSONNEL ACTIONS.** Sherrie Ahlstrom, Health Department, stated that the Health Department has received a new contract from the State for Maternal Child Health Injury Prevention and with that contract they asked that a half-time person be hired to run this program. The Health Department would like to move Rich Layton, who is a half time person with the Health Department, to a full time person. Also with the federal funds they receive they would like to move Maria, a clerk in Wendover, from part time status to three quarter time status. Both positions are federally funded and if the funds were ever cut the positions would be cut. Commissioner McArthur moved to approve the personnel changes for the Health Department, changing Rich Layton to a full time position and increasing the clerk in Wendover, Maria, from half time status to three quarter time status. Commissioner Griffith seconded the motion. All concurred.
3. **INVOICES.** Commissioner Griffith moved to approve the warrants issued on June 12, 1998 in the amount of \$442,830.56 - #982970 through #983130; also warrants issued on June 19, 1998 in the amount of \$803,304.86 - #983131 through #983262. Commissioner McArthur seconded the motion. All concurred.
4. **DESERET PEAK COMPLEX.** Mark McKendrick, Parks & Recreation, presented bids for the sound system for the Deseret Peak Complex. The engineer's estimate for the system was approximately \$29,000, the low bid came in at \$54,000. One of the major reasons seems to be the timing of the bid. The system needs to be installed in time for the fair which is a little over a month away. Mark suggested renting a system for \$700 to get them through the fair and then look at purchasing costs more closely. Commissioner Griffith moved to approve renting a system for the Deseret Peak Complex for the fair and to reevaluate the bids and look at the time frame to rebid at a later time. Commissioner McArthur seconded the motion. All concurred.
5. **TOOELE VALLEY REGIONAL MEDICAL CENTER.** Attorney Ahlstrom discussed two contracts with the Commission which the hospital board had recommended be approved. He stated that he had discussed the contracts pertaining to Sue Montiel and George Vargyas with Mr. Bob Harding of Community Health Systems and he stated that he would honor the contracts if they purchase the hospital. Commissioner McArthur moved to approve the Professional Services Agreement with Sue Montiel and Dr. Vargyas. Commissioner Griffith seconded the motion. All concurred.

Commissioner Hunsaker discussed the hospital board. He took this opportunity to thank those member of the board who have served the county well on the hospital board. He appointed new board members as follows:

Donna McKendrick to replace Ed St.Clair  
Dee Askariund to replace Lynn Wyatt

Dr. Richard Anderson to replace Virginia Caldwell  
 Sid Hullinger to replace Kathleen Griffith  
 Bob Shields to replace Jim Gowans

There is still a vacancy of two seats at the request of Community Health Systems (Jerry Medina's and Ray Cormier's seat's). Commissioner McArthur moved to approve the appointments. Commissioner Griffith seconded the motion. All concurred.

6. **PUBLIC HEARING - TO AMEND THE OFFICIAL ZONING MAP OF TOOELE COUNTY; REZONING A PORTION OF PROPERTY IN LAKE POINT FROM RR-1 TO AN C-H ZONING DESIGNATION.** Commissioner Hunsaker opened the public hearing. Those in attendance were: Mark McKendrick, Maggie Wilde, Jeff Schumaker and Val Stearns. Nicole Cline, Engineering, discussed this zone change with the Commission. One citizen asked what a CH zone will allow for. Nicole stated that a CH zone means commercial highway and allows for those commercial industries that cater to the traveling public. No other comments were offered by the public.

Commissioner McArthur moved to close the public hearing. Commissioner Griffith seconded the motion. All concurred.

7. **ORDINANCE 98-19 - AMENDING THE OFFICIAL ZONING MAP OF TOOELE COUNTY; REZONING CERTAIN PROPERTY IN LAKE POINT FROM RR-1 TO CH.** Commissioner Griffith moved to approve Ordinance 98-19 - Amending the Official Zoning Map of Tooele County; Rezoning Certain Property In Lake Point From RR-1 to CH. Commissioner McArthur seconded the motion. All concurred.

8. **ORDINANCE REVISIONS: CODE SECTION 4-3-b TOOELE COUNTY ZONING ORDINANCE LOT STANDARDS.** Attorney Ahlstrom stated that before this can be acted upon, a public hearing needs to be held. Commissioner McArthur moved to table the Ordinance Revisions. Commissioner Griffith seconded the motion. All concurred.

9. **CONTRACT REVIEW.** A) Contract #97-06-01 - County Brand Inspection has no further need for inspection. B) Contract #97-06-02 - Cooperative Law Enforcement - Skull Valley Geochytes; C) Contract #97-06-05 - Jail Agreement - Tooele County - Tooele City; D) Contract #97-07-02 - Interlocal Cooperation Agreement - Impact Fee Collection Services - NTCFD will all be reviewed again next year.

10. **PETITIONS, REMONSTRANCES AND COMMUNICATIONS.**  
**Tooele County Fair Bid.** Commissioner Griffith presented bids received for the fair books and posters. The low bid came from the Transcript Bulletin. Commissioner Griffith moved to approve the bid from the Transcript Bulletin.

**Emergency Management.** Commissioner Griffith presented bids received for a Maintenance Shop/Storage Facility. The low bid was from Brundie & Brundie for \$106,000.00. Commissioner Griffith moved to award the bid to Brundie & Brundie. Commissioner McArthur seconded the motion. All concurred.

Commissioner Griffith discussed leasing the mountain top on South Mountain and erecting a tower for better communications during an emergency. He moved to approve the bids for the tower \$15,980 (materials not erection) and for the Communications Equipment Shelter \$24,153 (plus shipping). The bids were from the State-approved list. These will be paid for with FEMA funds. Commissioner McArthur seconded the motion. All concurred.

**Economic Development.** Attorney Ahlstrom has received an invoice from Economic Development for \$3798.23 for legal fees to date (they were sued by Crossley). Commissioner Hunsaker moved to have Commissioner Griffith take the invoice to Economic Development at their next meeting, discuss it, make the proposal that they pay the bill and then the county will reimburse Economic Development, also to see if this gets

the County out of the situation. Commissioner McArthur seconded the motion. All concurred.

Wendover Airport. Attorney Ahlstrom received a complaint that the Wendover Airport sweeper, which is restricted to airport use, is being used to sweep Wendover City streets. This item will be put on the Airport Board agenda.

ADJOURN. Commissioner McArthur moved to adjourn the meeting. Commissioner Griffith seconded the motion. All concurred.

APPROVED JULY 7, 1998

BY 