

July 7, 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 COMMENTS ON GENERAL SCHEDULE  
FOR PROCEEDING AND ASSOCIATED GUIDANCE**

Applicant Private Fuel Storage L.L.C. ("Applicant") hereby provides the following comments with respect to the June 29, 1998 Memorandum and Order (General Schedule for Proceeding and Associated Guidance) issued by the Atomic Safety and Licensing Board ("Board"). Specifically, the Applicant has limited comments with respect to Part B of the Order and somewhat broader comments with respect to Part C of the Order. As set forth below, the NRC Staff generally joins the Applicant with respect to these comments.

With respect to Part B (Informal and Formal Discovery), the Applicant believes that the time limit provided by the Board for interrogatory responses of seven days is too short. The NRC Rules of Practice generally allow 14 days for interrogatory responses. 10 C.F.R. § 2.740b(b). Because simple informational requests are likely to have been satisfied during informal discovery, it is likely that interrogatory requests during formal discovery will be more substantive in nature and will require more rather than less time

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the "Applicant's Comments on General Schedule for Proceeding and Associated Guidance," dated July 7, 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 13th day of May 1998.

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than usual to prepare responses. Accordingly, Applicant believes that seven days will generally be insufficient time to permit review of the interrogatory questions, discussion of appropriate responses with the persons designated to answer the interrogatories, and the preparation, review and execution of answers. This will be particularly true if, as is likely, a set of interrogatories covers more than one contention or requires answers from more than one person.

Accordingly, Applicant requests the Board to modify its Order to allow 14 days for responses to interrogatories as generally provided for by the NRC Rules of Practice. The Applicant is authorized to state that the Staff also believes that seven days is too short of a time for responding to interrogatories and joins the Applicant in requesting the Board to allow 14 days for such responses.

The Applicant and the Staff also believe that 10 days should be allowed for the filing of motions to compel discovery. The additional time may be necessary to review potentially lengthy or vague discovery responses to determine whether a motion to compel is appropriate. Also, with respect to the receipt of discovery responses, the Applicant and the Staff believe that the Board should allow any documents accompanying a discovery response or motion to compel to be sent on the due date for next day delivery.

With respect to Part C (Summary Disposition Motions), the Applicant has the following comments and request for clarification. First, it is not clear whether the page limits set by the Board apply only to a summary disposition motion itself or include as well the statement of material facts on which there is no dispute and the supporting affidavits

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and exhibits. Applicant believes that the page limits should apply only to the motion itself and requests Board clarification to this effect. The Applicant is authorized to state that the Staff joins in this comment and requests similar clarification.

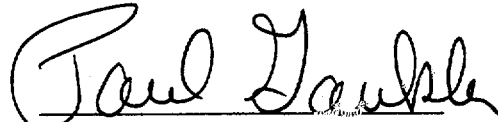
Second, the page limitations set forth in the Order remain the same regardless of the number of contentions on which a party seeks summary disposition. Thus, for example, OGD would be allowed 75 pages for summary disposition filed 60 days or more before the deadline with respect to its sole contention in Group III whereas Applicant would be allowed the same number of pages, 75, should it file for summary disposition with respect to all 12 of the contentions (as consolidated by the Board) in Group III. The Applicant believes that the Board should provide for some flexibility in the page limitations to take into account the number of contentions on which a party moves for summary disposition, for example, by setting a page limit per contention. The Applicant is authorized to state that the Staff joins in this comment and both the Applicant and the Staff suggest that the Board should allow 20 pages per contention for summary disposition motions (excluding supporting documents) filed before the initial cut-off date, 15 pages per contention for motions filed before the second cut-off date, and 10 pages per contention for motions filed after the second cut-off date.

Third, the Order requires a party to file all its summary disposition requests for each Group simultaneously. Thus, a party could not move for summary disposition earlier with respect to certain contentions than it does for others. This could actually delay the filing of summary disposition with respect to certain contentions for which such a motion

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may be ripe in order to await completion of sufficient discovery for purposes of summary disposition with respect to other contentions. Moreover, particularly with respect to the Group I contentions, a party could be placed in a bind if sufficient discovery for purposes of summary disposition were not completed by mid February 1999 with respect to several of the contentions. The party might be forced either to delay filing its summary disposition motion, reducing the number of allowed pages, or decide not to include the several contentions in its motion.

Thus, the Board should not require the simultaneous filing of summary disposition motions for each Group of contentions but rather should allow the parties to file individual motions for summary disposition whenever such motions are appropriate. If the Board adopts the page limitation per contention suggested above, the parties will still have an incentive to file summary disposition motions before the deadline for such motions. The Applicant is authorized to state that the Staff joins in this comment as well.

Respectfully submitted,



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Dated: July 7, 1998