

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

August 10, 1998

any evidentiary hearing should not commence before completion of the staff's Safety Evaluation Report (SER) or Final Environmental Statement (FES) regarding an application, unless the presiding officer finds that beginning earlier, e.g., by starting the hearing with respect to safety issues prior to issuance of the SER, will indeed expedite the proceeding, taking into account the effect of going forward on the staff's

ability to complete its evaluation in a timely manner.

Id. at 6. The schedule for this case, where the Board focuses on the date of the completion of the Staff's review rather than the issuance of the SER, may not expedite the proceeding, given the potential effect of going forward on the Staff's ability to complete its technical review.

The Commission states that only a single round of discovery should be allowed against the Staff. CLI-98-12. The State believes that, given the complexity of issues in this case, a single round of discovery against the Staff is likely to be insufficient to allow thorough exploration of the basis for the Staff's conclusions regarding the adequacy of the application and its compliance with NEPA. The Staff is a major party to the case, whose views on the PFS license application will be entered in the record and weighed with the other evidence. It would violate the Intervenor's right to a meaningful hearing and be inconsistent with the Federal Rules of Civil Procedure if the Staff were permitted to present evidence which Intervenor had not had an adequate opportunity to uncover in the discovery process. Moreover, the Commission's guidance is to "ensure a prompt yet fair resolution of contested issues in adjudicatory proceedings." CLI-98-12 at 4. Only one round of discovery against the Staff relating to the voluminous and complex final EIS and SER that will be developed in this case will not meet the foregoing objectives.

Another troubling aspect of the Commission's guidance is that, except for

establishment of the case file, Licensing Boards generally should "suspend discovery against the staff until the staff issues its review documents regarding the application." CLI-98-12 at 9. Whether or not it has reached a conclusion regarding the application, the Staff is likely to have important documents and information, in addition to the case file, that should be disclosed to the other parties as early in discovery as possible. The informal discovery process established by this Licensing Board allows such discovery without putting an onerous burden on the Staff. The State believes that in this particular case the approach taken by the Board is more expeditious and is likely to encourage a more meaningful hearing than the general approach suggested by the Commission.

DATED this 10th day of August, 1998.

Respectfully submitted,



Denise Chancellor, Assistant Attorney General
Fred G Nelson, Assistant Attorney General
Diane Curran, Special Assistant Attorney General
Connie Nakahara, Special Assistant Attorney General
Attorneys for State of Utah
Utah Attorney General's Office
160 East 300 South, 5th Floor, P.O. Box 140873
Salt Lake City, UT 84114-0873
Telephone: (801) 366-0286, Fax: (801) 366-0292

CERTIFICATE OF SERVICE

I hereby certify that copies of STATE OF UTAH'S COMMENTS ON BOARD'S JUNE 29, 1998 SCHEDULING ORDER IN LIGHT OF CLI-98-12 were served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class (unless otherwise noted), this 10th day of August, 1998:

Attn: Docketing & Services Branch
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Mail Stop: O16G15
11555 Rockville Pike, One White Flint
North
Rockville, MD 20852-2738
E-mail: secy@nrc.gov
(original and two copies)

G. Paul Bollwerk, III, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555
E-Mail: gpb@nrc.gov

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555
E-Mail: jrk2@nrc.gov

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555
E-Mail: psl@nrc.gov

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
E-Mail: pfscase@nrc.gov
E-Mail: set@nrc.gov

Jay Silberg
Ernest L. Blake, Jr.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N. W.
Washington, DC 20037-8007
E-Mail: Jay_Silberg@shawpittman.com
E-Mail: ernest_blake@shawpittman.com

Clayton J. Parr, Esq.
Parr, Waddoups, Brown, Gee &
Loveless
185 South State Street, Suite 1300
P. O. Box 11019
Salt Lake City, Utah 84147-0019
E-Mail: karenj@pwlaw.com

John Paul Kennedy, Sr., Esq.
1385 Yale Avenue
Salt Lake City, Utah 84105
E-Mail: john@kennedys.org


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

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

Danny Quintana, Esq.
Danny Quintana & Associates, P.C.
50 West Broadway, Fourth Floor
Salt Lake City, Utah 84101
E-Mail: quintana@xmission.com

James M. Cutchin
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-Mail: jmc3@nrc.gov
(electronic copy only)

Office of the Commission Appellate
Adjudication
Mail Stop: 16-G-15 OWFN
U. S. Nuclear Regulatory Commission
Washington, DC 20555
(United States mail, first class only)



Denise Chancellor
Assistant Attorney General
State of Utah