

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

98 JAN 21 P3:15

Before Administrative Judges:

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

OFFICE OF THE
RULE MAKING
ADJUDICATORY
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
January 21, 1998

SERVED JAN 21 1998

MEMORANDUM AND ORDER
(Prehearing Conference Agenda
and Schedule for Replies)

Pending before the Board are petitions from the State of Utah (State of Utah), the Skull Valley Band of Goshute Indians (Skull Valley Band), Ohngo Gaudadeh Devia (OGD), Confederated Tribes of the Goshute Reservation and David Pete (Confederated Tribes), and Castle Rock Land and Livestock, L.C., Skull Valley Co. LTD., and Ensign Ranches of Utah, L.C. (Castle Rock), seeking a hearing concerning the application of Private Fuel Storage, L.L.C. (PFS), for authority to construct and operate a 10 C.F.R. Part 72 independent spent fuel storage installation.¹ At a

¹ By e-mail today, the Board received a petition from Richard Wilson, purportedly submitted on behalf of a group of individuals prominent in the nuclear area and the Atlantic Legal Foundation, seeking to intervene in this proceeding in support of the PFS application. When that
(continued...)

prehearing conference scheduled to begin on Tuesday, January 27, 1998, the Board will hear arguments concerning various contested issues relating to the standing of the intervenors and the admissibility of the eighty plus contentions they have filed.

Attachment 1 to this order is an agenda setting forth the general order of presentation at the prehearing conference. Given the number and variety of the intervenors' contentions, the Board wants presentations on admissibility that are concise and focused. To this end, after receiving the intervening participants' input, the Board has placed each of the intervenors' contentions into one of four general categories: safety, emergency planning, environmental, and other. These classifications, which are not intended as a limitation on the scope of any contention, are based on the Board's judgment about whether the focus of the contention is on matters discussed primarily in the applicant's safety analysis report, emergency plan, or environmental report, or whether the contention instead relates to other matters.

As the attached agenda indicates, after hearing arguments on standing issues, the Board will entertain

¹(...continued)
petition has been received in the Office of the Secretary and officially docketed, the Board will issue an order establishing a schedule for participant answers to the petition.

contention admissibility arguments regarding each category of contentions, beginning with the "Other" category. Within each category, the Board will first consider the individual contentions of the State in the order set out in the attached agenda. At the conclusion of argument on each State contention,² the Board will request that the other intervenors identify and discuss the admissibility of any of their particular contentions that involve similar issues and allegations. (For example, after the State's presentation on Utah Contention E, the Board would entertain presentations on Castle Rock Contention 7 and Confederated Tribes Contention F, which also concern financial qualifications.) In this regard, the other intervenors also should be prepared to discuss the degree to which their related contention involves any matters that are different from, or not within the scope of, the State's contention.

Once consideration of all the State's contentions in a particular category is completed, the Board will hear arguments on the admissibility of the other intervenors' contentions within that category about which a presentation has not already been made. In discussing these contentions, the Board will expect counsel for the other intervenors to identify and discuss related contentions that have not been

² The argument sequence will be an initial presentation by the contention's sponsor, responses (if any) by PFS, the Skull Valley Band, and the NRC staff, and a reply by the contention's sponsor.

the subject of a previous presentation. Contentions will be discussing in the order outlined in the agenda until presentations have been made regarding all contentions in the category.

In making their presentations, the participants should assume that the Board has read their filings. Arguments that merely reiterate material in participant pleadings are not favored by the Board. Although several of the intervening participants have indicated they wish to incorporate by reference other participants' contentions, absent leave of the Board, arguments supporting admissibility of any particular contention will be entertained only from the participant who initially sponsored the contention.

In addition, after reviewing the filings of the State, PFS, and the NRC staff concerning the State's late-filed contentions EE, FF, and GG, which concern nonpublic proprietary information, and the State's nine security plan contentions, which involve nonpublic safeguards information, the Board has decided that, with the exception of the two issues specified below, the State's opportunity to address the PFS and staff responses to these pleadings will be in a written reply rather than an oral reply argument. These reply pleadings shall be filed on or before Wednesday, February 11, 1998. During the prehearing conference, the Board will hear argument on the issues of (1) the State's


satisfaction of the late-filed factors of 10 C.F.R. § 2.714(a)(1); and (2) the credentials of William J. Sinclair to support the State's security contentions.

If the State reply filings permitted under this memorandum and order do not involve proprietary or safeguards information, they should be served on the Board, the Office of the Secretary, and counsel for the other participants by facsimile transmission, e-mail, or other means that will ensure receipt by close of business (4:30 p.m. EST) 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). If, on the other hand, a State reply filing includes proprietary or safeguards information, it should (1) be served in the manner and on the individuals described in paragraphs I.H.1.a.-b. of the Board's December 17, 1997 memorandum and order, as amended, and include a cover letter or memorandum that shall served on all other participants as described in paragraph I.H.2. of that issuance, see Licensing Board Memorandum and Order (Protective Order and Schedule for Filing Security Plan Contentions) (Dec. 17, 1997) at 8, 9 (unpublished); Licensing Board Memorandum and Order (Additional Amendments to Protective Order) (Dec. 23, 1997) at 2 (unpublished); and (2) be served so as ensure receipt by the individuals

described in paragraph I.H.1.a. of the Board's December 17, 1997 memorandum and order by the next business day.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD³


G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

January 21, 1998

³ Copies of this memorandum and order were sent this date to counsel for the applicant PFS, and to counsel for petitioners Skull Valley Band, OGD, Confederated Tribes, Castle Rock, and the State by Internet e-mail transmission; and to counsel for the staff by e-mail through the agency's wide area network system.

ATTACHMENT 1

JANUARY 1998 PREHEARING CONFERENCE AGENDA

- I. Introduction of Board and Participants
- II. Standing Issues
 - A. Standing of Confederated Tribes
 - B. Other Standing Matters
- III. Admissibility of Contentions
 - A. Other Issues
 - 1. Utah Contentions A and B
 - 2. Castle Rock Contentions 1 through 5
 - 3. Incorporation by Reference (including Castle Rock Contention 24, Confederated Tribes Contentions G and H)
 - 4. Skull Valley Band Contention
 - B. Safety Issues
 - 1. Utah Contentions C through Q, S, EE through GG (late-filing factors), Security-A through Security-I (credentials of William J. Sinclair)
 - 2. Castle Rock Contentions 6 and 7, 11
 - 3. Confederated Tribes Contentions A and B, F
 - 4. OGD Contentions A, C through I, K through N, P
 - C. Environmental Issues
 - 1. Utah Contentions T through DD
 - 2. Castle Rock Contentions 8 through 10, 12 through 23
 - 3. Confederated Tribes Contentions B through E
 - 4. OGD Contentions J, O, P
 - D. Emergency Planning Issues
 - 1. Utah Contention R
 - 2. OGD Contention B

IV. Administrative Matters and Future Scheduling

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Docket No.(s) 72-22-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB PREHEARING CONFERENCE ORDER 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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Washington, DC 20555

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Docket No.(s)72-22-ISFSI
LB PREHEARING CONFERENCE ORDER

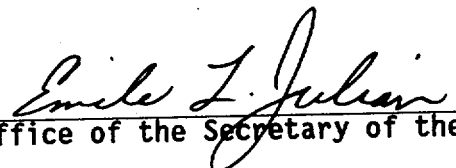
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Dated at Rockville, Md. this
21 day of January 1998


Office of the Secretary of the Commission