

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

PRIVATE FUEL STORAGE, LLC
(Independent Spent Fuel
Storage Installation)

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Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

December 17, 1998

STATE OF UTAH'S MOTION TO AMEND
SECURITY CONTENTIONS

The State of Utah has received new information from the Tooele County Attorney regarding the scope of the Tooele County Cooperative Law Enforcement Agreement ("CLEA") with the Bureau of Indian Affairs ("BIA") and the Skull Valley Band of Goshute Indians ("Band"). Based on the new information, the State files this Motion to Amend Utah Contentions Security C and also Security A and Security B.

On January 3, 1998, the State filed contentions based on the Applicant's confidential safeguards security plan. The Staff and Applicant filed responses on January 30, 1998, and the State filed a reply on February 11, 1998. The State raised two issues in Contention Security C ("Local Law Enforcement"): (1) the authority of the Tooele County Sheriff's Office to provide law enforcement assistance to incidents at the Applicant's independent spent fuel storage installation ("ISFSI"); and (2) the time required for Tooele County Sheriff's office to respond to incidents at the ISFSI. The Board admitted only the second issue. LBP 98-13 at 15-16.

At a prehearing conference on the security plan contentions held at the NRC in Rockville, MD, on June 17, 1998, counsel for the Applicant produced a copy of a Cooperative Law Enforcement Agreement between the County, BIA and the Band dated June 3, 1997. The CLEA was signed on behalf of the County by Teryl Hunsaker, Chairman of the Tooele County Commission, and approved as to form by Douglas J. Ahlstrom, the Tooele County Attorney. A copy of the CLEA is attached hereto as Exhibit 1.

The NRC Staff generally took the position at the prehearing conference that by merely raising the question of whether or not Tooele County has law enforcement jurisdiction on the Skull Valley Reservation, the State had not established a sufficient legal basis for Contention Security C. TR at S-22. The Applicant generally argued that the June 3, 1997, CLEA established that Tooele County has law enforcement jurisdiction on the Skull Valley Reservation, and by extension, the Applicant has met the requirements for law enforcement liaison for its facility. TR at S-34.

In ruling on the State's security contentions, the Board found certain aspects of Utah Contention Security C¹ inadmissible because a cooperative law enforcement agreement between the County, BIA and the Band was "shown to exist." LBP 98-13 at

¹ Security C, Local Law Enforcement, states:

Contention: The Applicant has not met the requirements of 10 C.F.R. Part 73, App. C, Contents of the Contingency Plan, Law Enforcement Assistance.

16. Moreover, the Board ruled "nothing on the face of the cooperative agreement gives us cause to question its validity as it provides such jurisdiction on the Skull Valley Band's reservation for the designated LLEA [local law enforcement agency]." Id at n.

9. Furthermore, the Board ruled with respect to Contentions Security A (Security Force Staffing) and Security B (Equipment and Training):

to the extent the State seeks to rely on the issue of the designated LLEA's lack of jurisdiction and law enforcement authority on the Skull Valley Band's reservation as a basis for this contention, that assertion lacks adequate legal or factual support.

LBP 98-13 at 13-14.

The State filed a Motion for Reconsideration of the Board's Ruling on State of Utah Physical Security Plan Contentions, dated July 10, 1998, wherein the State raised the issue of whether the Tooele County Commission has passed the appropriate resolution for the June 3, 1997 CLEA to be in force. The Applicant and Staff responded to the State Motion for Reconsideration on July 22, 1998. The Board ruled, on August 5, 1998, it will admit contentions Security-A through Security-C on the issue:

[W]hether a June 1997 cooperative law enforcement agreement that permits the Tooele County sheriff's office to exercise law enforcement authority on the Skull Valley Band reservation has been properly adopted by Tooele County, thereby allowing the county sheriff's office to fulfill its role as the designated LLEA for the PFS facility.

LBP-98-17 at 2. The State now requests the Board to expand its August 5 ruling based on new information the State has obtained from the Tooele County Attorney.

The State sent a letter to Commissioner Hunsaker, Chairman of the Tooele County Commission, inquiring into the scope of the June 3, 1997, CLEA that Chairman Hunsaker signed on behalf of the County. See Letter from Dianne R. Nielson, Ph.D, Executive Director, Department of Environmental Quality to Teryl Hunsaker, dated October 14, 1998, attached hereto as Exhibit 2. Dr. Nielson received a reply to her letter from Tooele County Attorney, Douglas J. Ahlstrom dated December 2, 1998, attached hereto as Exhibit 3.

Mr. Ahlstrom, the Tooele County Attorney, is the same person who approved the CLEA as to form. The Tooele County Attorney's view of the CLEA is antithetical to that the Applicant. In the words of the Tooele County Attorney:

I do not believe Tooele County is obligated to provide law enforcement protection to Private Fuel Storage and their proposed storage site.... At the time the CLEA was signed there was no discussion or contemplation that Private Fuel Storage would be part of the agreement. Moreover, the county has not yet entered into any agreement that has any bearing on locating the PFS storage facility on the reservation.

Given this new information, the State requests the Board to revise its August 5, 1998, ruling on the admissibility of the bases of Contentions Security C and also Security A and Security B.

On May 15, 1998, the NRC issued a final rule, codified at 10 CFR § 73.50, Requirements for Physical Protection for Licensed Activities. Pursuant to 10 CFR § 73.50(a), physical protection requirements applicable to ISFSIs licensed under Part 72, include the following requirement:

Documented liaison with a designated response force or local law enforcement agency (LLEA) must be established to permit timely response to unauthorized penetration or activities.

10 CFR § 73.51(d)(6) (*emphasis added*). In accordance with 10 CFR § 72.184, an ISFSI must also comply with 10 CFR Part 73, Appendix C, Licensee Safeguards Contingency Plans. The Law Enforcement Assistance in (3)(d) of Appendix C requires:

A listing of available local law enforcement agencies and a description of their response capabilities and their criteria for response; and a discussion of working agreements or arrangements for communicating with these agencies.

In light of the December 2, 1998, letter from the Tooele County Attorney, the Applicant cannot satisfy the requirements of 10 CFR § 73.51(d)(6) and Part 73, Appendix C(3)(d) by relying on the June 3, 1997 CLEA. The Tooele County Attorney's letter plainly shows that Tooele County will not provide law enforcement protection to the proposed ISFSI under the June 3, 1997 CLEA. Thus, the State has raised an additional legal challenge to the Applicant's ability to comply with 10 CFR § 73.51(d)(6) and Part 73, Appendix C(d)(3).² Furthermore, the lack of an agreement with Tooele County adds extra weight to the already admitted basis for this contention regarding the time a local law enforcement agency will take to respond to an incident

²The State requests Security C now read:

Contention: The Applicant has not met the requirements of 10 C.F.R. Part 73, App. C, Contents of the Contingency Plan, Law Enforcement Assistance nor has the Applicant met the requirements of 10 C.F.R. § 73.51(d)(6).

at the Applicant's ISFSI.

Finally, the State requests the Board broaden its August 5, 1998, ruling on Contentions Security A and Security B.³ The letter from the Tooele County Attorney clearly establishes that Tooele County will not provide law enforcement assistance to the PFS ISFIS under the CLEA. The State refers the Board to its original Security A and Security B Contentions, dated January 3, 1998, at 2-3 and the State's Reply to the NRC Staff and Applicant's Responses to Utah's Security Plan Contentions Security-A through Security-I, dated February 11, 1998 at 7-9, and requests the Board find that the new information provides support to broaden the bases for the admissibility of Contentions Security A and Security B.

³ Security A (Security Force Staffing) states:

CONTENTION: The Applicant has failed to establish a detailed plan for security measures for physical protection of the proposed ISFSI as required by 10 C.F.R. § 72.180, including failure to demonstrate that it has adequate staffing capability to cope with or respond to safeguards contingency events.

Security B (Equipment and Training) states:

CONTENTION: The Applicant has not described the type or location of security equipment available to security force personnel, nor has the Applicant described adequate training for fixed site guards or armed response personnel.

The State Satisfies the Commission's Late-Filing Criteria.

The State submits that it satisfies the criteria under 10 CFR § 2.714(a)(1) for amending the bases to Contentions Security C and also Security A and B.

First, the State has good cause for late filing, because the State only received the new information from the Tooele County Attorney on December 4, 1998. Counsel for the State was in Washington, D.C. last week, in part to attend a prehearing conference in this case, which precluded filing this pleading at an earlier date.

Second, the State has no means, other than this proceeding, to protect its interests in the issues identified above.

Third, the State's participation in this proceeding can reasonably be expected to assist in developing a sound record relating to legal issues regarding local law enforcement authority. Furthermore, the NRC Staff has no special expertise in addressing local law enforcement authority or issues relating to Indian law.

Finally, it is unlikely that admission of the question of local law enforcement authority would broaden or delay the proceeding because the issues could be addressed as part of the existing admitted security contentions. Thus, the State's filing will not delay the proceeding. Furthermore, any delay is outweighed by the significance of the issues raised with respect to law enforcement assistance to the Applicant's facility.

Accordingly, the above amended bases satisfy the NRC's criteria for late consideration.

DATED this 17th day of December, 1998.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Denise Chancellor", written over a horizontal line.

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 a copy of STATE OF UTAH'S MOTION TO AMEND SECURITY CONTENTIONS was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 17th day of December, 1998:

Rulemaking & Adjudication Staff
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington D.C. 20555
E-mail: hearingdocket@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: set@nrc.gov
E-Mail: clm@nrc.gov
E-Mail: pfscase@nrc.gov

Jay E. Silberg, Esq.
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
E-Mail:
paul_gaukler@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 only*)



Denise Chancellor
Assistant Attorney General
State of Utah