

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC
LBP-99-26

'99 JUL 27 P1:45

Before Administrative Judges:

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

OFFICE
FACILITATOR
ADMINISTRATIVE

SERVED JUL 27 1999

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

July 27, 1999

MEMORANDUM AND ORDER
(Dismissing Contention Utah F/Utah P)

By motion filed July 13, 1999, intervenor State of Utah (State) has requested that the Board dismiss contention Utah F/Utah P, with prejudice. This consolidated issue concerns the adequacy of training and certification of personnel for the proposed Skull Valley, Utah independent spent fuel storage installation (ISFSI) of applicant Private Fuel Storage, L.L.C. (PFS). In its motion, the State declares that dismissal of this contention is appropriate because it is now moot. According to the State, it has settled its dispute with PFS in connection with this issue, as evidenced by an attached July 13, 1999 letter from PFS counsel outlining the terms of an agreement between the parties regarding contention Utah F/Utah P. The State also indicates that the NRC staff supports its motion. See

[State] Motion to Dismiss Utah Contentions F and P (July 13, 1999) at 1 [hereinafter State Motion to Dismiss]. No other party to this proceeding has filed a response objecting to, or otherwise commenting on, the State's request.

Under the terms of the settlement between the State and PFS relative to this issue, PFS has agreed to make language changes that incorporate six items into the Safety Analysis Report (SAR) accompanying its 10 C.F.R. Part 72 ISFSI application. These changes include SAR revisions indicating that PFS will use a training approach for its personnel that includes the five elements of the Systematic Approach to Training (SAT) set forth in 10 C.F.R. § 55.4; that PFS, to the extent it acts as a rail carrier from the existing main rail line to the PFS facility, will comply with applicable United States Department of Transportation (DOT) statutes and regulations and the rail carrier requirements of 49 U.S.C. Subtitles IV (Part A) and V and the associated implementing regulations in Title 49 of the Code of Federal Regulations; and that PFS, to the extent it acts as a motor carrier between the main rail line and the PFS facility, will comply with the DOT motor carrier requirements, including 49 U.S.C. Subtitle IV. Several of these items, however, are subject to a disclaimer, requested by the staff and apparently not objected to by the State, that the PFS SAR commitment does not constitute a license condition or

licensing commitment under any 10 C.F.R. Part 72 license issued for the PFS facility; does not render the commitment subject to 10 C.F.R. § 72.48; and does not obligate the staff to enforce the requirements or undertake enforcement action with respect to a violation of the requirements under any 10 C.F.R. Part 72 license issued to PFS. See State Motion to Dismiss, unnumbered attach. at 1-3 (July 13, 1999 Letter from Paul Gaukler, Counsel to PFS, to Diane Curran, State Counsel).

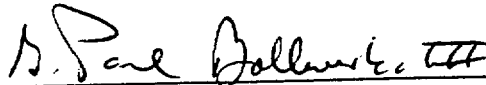
After reviewing the State's motion and the accompanying attachment, and finding nothing therein that is inconsistent with the public interest,¹ we grant the State's July 13,

¹ In granting the State's motion to dismiss, we express no opinion on the extent to which the staff-requested disclaimers regarding the effect of incorporating the PFS commitments into the facility SAR may impact the Board's authority relative to any future attempt to enforce the agreement between PFS and the State.

1999 motion to dismiss. Further, as requested by the State, contention Utah F/Utah P is dismissed with prejudice.

It is so ORDERED.

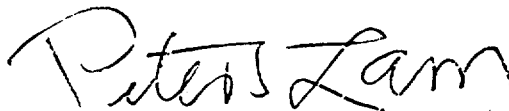
THE ATOMIC SAFETY
AND LICENSING BOARD²



G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE



Jerry R. Kline
ADMINISTRATIVE JUDGE



Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland

July 27, 1999

² Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant PFS; (2) intervenors Skull Valley Band of Goshute Indians, Ohngo Gaudadeh Devia, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State; and (3) the staff.

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of

PRIVATE FUEL STORAGE, LLC

(Independent Spent Fuel Storage
Installation)

Docket No.(s) 72-22-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMO & ORDER (LBP-99-26) 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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Docket No.(s)72-22-ISFSI
LB MEMO & ORDER (LBP-99-26)

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Dated at Rockville, Md. this
27 day of July 1999

Adrian T. Byrdson
Office of the Secretary of the Commission