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

DOCKETED 07/25/00

SERVED 07/25/00

Before Administrative Judges:

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

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 25, 2000

ORDER

(Requesting Docketing and Service of Submission)

In accordance with 10 C.F.R. § 2.780(c), the e-mail communication from petitioner William D. Peterson included herewith as Attachment 1 should be placed in the docket of this proceeding and served on those individuals who are on the service list for this proceeding.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD*

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

July 25, 2000

*Copies of this order were sent this date by Internet e-mail transmission to petitioner William D. Peterson and to counsel for (1) applicant Private Fuel Storage, L.L.C.; (2) intervenors Skull Valley Band of Goshute Indians, Ohngo Gaudadeh Devia, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State of Utah; and (3) the NRC staff.

ATTACHMENT 1

From: w d peterson <paengineers@juno.com>
To: <barrowesscb@juno.com>
Date: Mon, Jul 24, 2000 11:59 AM
Subject: Proposed Order for your review

William D. Peterson
Pigeon Spur Fuel Storage Facility
(new address) 4010 Cumberland Road
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Tel (801-277-3981

E-mail BillPeterson@OlympicHost.com
and paengineers@juno.com

July 24, 2000

Dr. Steve Barrowes
and
Dr. Gary Sandquist

Subject NRC Docket 72-23 relative to NRC Docket 72-22

Dear Dr. Barrowes and Sandquist

Inclosed is a proposed order for the NRC Board in this matter.
As you have done for other papers, please review this and provide your suggested changes. I will send this to Administrative Judge G. Paul Bollwerk, III, FOR THE ATOMIC SAFETY AND LICENSING BOARD.

This is a proposed order for this matter. I do not know if it appropriate that we submit a proposed order. In trying to intervene we tried to get testimony from 17 government officials into the SNF storage matters. As yet, we have not been able to do this. Basically what has been gained from our attempt to intervene is that a procedure has been used and shown for licencing a facility for storage of spent nuclear fuel. Importantly, the procedure is shown to be under the authority of the Federal Government in the Department of the Nuclear Regulatory Commission. We should have been able to obtain an order that such would be the case from Utah Division of Radiation Control Board. However, as you know the Governor has personally used the Utah DRC Board and

dominated the board to do his personal or his office's whims and demands, possibly for political posture or gain. Through the Utah DRC Board, Utah's Governor has been controlling our work in this federal matter.

Our response in this is due today, please respond immediately. With the inclosed proposed order is copy of matter that I have taken form other documents in the proceeding, primarily the reply of the NRC Staff and PFS attorney. Where you see additions or subtractions from the proposed order, please take liberty. Thank you for all that you do.

Sincerely yours,

William D. (Bill) Peterson

cc: Judge Bollwerk

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

Before Administrative Judges:

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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 __, 2000

FINDINGS AND ORDER

On June 20, 1997, Private Fuel Storage, L.L.C. (Applicant or PFS) applied for a license, pursuant to 10 C.F.R. Part 72, to receive, transfer and possess power reactor spent fuel and other radioactive material associated with spent fuel storage in an independent spent fuel storage installation (ISFSI), to be constructed and operated on the Skull Valley Indian Reservation in Tooele County, Utah.

On June 5, 2000, the Petitioner William D. (Bill) Peterson with Pigeon Spur Fuel Storage Facility (PSFSF) filed a pleading entitled "Petition to Intervene" and "Complaint," in which he seeks party status in this proceeding as a third party plaintiff and/or a late-filed intervener. In its June 7, 2000, Order, the Licensing Board permitted Mr. Peterson to file an amended petition and contentions, as required under 10 C.F.R. § 2.714(b)(2). On June 27 and June 28, 2000, the Petitioner filed amended intervention pleadings and contentions.

On July 12, 2000, the NRC staff and PFS staff responded to the petitioner's petition and proposed intervention. In general their responses objected to Peterson's intervention pointing out that where Peterson and his proposed Pigeon Spur Fuel Storage Facility's may have contentions they would be with the State of Utah and would appropriately be seen in the licensing proceedings of Docket No. 72-23. The NRC Staff and PFS oppose Peterson's Petition and recommends that it be denied.

On July 13, 2000, IT WAS FURTHER ORDERED, that petitioner Peterson had up to and including Monday, July 24, 2000, within which to file a reply to the responses of PFS and the NRC staff regarding his intervention petition and contentions. The Board noted that it does not intend to conduct an oral argument regarding this petition.

On July 20th, 2000 Petitioner Peterson responded with a Reply and Motion.
SPECIFICS

In general the Board sees Peterson's contentions are with the State of Utah who have intervened into this matter, and sees that Peterson does not have contentions with NRC or PFS. While the State of Utah and Peterson with the purposed Pigeon Spur Fuel Storage Facility have issues, those issues must be dealt between them in appropriate tribunal[s] seeing their issues.

The NRC Atomic Safety and Licensing Board notes that the Federal law has pre-empted spent nuclear fuel storage at both the proposed PFS facility on the Skull Valley Goshute Indian reservation in Tooele County, Utah, and at the proposed Pigeon Spur facility in Box Elder County, Utah, and does not relinquish to the State of Utah any federal AEA power to oversee, license, or to regulate these facilities. Reference WCS v DOE Civil No. 7-97CV-202-X in the U.S. District Court for the Northern District of Texas, Wichita Falls Division, October 3rd 1997 order of

Judge Joe Kendall.

While The State of Utah has brought matters to this board relative to licensing the PFS Facility (NRC Docket No. 72-22) which may also be matters of the proposed Pigeon Spur Fuel Storage Facility (NRC Docket No. 72-23) those matters relative to the PSFSF applications will have to be seen in its licensing. Distant issues of Peterson relative to his moving the Vitro Uranium Tailings and following problems and their affects in his business cannot be dealt with in any NRC licensing procedure of either NRC Docket No. 72-22 or 72-23. Matters outside of the immediate scope of the licensing of spent nuclear fuel storage will have to be seen in other courts.

Accordingly, Mr. Peterson's and the Pigeon Spur Fuel Facility's, NRC Docket No. 72-23 petition to intervene in the licensing matter of Private Fuel Storage, NRC Docket No. 72-22 is denied.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Original Signed By

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

June 13, 2000

EXPLANATION

Peterson explains that to write the above, information was taken from the

all of the proceeding, and most particularly from the paper[s] of the NRC staff. The following is such matter which was not used in the proposed order.

WRITINGS TAKEN FROM MATTER PAPERS BUT NOT USED

The filings required or permitted under this order 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 midnight Eastern Time (ET) 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); Licensing Board Memorandum and Order (Schedule for Telephone Conference and Directives Regarding Expedited Service) (Sept. 2, 1998) at 2-3 (unpublished).

If a filing includes proprietary information, it should be served in the manner and on the individuals described in paragraphs I.H.1.a.-c. of the Board's December 17, 1997 memorandum and order, as amended, and include a cover letter or memorandum that shall be 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); Licensing Board Order (Revising Procedures Governing Service of Pleadings and Issuances Containing Proprietary Information) (Feb. 28, 2000) at 1-2 (unpublished).

Accordingly, the Staff opposes the Petition and recommends that it be denied. On April 22, 1998, the Licensing Board ruled on standing and

the admissibility of contentions. See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142 (1998).

On June 5, 2000, almost three years after the Notice of Opportunity to request a hearing was published and more than two years after the Licensing Board ruled on other petitioners' standing, Petitioner Peterson filed his initial petition to intervene in this proceeding. The Petition Is Untimely and Does Not Satisfy the Balancing Test of 10 C.F.R. § 2.714.

As indicated in the above discussion, the Commission's Notice of Opportunity for Hearing, published in the Federal Register on July 31, 1997, provided that any person whose interest may be affected by this proceeding and who wishes to participate as a party must file a request and petition for leave to intervene "by September 15, 1997," in accordance with the provisions of 10 C.F.R. 2.714. 62 Fed. Reg. at 41,099.

Certainly, to the extent that any party submits expert testimony that is unsound, opposing parties may be expected to point out the testimony's flaws. Thus, the "scientific data of Governor Leavitt's 'policy,'" (Petition at 11) should it be raised as part of the State of Utah's case, will be addressed during the course of the proceeding.

In sum, good cause has not been shown for the lateness of the Peterson petition; and a balancing of the five factors in 10 C.F.R. § 2.714(a)(1) weighs against the grant of the Petition. For these reasons, the Petition should be denied.

B. Petitioner Peterson Fails to Demonstrate that He Possesses Cognizable Interests Which Could Be Adversely Affected by This

Proceeding

1. Legal Requirements for Intervention.

It is fundamental that any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that it has standing to do so. Section 189a(1) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2239(a) (the Act or AEA), provides:

In any proceeding under this Act, for the granting, suspending, or amending of any license . . . , the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

Id.; emphasis added.

The Commission's regulations in 10 C.F.R. § 2.714(a)(2) provide that a petition to intervene, among other things, "shall set forth with particularity the interest of the petitioner in the proceeding, [and] how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors set forth in [§ 2.714(d)(1)]."

Pursuant to 10 C.F.R. § 2.714(d)(1), in ruling on a petition for leave to intervene, the presiding officer of Licensing Board is to consider:

In determining whether a petitioner has established the requisite interest, the Commission has traditionally applied contemporaneous judicial concepts of standing.

Petitioner's injury is more of a general interest in the litigation because some of the issues might be similar with respect to his facility.

However, this type of interest is not sufficient to show a real stake in the outcome sufficient to establish injury in fact. See General Public Utilities Nuclear Corp. (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143 (1996) (fear of "bad precedent" was too generalized

to constitute an injury in fact).

Rather, the proper place for the Petitioner to challenge the State's policy would be in a proceeding on his own application.

The Staff expresses no opinion with respect to Mr. Peterson's claim of financial damages, except to note that such a claim is beyond the scope of an NRC licensing proceeding. See Quivera Mining Co. (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 8-11 (1998) (where a stated injury is purely economic, unrelated in any respect to radiation or to environmental impacts, such injury is outside of the zones of interest of either the AEA or NEPA), aff'd sub nom. Envirocare of Utah v. United States Nuclear Regulatory Commission, 194 F. 3d 72 (D.C. Cir. 1999).

1. Legal Standards Governing the Admission of Contentions
It is well established that contentions may only be admitted in an NRC licensing proceeding if they fall within the scope of issues set forth in the Federal Register notice of hearing and comply with the requirements of 10 C.F.R. § 2.714(b) and applicable Commission case law. See, e.g., Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167-170-71 (1976); Philadelphia Elec. Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974); Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 245 (1973).

Pursuant to 10 C.F.R. § 2.714(b)(1), a petitioner for leave to intervene is required to file a list of contentions it seeks to have litigated in the proceeding, at least one of which must satisfy the

requirements of § 2.714(b)(2). Section 2.714(b)(2), as amended, requires that each contention "must consist of a specific statement of the issue of law or fact to be raised or controverted," and that the following information must be provided in support of the contention.

Some complaints / contentions of the Petitioner do not raise a matter falling within the scope of the Federal Register Notice.

Further, this license proceeding does not pertain in any way to Petitioner's transport of vitro uranium tailings. See Contentions at ¶¶ 24 and 27. Consequently, these contentions fall outside the scope of the issues set forth in the Federal Register notice and should be rejected. In addition, these contentions raise issues which are not proper for adjudication in this proceeding and do not apply to the PFS facility in question. Peach Bottom, 8 AEC 20-21. Therefore, these contentions should be dismissed.

Similarly, Contention 21 relates to Petitioner's proposed Pigeon Spur storage facility and Petitioner's proposal for later reprocessing. This contention, however, does not pertain to the PFS facility and should be dismissed.

issues involving his movement of vitro tailings; and alleged false filings in Utah's Department of Commerce. None of these matters can be resolved through intervention in this proceeding. Accordingly, Petitioner has failed to raise a valid contention, and his Petition should be denied.

Petitioner did not set forth a valid contention.

Copies of this order were sent this date by Internet e-mail transmission to petitioner William D. Peterson and to counsel for (1) applicant Private Fuel Storage, L.L.C.; (2) intervenors Skull Valley Band of Goshute Indians, Ohngo Gaudadeh Devia, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State of Utah; and (3) the NRC staff.

removed pg ____ line ____ See "Contentions Third Party Complaint Intervention 10 C.F.R. § 2.714(b)(2)" (Contentions), dated June 27, 2000 and "Additional Contentions Petition to Intervene From Sept 2, 1997, Complaint" (Additional Contentions), dated June 28, 2000. Petitioner additionally submitted letters to the Office of the Secretary and Licensing Board, dated May 26 and May 31, 2000, which relate to the topic of his June 5th pleading and provide additional information.

CC: <gmsand@arachne.eng.utah.edu>, <gms@asp-llc.com>, ...

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
PRIVATE FUEL STORAGE, L.L.C.)	Docket No. 72-22-ISFSI
)	
(Independent Spent Fuel Storage)	
Installation))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (REQUESTING DOCKETING AND SERVICE OF SUBMISSION) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

<p>Office of Commission Appellate Adjudication U.S. Nuclear Regulatory Commission Washington, DC 20555-0001</p> <p>Administrative Judge Jerry R. Kline Atomic Safety and Licensing Board Panel Mail Stop - T-3 F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001</p> <p>Sherwin E. Turk, Esquire Catherine L. Marco, Esquire Office of the General Counsel Mail Stop - 0-15 D21 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001</p> <p>Martin S. Kaufman, Esquire Atlantic Legal Foundation 205 E. 42nd St. New York, NY 10017</p>	<p>Administrative Judge G. Paul Bollwerk, III, Chairman Atomic Safety and Licensing Board Panel Mail Stop - T-3 F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001</p> <p>Administrative Judge Peter S. Lam Atomic Safety and Licensing Board Panel Mail Stop - T-3 F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001</p> <p>Diane Curran, Esquire Harmon, Curran, Spielberg & Eisenberg, L.L.P. 1726 M Street, NW, Suite 600 Washington, DC 20036</p> <p>Joro Walker, Esquire Land and Water Fund of the Rockies 2056 East 3300 South, Suite 1 Salt Lake City, UT 84109</p>
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Docket No. 72-22-ISFSI
LB ORDER (REQUESTING DOCKETING
AND SERVICE OF SUBMISSION)

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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 25th day of July 2000