

ATOMIC SAFETY AND LICENSING BOARD

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

September 25, 2000

MEMORANDUM AND ORDER

(Denying Motion for Reconsideration/Intervention Petition)

Before the Licensing Board is an additional pleading (dated September 14, 2000) that was submitted by e-mail by William D. Peterson on September 15, 2000.¹ In that pleading, which is captioned "Petition for Intervention into the EIS," petitioner Peterson references the Board's September 5, 2000 memorandum (in which we stated we were taking no action relative to a September 4, 2000, pleading entitled "Motion for Enlargement of Time") and indicates he

¹ At the end of his September 15, 2000 submission, petitioner Peterson indicates he has sent his pleading by e-mail, without any mention of the filing and service of paper copies that is mandated by the agency's rules of practice. See 10 C.F.R. §§ 2.708(d), 2.712. The petition subsequently arrived, with a number of other documents, attached to certificate of service dated September 18, 2000. The Board also notes that it has not yet received a paper copy of two August 13, 2000 submissions by Mr. Peterson entitled "Request for Understanding." As the Board advised petitioner Peterson earlier, e-mail electronic courtesy copies of pleadings are in addition to, not in lieu of, the paper copies of pleadings that must be provided to the Office of the Secretary, the Board members, and all the parties to this proceeding. See Licensing Board Memorandum and Order (Setting Schedule for Supplement and Responses to Late-Filed Intervention Petition) (June 7, 2000) at 2 (unpublished). Moreover, under existing NRC rules, placing a document into the U.S. mail, not sending an e-mail, is an appropriate method of filing a document and is the method that controls the timeliness of the document relative to any filing deadlines and the due date for responsive pleadings. See 10 C.F.R. §§ 2.701(a), 2.710, 2.730(c).

wishes to petition the Board for “reconsideration.” He then seeks to provide what he labels as additional “contentions” based on NUREG-1714, the NRC staff’s June 2000 draft environmental impact statement (DEIS) for the proposed 10 C.F.R. Part 72 Skull Valley, Utah independent spent fuel storage installation (ISFSI) that is the subject of this proceeding. Pursuant to a September 18, 2000 Board scheduling order, applicant Private Fuel Storage, L.L.C., (PFS) and the NRC staff responded to petitioner Peterson’s filing, asserting it should be denied. See [PFS] Response to William D. Peterson’s Petition for Intervention into the EIS (Sept. 22, 2000); NRC Staff’s Response to William D. Peterson’s “Petition to Intervene into the EIS” (Sept. 21, 2000).

To the degree petitioner Peterson’s September 15, 2000 submission is meant to be a motion for reconsideration of the Board’s August 31, 2000 decision, LBP-00-23, 52 NRC __ (Aug. 31, 2000), denying his petition for late-filed intervention, it fails on two points. First, it is untimely. Under 10 C.F.R. § 2.771, a petition for reconsideration of a final decision is to be filed within ten days of the date of the decision, in this case by September 11, 2000. Second, under the standards that govern reconsideration requests, petitioner Peterson has provided nothing that gives the Board reason to take such action. It is well-established that reconsideration motions are intended to provide an opportunity to seek correction of a Board error based on an elaboration or refinement of an argument already made, an overlooked controlling decision or principle of law, or a factual misapprehension, not a new thesis or argument. See LBP-98-17, 48 NRC 69, 73-74 (1998); LBP-98-10, 47 NRC 288, 292 (1998). In this instance, petitioner Peterson improperly seeks to introduce new information, i.e., new contentions, as the basis for reconsideration. This he cannot do.

As PFS and the staff point out, it also is possible to construe Mr. Peterson’s September 15, 2000 submission as a new petition for leave to intervene relative to the DEIS. Given their timing relative to the original notice of hearing opportunity in this case and public

availability of the DEIS, the petition and its accompanying contentions still would be late-filed. Yet, because Mr. Peterson's pleading evidences no concerted effort to address the late-filing factors,² it is subject to dismissal under this guise as well. See Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-93-11, 37 NRC 251, 255 (1993). Moreover, his petition contains nothing to suggest that the standing deficiency the Board previously identified has been cured. See LBP-00-23, 52 NRC at __ (slip op. at 9-10). Mr. Peterson's petition thus cannot stand on this basis either.

Consequently, petitioner Peterson's September 15, 2000 request for reconsideration and/or petition to intervene is denied.³ In accordance with the provisions of 10 C.F.R.

² Given petitioner Peterson's prominent references to the DEIS, it reasonably can be considered the "trigger" for his petition; however, he fails to provide a convincing explanation of why the DEIS provides "good cause" for a late-filed intervention petition or any evidence that there is a significant difference between the DEIS and the PFS environmental report that justifies a filing delay for his accompanying "contentions." See 10 C.F.R. § 2.714(a)(1), (b)(2)(iii).

³ The Board notes that, to the degree Mr. Peterson seeks staff consideration of his concerns in the context of issuance of a final environmental impact statement (FEIS), he apparently has lodged comments with the staff (an e-mail copy of which was sent to the Board on September 13, 2000) in connection with the DEIS urging staff consideration/discussion of the proposed Pigeon Forge spent fuel storage facility relative to the FEIS.

§ 2.714a(a) to the extent it rules on an intervention petition, this memorandum and order may be appealed to the Commission within ten days after it is served.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD⁴

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

/RA/

Dr. Jerry R. Kline
ADMINISTRATIVE JUDGE

Rockville, Maryland

September 25, 2000

⁴ Copies of this memorandum and order were sent this date by Internet e-mail transmission to petitioner Peterson and 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.

Judge Lam was not available to participate in the issuance of this memorandum and order.

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 MEMORANDUM AND ORDER (DENYING MOTION FOR RECONSIDERATION/INTERVENTION PETITION) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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

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

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

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

Diane Curran, Esquire
Harmon, Curran, Spielberg
& Eisenberg, L.L.P.
1726 M Street, NW, Suite 600
Washington, DC 20036

Martin S. Kaufman, Esquire
Atlantic Legal Foundation
205 E. 42nd St.
New York, NY 10017

Joro Walker, Esquire
Land and Water Fund of the Rockies
2056 East 3300 South, Suite 1
Salt Lake City, UT 84109

Docket No. 72-22-ISFSI
LB MEMORANDUM AND ORDER
(DENYING MOTION FOR
RECONSIDERATION/INTERVENTION PETITION)

Denise Chancellor, Esquire
Assistant Attorney General
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, UT 84114

Jay E. Silberg, Esquire
D. Sean Barnett, Esquire
Shaw Pittman
2300 N Street, NW
Washington, DC 20037-1128

John Paul Kennedy, Esquire
Confederated Tribes of the Goshute
Reservation and David Pete
1385 Yale Avenue
Salt Lake City, UT 84105

Richard Wilson
Department of Physics
Harvard University
Cambridge, MA 02138

Richard E. Condit, Esquire
Land and Water Fund of the Rockies
2260 Baseline Road, Suite 200
Boulder, CO 80302

Danny Quintana, Esquire
Skull Valley Band of Goshute Indians
Danny Quintana & Associates, P.C.
68 South Main Street, Suite 600
Salt Lake City, UT 84101

William D. (Bill) Peterson
Pigeon Spur Fuel Storage Facility
4010 Cumberland Road
Holladay, UT 84124

[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

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