

RAS2288

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Title: CONFERENCE CALL TO TDISCUSS THE
MATTER OF PRIVATE FUEL STORAGE, LLC

Location: Rockville, Maryland

Date: Wednesday, October 4, 2000

Pages: 1 - 20

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

- - - - - X
In the Matter of: :
CONFERENCE CALL TO DISCUSS THE :
MATTER OF PRIVATE FUEL STORAGE, LLC :
- - - - - X

Wednesday, October 4, 2000

The above-entitled conference call commenced
pursuant to notice.

BEFORE:

JUDGE BOLLWERK
JUDGE LAMM
JUDGE KLINE

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P R O C E E D I N G S

JUDGE BOLLWERK: All right. This is Judge Bollwerk. We're here this morning at approximately 10:45 Eastern time for a telephone conference in the Private Fuel Storage case. With me in the room is Judge Lamm. Also Judge Gary Kline is on a separate line but is part of the conference.

Why don't we go ahead and have the parties identify themselves, if they could, starting with the state?

MS. CHANCELLOR: [Inaudible].

JUDGE BOLLWERK: All right. And Private Fuel Storage?

MR. GOKLER: Paul Gokler and Ernie Blake.

JUDGE BOLLWERK: All right. And the NRC staff.

MR. TERK: Sherman Terk and Catherine Marco.

JUDGE BOLLWERK: All right.

And as I mentioned to all the parties a second ago, we are tape-recording this. We'll try to get it transcribed if it comes through clearly enough for the court reporter. We weren't able to obtain one on short notice. But I would ask that everyone identify themselves as they're speaking. And also obviously if this doesn't work, you need to be taking notes because we won't have a transcript at that point.

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1 So, all right, I received a call yesterday
2 afternoon from Mr. Terk who wanted to talk -- I guess the
3 parties wanted to talk with the Board about scheduling
4 matters, and we have made ourselves available, and I don't
5 know who wishes to speak first, but I'll simply open the
6 floor for whomever wants to talk with the Board.

7 MR. GOKLER: Your Honor, Paul Gokler.

8 The purpose of the call is to talk about the
9 Board's order of October 2nd and October 3rd with respect to
10 filing responses or opinions with respect to the model
11 service agreement.

12 Yesterday, as Mr. Terk indicated, we talked with
13 counsel for the state and counsel for the staff in terms of
14 the different pleadings and reports called for by the order.

15 We have been advised by the state that they intend
16 at this point in time to file a motion to reopen the record.
17 We have also been advised that they -- I believe they have
18 general concerns with respect to the service agreement
19 [inaudible] the commitments that PFS had made with respect
20 to financial qualifications; however, they don't believe
21 that they can get a comprehensive or detailed list of those
22 concerns done by October 10th in the time frame of ten days.

23 We discussed it among ourselves. PFS doesn't
24 believe -- PFS would probably move for summary disposition,
25 but it has to wait to see what the concerns are

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1 specifically. But PFS does not believe that it's efficient
2 for it to move for summary disposition prior to the time
3 that they have a detailed listing of their specific concerns
4 in terms of how it believes we did not implement the
5 financial assurance commitments.

6 Our September 29th pleading set forth in general
7 terms why we believe the model service agreement meets the
8 commitments, and absent some more detail from the state, a
9 summary disposition pleading at this point in time would
10 just be maybe another [inaudible] what we filed September
11 29th and we believe would not advance the resolution of the
12 issues.

13 With that in mind, like I said, we talked
14 yesterday and we believe that one alternative would be for
15 the state to file everything that it proposes to file and we
16 picked a date, a proposed date of that for November 7th,
17 which reflects the fact that the last two weeks in October
18 are currently scheduled for about twelve depositions on
19 [inaudible].

20 The state would file at that point in time any
21 motion to reopen the record, it would file at that point in
22 time a detailed listing of its specific concerns or
23 objections in terms of why it believes that the model
24 service agreement does not implement the commitment that PFS
25 made to the Board and to the Commission. Any new

1 contentions they would file at that time as well.

2 PFS would then reply with respect to the motion to
3 reopen the record and any new contentions by November 17th,
4 which is the Friday before Thanksgiving.

5 With respect to the -- then PFS would probably
6 file its motion for summary disposition December 1st, and we
7 believe right now we would file, but obviously we need to
8 see the particular issues raised by the state, and we would
9 file any motion for a summary disposition December 1st,
10 which is the Friday following Thanksgiving, the week
11 following Thanksgiving.

12 The state and NRC staff would file responses to
13 our motion for a summary disposition December 21st and then
14 the state would file any reply or anybody would file a reply
15 that were entitled to file a reply by January 5th, 2001.

16 That's the schedule that we talked to and would
17 propose for the resolution of the issues. Any issues
18 [inaudible] that would be held over for the June hearing.

19 The other matter, and this one, I did not have a
20 chance to talk to the state, but I talked to Mr. Terk, the
21 Board's order yesterday requested us to identify any other
22 variations in the service agreement or the representations
23 made to the Board in our pleadings for summary disposition
24 and in our hearing testimony.

25 We still believe we should file that before the

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1 state files whatever they're going to file on November 7th
2 per our proposed schedule, but we would request that we be
3 able to file that October 17th. I know the staff has no
4 objection to that, but I've not been able to talk to the
5 state, reach the state this morning on that.

6 That, Your Honor, summarizes generally what the
7 parties discussed yesterday. I'm sure [inaudible] has
8 something to add to that in terms of the state's
9 perspective, but that summarizes generally what the parties
10 discussed and generally the proposed schedule that we
11 developed with the state and the staff yesterday.

12 MS. CHANCELLOR: Denise Chancellor, Your Honor. I
13 think that Mr. Gokler adequately captures what we talked
14 about.

15 With respect to what it is the state would file on
16 November the 7th, I was a little confused by the order that
17 you sent out. From the Commission's order, I thought we
18 would be filing mostly objections to the service agreement
19 such that it didn't meet the summary disposition -- the
20 summary disposition wasn't appropriate, and in addition to
21 that, there would be, as Paul said, a motion to reopen the
22 record to the extent that the service agreement changes the
23 testimony, and thirdly, there could be new contentions, but
24 that would be more unlikely.

25 JUDGE BOLLWERK: All right. Well, anything the

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1 staff wants to say or anything more you want to say on this
2 subject?

3 MR. TERK: The staff, Your Honor?

4 JUDGE BOLLWERK: Yes.

5 MR. TERK: I think that the proposed approach
6 probably is a good one. I think it's good for everyone to
7 see what the state is concerned about before responses get
8 filed. I think that should be the taking-off point.

9 I'm a little concerned about the November 17th
10 date proposed by Mr. Gokler for responses, any motion to
11 reopen or new contentions. Without seeing what comes in,
12 I'm a little hesitant to commit to that.

13 I would be a little more comfortable if the date
14 was in the following week, like November 21st or 22nd, at
15 least for the staff.

16 MR. GOKLER: We have no problem with -- we would
17 like to have the same day as the staff. There's no problem
18 with the 20th or the 21st.

19 MS. CHANCELLOR: Of course, Your Honor, the state
20 would want the same [inaudible].

21 SPEAKER: No, this is with respect to the motion
22 to reopen the record and --

23 MS. CHANCELLOR: Oh, that's right. We wouldn't be
24 [inaudible]. That's okay.

25 JUDGE BOLLWERK: All right. So I'm now hearing a

1 request for the 20th or the 21st?

2 MR. TERK: Actually, mine was for the 21st or
3 22nd, which would be Tuesday or Wednesday.

4 JUDGE BOLLWERK: All right.

5 MR. GOKLER: The 21st or 22nd.

6 JUDGE BOLLWERK: All right. All right.

7 I just wanted to say one thing in response to Ms.
8 Chancellor, I guess. In looking at this, in looking at the
9 Commission's order, it seemed to us that what the Commission
10 was trying to find out was would what Private Fuel Storage
11 filed or submitted be adequate to take care of the state's
12 concern, and that was why we were asking for the joint
13 report and for that specifically to be addressed, and then
14 moving on from there, if it didn't, that's why we were
15 trying to respond, then, with whatever we thought would be
16 the appropriate procedural motions to move forward.

17 I guess the one thing we didn't anticipate, at
18 least not initially anyway, was that there would be some
19 changes in the language of the service agreement. So that's
20 sort of where we were, at least from what apparently had
21 been -- what had been represented to us previously.

22 So I think this schedule captures our concern,
23 which was a way to deal with this procedurally, and probably
24 moving the summary disposition motion until after the state
25 has filed whatever, you know, submissions it wants to make

1 is probably a good idea. So I don't have a problem with
2 that. I have to talk with Judge Kline and Judge Lamm to see
3 if it's all right with them, but from my perspective, that
4 sounds reasonable.

5 All right. Let me ask you one other question. We
6 put some page limitations in that order. I didn't hear
7 anything, that anybody had a problem with those. Do you
8 want to address that at this point?

9 MS. CHANCELLOR: That was 25 pages?

10 JUDGE BOLLWERK: It was 25 pages for the summary
11 disposition and then 15 pages for contentions, per
12 contention. Now, in terms of a motion to reopen, you know,
13 I'm willing to -- I don't know what you think you need, Ms.
14 Chancellor.

15 MS. CHANCELLOR: Well, [inaudible] basically
16 glanced at the agreement, but because there are significant
17 differences between what was represented in the hearing and
18 what PFS has represented [inaudible], I think it's going to
19 take -- it may take more pages than that just because we
20 need to cite to the record and describe the various ways in
21 which it differs.

22 JUDGE BOLLWERK: Do you think 25?

23 MS. CHANCELLOR: Yes, I think 25.

24 JUDGE BOLLWERK: Okay. Let's put down 25. If
25 there is a problem with that, we're always willing to listen

1 to, you know, extensions or additions to the page
2 limitations.

3 MS. CHANCELLOR: Judge Bollwerk?

4 JUDGE BOLLWERK: Yes.

5 MS. CHANCELLOR: I'm still a little unclear about
6 contentions versus deficiencies that the state sees in the
7 service agreement such that the Board could withhold
8 [inaudible] summary disposition given the Commission's
9 [inaudible].

10 JUDGE BOLLWERK: Right.

11 MS. CHANCELLOR: I saw those as basically the
12 state's issues or objections rather than contentions, and I
13 don't know whether the same standards are going to apply,
14 but I'm just a little fuzzy as to how to style that.

15 JUDGE BOLLWERK: All right. Well, I don't want to
16 -- I guess all I'm going to say in that respect -- does the
17 staff or the state want to say -- I'm sorry -- PFS want to
18 say anything about that before I respond?

19 MR. GOKLER: Yes. I was [inaudible]. I was
20 thinking the point of the Commission's order was that they
21 were to identify any objections or concerns they had with
22 respect to the model service agreement as it related to the
23 issues they raised in the [inaudible], which were very broad
24 to begin with.

25 JUDGE BOLLWERK: Mr. Terk, anything you want to

1 say?

2 MR. TERK: I have nothing to add to that, Your
3 Honor.

4 JUDGE BOLLWERK: All right.

5 Let me just say, the only thing I was trying to
6 anticipate -- I would agree that the Commission obviously
7 sent -- was working within the context of contention E,
8 which, as Mr. Gokler points out, is broadly worded in some
9 respects.

10 The only thing I was trying to anticipate is if
11 the state saw something that it thought merited an
12 additional contention -- I'm not trying to urge you to file
13 them, but simply I just wanted procedurally to have a date
14 by which you needed to deal with that.

15 So I'm not saying there are additional contentions
16 there or urging you to file additional contentions; all I
17 was trying to do as a procedural matter is, if for whatever
18 reason you decided to file additional contentions, that that
19 was the date by which that needed to be done.

20 MS. CHANCELLOR: Okay. [Inaudible] I think what
21 the state will do is file probably two documents, possibly
22 three, one a motion to reopen, the second one dealing with
23 our objections or the issues we see, and [inaudible] a
24 separate document.

25 JUDGE BOLLWERK: All right.

1 MS. CHANCELLOR: That's generally the way I see
2 it, but [inaudible].

3 JUDGE BOLLWERK: All right.

4 Mr. Gokler had mentioned a date about the 17th to
5 get his, I guess, filing -- the PFS filing out detailing any
6 other changes. Is that an acceptable date for you, October
7 17th?

8 MS. CHANCELLOR: All the changes in the service
9 agreement or would this be identifying what is different?

10 MR. GOKLER: What is different from [inaudible] we
11 made previously, yes.

12 MS. CHANCELLOR: Sure, we can live with that.

13 JUDGE BOLLWERK: All right.

14 All right. Then just to review the bidding, we
15 now have a proposal to I guess essentially to quash, for
16 want of a better word, the joint report that was due a week
17 from -- well, next Tuesday, then go into a filing schedule
18 that has the state making filings with respect to objections
19 to the service agreement and/or motions to reopen or however
20 else they wish to style it and any new contentions by the
21 7th of November. Staff and Applicant reply to that, those
22 documents, by the 21st or 22nd. Then Private Fuel Storage
23 then would look toward filing a summary disposition motion
24 if it felt it was appropriate by the 1st of December, with
25 responses from the staff and/or the state on the 21st of

1 December, and then any replies by the state to, I guess, to
2 the staff's response would be by the 5th of January.

3 MR. GOKLER: That's correct.

4 JUDGE BOLLWERK: Is that it?

5 MS. CHANCELLOR: Correct.

6 JUDGE BOLLWERK: Anything I've missed? And also
7 Private Fuel would then be filing by the 17th of October its
8 listing of additional, if there are any changes or
9 variations from the representations they have made relative
10 to the service agreement.

11 All right. All right. I need to talk with Judge
12 Kline, obviously, off line. We certainly will try to get
13 back to you today and issue something to deal with this
14 matter, all right?

15 Judge Kline, maybe we'll need to talk with you,
16 give you a call immediately after this is over.

17 JUDGE KLINE: Yes. Just call back when you're
18 ready.

19 JUDGE BOLLWERK: All right. Okay. At this point,
20 anything else you need to bring to the Board's attention?

21 MS. CHANCELLOR: I have one issue, Your Honor.
22 PFS filed a response justifying withholding information and
23 cited to [inaudible] support its justification [inaudible].
24 [Inaudible] asked to file a response to anything that PFS
25 files with respect to justification and I don't know whether

1 that -- whether you still have that before you, but I'd like
2 to repeat that request because the state believes that it
3 has information that would help the Board make that
4 decision, that we have some conflicting information from
5 what PFS has submitted previously [inaudible].

6 JUDGE BOLLWERK: All right.

7 Any objection from Private Fuel?

8 MR. GOKLER: We would like to have -- no
9 objection, but we would like to have the opportunity to
10 respond to any information or argument that they'd make. At
11 least have the opportunity to respond.

12 JUDGE BOLLWERK: All right.

13 Anything the staff wants to say on this subject?

14 MR. TERK: I'm a little unclear. She's talking
15 about the [inaudible] Creek application?

16 MS. CHANCELLOR: No, I'm talking about Contention
17 E and what part of the record should be open or not, and PFS
18 filed a pleading justifying why part of the record should be
19 closed and they relied in our [inaudible] as a competitor to
20 support their proprietary claim.

21 MR. TERK: In part.

22 MS. CHANCELLOR: [Inaudible].

23 JUDGE BOLLWERK: All right.

24 MR. TERK: We have nothing on that, Your Honor.

25 JUDGE BOLLWERK: Okay. How quickly do you think

1 you can file it, Ms. Chancellor?

2 MS. CHANCELLOR: Probably within a week.

3 JUDGE BOLLWERK: All right. This is the 4th. Do
4 you think you can file it by the 11th?

5 MS. CHANCELLOR: Sure.

6 JUDGE BOLLWERK: All right.

7 MS. CHANCELLOR: We're in depositions after that,
8 so that will be fine.

9 JUDGE BOLLWERK: All right.

10 Mr. Gokler, how long do you want to file a
11 response?

12 MR. GOKLER: About a week.

13 JUDGE BOLLWERK: So the 18th?

14 MR. GOKLER: That would be fine.

15 JUDGE BOLLWERK: All right.

16 MR. BLAKE: Judge Bollwerk?

17 JUDGE BOLLWERK: Yes.

18 MR. BLAKE: This is Mr. Blake.

19 JUDGE BOLLWERK: Yes, sir.

20 MR. BLAKE: I would hope that the state would
21 follow our practice and raise with us if they have
22 something. It may not require Board attention.

23 JUDGE BOLLWERK: All right. I don't have a
24 problem with that, certainly. Is that something you need to
25 do off-line, then, I take it?

1 MR. BLAKE: Yes, I think that would be best.

2 JUDGE BOLLWERK: Okay.

3 MS. CHANCELLOR: [Inaudible].

4 JUDGE BOLLWERK: I think I should mention -- well,
5 let me ask first, anything else, then, from any of the
6 parties?

7 All right. I think I should mention -- I need to
8 talk with Judge Kline and Judge Lamm -- I suspect that
9 what's gone on here has put the Board's decision in
10 Contention E sort of in somewhat limbo right now. We need
11 to talk about that, but it would not shock me if we do not
12 issue something by the end of this month.

13 MS. CHANCELLOR: We [inaudible], Your Honor, given
14 what we have to file.

15 JUDGE BOLLWERK: Right. I think that may be
16 obvious to everyone, but I just wanted to put you on notice
17 there is a schedule out there, and generally we try to be
18 pretty straightforward about how we're doing, and given
19 everything that has happened, I think there may be some
20 question about what Contention E can go forward at this
21 point. But that's something the Board is still assessing.

22 Okay. Anything anybody wants to say about that?

23 [No response.]

24 JUDGE BOLLWERK: All right.

25 Judge Kline, anything you want to say?

1 JUDGE KLINE: No, not for the moment.

2 JUDGE BOLLWERK: All right.

3 Judge Lamm?

4 JUDGE LAMM: No.

5 JUDGE BOLLWERK: All right. Then you should
6 expect an order from us with respect to the matters we've
7 talked about here hopefully -- if I can get it out in the
8 next couple of hours, I'll do so. If not, certainly by
9 first thing tomorrow morning.

10 If there's nothing else, then I thank you all for
11 your time, and Judge Kline, we'll be calling you back in a
12 couple of minutes.

13 JUDGE KLINE: Fine.

14 SPEAKER: Your Honor, I may mention something
15 since we're all on, at least the [inaudible] parties and the
16 Board are on --

17 JUDGE BOLLWERK: Mr. Terk -- I did have --
18 actually, what about the SER? Maybe that's the question or
19 maybe that's what you were going to say something about.

20 MR. TERK: That's exactly what I was going to
21 mention.

22 JUDGE BOLLWERK: Okay.

23 MR. TERK: The SER has been completed and it will
24 be distributed shortly. I'm hoping to see it actually out
25 today, but there are logistics problem that we have to

1 overcome.

2 MS. CHANCELLOR: Can I put in a request that
3 [inaudible].

4 MR. TERK: Yes.

5 JUDGE BOLLWERK: Yes, I think that was a problem
6 with that last time. We probably want to avoid that again.

7 MR. TERK: What I'm going to be doing is taking
8 copies and mailing them personally to the parties and Board.

9 JUDGE BOLLWERK: All right.

10 MR. TERK: So that will be separate from the staff
11 distribution.

12 Incidentally, the SER does -- comes to a
13 conclusion on the two matters that have been discussed
14 before. One item, the PFS request for a seismic exemption,
15 the staff recommended that they grant it; and the aircraft
16 crash has now been resolved along with the cruise missile
17 and other munitions-related issues. And the discussion of
18 those matters will appear in the SER.

19 JUDGE BOLLWERK: All right.

20 MS. NOKAHARA: Chairman, this is Connie Nokahara.

21 Are you going to issue a provision on the military
22 aircraft crashes? The position you issued last summer
23 reserved that issue for a later statement.

24 MR. TERK: The SER discussion of aircraft crash is
25 extensive, it's on the order of I would say about 60 pages.

1 MS. NOKAHARA: You're not going to issue a
2 separate position like you always do?

3 MR. TERK: I don't think there's a need to. I
4 think the SER is so detailed that it would just be
5 redundant.

6 JUDGE BOLLWERK: All right.

7 The process we set up before was for something in
8 -- I shouldn't say in lieu of, but before the SER. If
9 you've [inaudible] the SER, you've gotten essentially the
10 same thing. Is that what you're saying, Mr. Terk?

11 MR. TERK: Yes.

12 JUDGE BOLLWERK: All right.

13 Is that document in electronic form? Is that
14 something you send electronically, or is it going to be put
15 on the agency's Web site, or how is it going to be handled?

16 MR. TERK: I don't know the answer to that, but
17 I'm sure that we do it electronically as well as hard copy.
18 I know that it's in electronic form now for Wordperfect
19 processing purposes.

20 JUDGE BOLLWERK: All right. Well, if that's
21 something that, even notwithstanding the fact you're putting
22 it in the mail, if you could send it to the parties
23 electronically and they want to receive it that way, that
24 probably would speed things up by several days.

25 MR. TERK: Okay. I don't know if I can do that

1 before [inaudible], but I'll see what we can do.

2 JUDGE BOLLWERK: All right.

3 All right. Anything else, then from anyone?

4 [No response.]

5 JUDGE BOLLWERK: All right, then. I appreciate
6 your time this morning. I'm glad we were able to get
7 together on such short notice, and if there's nothing
8 further, then we'll adjourn for today.

9 Thank you very much.

10 MR. GOKLER: Thank you.

11 MS. CHANCELLOR: Thank you, Your Honor.

12 MR. TERK: Thank you, Your Honor.

13 [Whereupon, the conference call adjourned.]

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CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission in
the matter of:

Name of Proceeding: CONFERENCE CALL TO DISCUSS THE
MATTER OF PRIVATE FUEL STORAGE, LLC

Docket Number:

Place of Proceeding: Rockville, MD

were held as herein appears, and that this is the original
transcript thereof for the file of the United States Nuclear
Regulatory Commission transcribed by me from recorded tapes
provided by the Nuclear Regulatory Commission, and that the
transcript is a true and accurate record of the foregoing
proceedings to the best of my belief and ability.

A handwritten signature in cursive script, reading "Mary Carpenter", followed by a horizontal line.

Mary Carpenter

Transcriber

Ann Riley & Associates, Ltd.
