

RAS 2360

William D. (Bill) Peterson  
Pigeon Spur Fuel Storage Facility  
NRC Docket No. 72-23  
4010 Cumberland Road  
Holladay, Utah, 84124  
Tel/FAX 801-277-3981  
E-Mail [BillPeterson@OlympicHost.com](mailto:BillPeterson@OlympicHost.com)  
[paengineers@juno.com](mailto:paengineers@juno.com)

DOCKETED  
JAN 10 2001

NOV -6 P2:03

OFFICE OF THE  
ADMINISTRATIVE  
JUDGES

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
Washington D.C. 20555-0001

ATOMIC SAFETY AND LICENSING BOARD

Before the Commission in the EIS Docket No. 72-22 matter Before Administrative Judges:

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

Before the Commission in the EIS Docket No. 72-22 matter Before Review Panel:

NRC - Susan Shankman, Mark Deligatti, Scott Flanders  
BLM - Glen Carpenter, BIA - David Allison  
STB - Charles Gardiner

In the Matter of

PRIVATE FUEL STORAGE, L.L.C., (PFS)

(Independent Spent Fuel Storage Installation)

Docket No. 72-22-ISFSI

Ref ASLBP No. 97-732-02-ISFSI

October 28, 2000

REPLY - APPEAL TO THE COMMISSION FOR INTERVENER STATUS  
(Response to 10/16/00 Actions of the NRC Staff and PFS attorneys)

To the Commission:

Peterson has petitioned to the NRC in the EIS review process to have the advantages of

Template = SECY-021

SECY-02

the Pigeon Spur Fuel Storage Facility (PSFSF) site proposal seen, which may warrant its selection over the PFS site. Peterson contends that the proposed PSFSF has substantial advantages over the proposed PFS facility. A copy of the original Pigeon Spur license application was sent to NRC for support of Peterson's petition. Peterson has also petitioned for NRC to include Pigeon Spur as a potential site with the other 38 sites listed in the PFS EIS. It is Peterson's understanding that his standing as only an interested party is sufficient to make his petition to have NRC review the Pigeon Spur proposal for its advantages in the EIS. Opposing representative counsel has not disputed this.

In their Oct 16, 2000 response the NRC staff recognized Peterson's petition saying the following:

**NRC STAFF'S RESPONSE TO PETITIONER WILLIAM D. PETERSON'S "APPEAL TO  
THE COMMISSION FOR INTERVENER STATUS"**

Sherwin E. Turk, Counsel for NRC Staff  
October 16, 2000

ARGUMENT

Petitioner William D. Peterson resides at some (unspecified) distance from the proposed PFS facility. He has proposed the construction of a separate independent spent Fuel storage facility ("ISFSI"), to be located at the Pigeon Spur of the Southern Pacific Railroad, in western Box Elder County, Utah. The Petitioner has not alleged that a decision concerning the licensing of the PFS facility could result in injury to him; rather, he generally asserted that his own application for an ISFSI license (for his Pigeon Spur facility) could be adversely affected by the State of Utah's policy against spent nuclear fuel storage in Utah, and (more recently, in his Second Petition) that his proposed facility should have been considered by the Staff in its DEIS as an alternate site for the PFS facility. *See generally*, First Petition at 2-6, 9-12; Second Petition at 1-3.

Likewise, on October 16, 2000 the applicant by its attorneys responded to the appeal of Peterson for intervention saying the following:

APPLICANT'S BRIEF ON APPEAL OF ORDER DENYING WILLIAM D.  
PETERSON'S PETITION FOR INTERVENTION

Jay E. Silberg, Ernest L. Blake, Jr, Paul A. Gaukler, D.Seaen Barnett  
Counsel for the Applicant - Private Fuel Storage

On September 7, 2000, Mr. Peterson filed comments on the DEIS with the NRC asserting that a Box Elder County, Utah site that he has proposed for a spent fuel storage facility is superior to the PFSF Skull Valley site.<sup>4</sup> The PFSF ER and the DEIS both considered two potential sites for the PFSF in Utah, but neither considered Mr. Peterson's Box Elder County site. Compare DEIS at 7-2 with ER Table 8.1-1. On September 15, 2000, over 80 days after the DEIS had been made available to the public, and more than three years after PFS filed its license application, Mr. Peterson filed a second petition to intervene with additional contentions that, inter alia, challenged the DEIS for failing to consider the Box Elder County site as a potential alternative for the PFSF<sup>5</sup>. Second Petition at 3, 5. Mr. Peterson's additional contentions also challenged actions taken by the Governor of Utah, and statements made by Utah officials and private individuals concerning spent fuel transportation and storage. Id at 3-4.

Both the applicant - Private Fuel Storage and the Nuclear Regulatory commission have recognized that Peterson has asserted to the NRC in the EIS review process to have the advantages of the Pigeon Spur Fuel Storage Facility (PSFSF) site proposal seen, which may warrant its selection over the PFS site, where the proposed PSFSF may have substantial advantages over the proposed PFS facility. A copy of the PSFSF preliminary license application has been submitted to NRC for this review. Peterson petitions that this review may be made even without his intervention. Both NRC and PFS have recognized this and have not denied this.

Peterson with his technical staff have carried the brunt of the scientific defense of storage of SNF in Utah against the opposition of the State of Utah and all other opposition. It may be desirable for Peterson and his technical board to have intervener status to contend with the State's and others wrongful contentions made in the Docket 72-22 proceedings and to require answers from the State

in the formal proceedings of Docket No. 72-22 to make the record complete. Peterson and his scientific board will continue to champion reprocessing of SNF for recovery and use of its 92%  $U_{238}$ . This is necessary to have a full solution to the SNF situation. Both NRC and PFS have recognized this and have not denied this.

Issues and conditions have arisen during the Docket No. 72-22 proceedings which makes consideration of Peterson and PSFSF's intervention out of time justified. Exceptions to the rules can be made by the Administrative Judges of NRC which makes the Petitioner's late filing allowable. Both NRC and PFS have not denied this.

Peterson moves for consideration of the PSFSF and NRC Docket No. 72-23 alternatives in any status with or without intervention. Peterson moves for consideration of intervention to better serve the objectives of storage and reprocessing of spent nuclear fuel. Note that the intervener State of Utah has not refuted any of this! This action is timely 13+1 days after October 16, 2000.

Dated this 28th day of October, 2000.



William D. (Bill) Peterson  
Pigeon Spur Fuel Storage Facility  
NRC Docket No. 72-23

File - D:\P\NUC\NRC\LAB1028rpl.wpd

CERTIFICATE OF E-mail SERVICE / DELIVERY

Copies of this APPEAL were sent this date by Internet e-mail transmission to counsel for (1) applicant PFS; (2) interveners 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,

CERTIFICATE OF U.S. POSTAL SERVICE / DELIVERY

Copies of the included document[s] were previously sent by E-mail and this day they were sent by U.S. Postal Mail, First Class to counsel for:

**Applicant:** (1) PFS; Jay E. Silberg, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, D.C. 20037;

**Interveners:** (2) Skull Valley Band of Goshute Indians, John Paul Kennedy, Sr., Esq., and David Pete, 1385 Yale Avenue, Salt Lake City, Utah 84105;

(3) Ohngo Gaudadeh Devia, Diane Curran, Esq., Harmon, Curran, Spielberg & Eisenberg, L.L.P., 1726 M Street, N.W., Suite 600, Washington, D.C. 20036;

(4) Confederated Tribes of the Goshute Reservation, Danny Quintana, Esq., 68 South Main, Suite 600, McEntire Bldg., Salt Lake City, Utah 84101;

(5) Southern Utah Wilderness Alliance, Joro Walker, Esq., Land and Water Fund of the Rockies, 2056 East 3300 South, Suite 1, Salt Lake City, Utah 84109;

The State, (6) Daniel Moquin, Utah Attorney General's Office, 1594 West North Temple, Suite # 300, Salt Lake City, Utah 84114-0855;

(7) Denise Chancellor, Esq., Assistant Attorney General, Utah Attorney General's Office, 160 East 300 South, 5<sup>th</sup> Floor, P.O. Box 140873, Salt Lake City, Utah 84114-0873;

**The Staff:** (8) G. Paul Bollwerk III, Esq., Chairman Administrative Judge, Atomic Safety and Licensing Board Panel, Mail Stop T-3 F23, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001;

(9) Dr. Peter S. Lam, Administrative Judge, Atomic Safety and Licensing Board Panel, Mail Stop T-3 F23, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001;

(10) Dr. Jerry R. Kline, Administrative Judge, Atomic Safety and Licensing Board Panel, Mail Stop T-3 F23, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001;

(11) Catherine L. Marco, Esq., and Sherwin E. Turk, Esq., Office of the General Counsel, Mail Stop O-15 B18, D21, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555;

(12) Adjudicatory File, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001;

(13) Office of the Secretary - (Original and two copies) Attention: Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001

Dated this 28th day of October, 2000.



William D. (Bill) Peterson  
Pigeon Spur Fuel Storage Facility  
NRC Docket No. 72-23