

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 2745

**DOCKETED 02/14/01
SERVED 02/14/01**

COMMISSIONERS

Richard A. Meserve, Chairman
Greta Joy Dicus
Nils J. Diaz
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

In the Matter of)
)
)

PRIVATE FUEL STORAGE L.L.C.)

(Independent Spent Fuel)
Storage Installation))
_____)

Docket No. 72-22-ISFSI

CLI-01-06

ORDER

In its January 31, 2001 order, the Atomic Safety and Licensing Board certified for the Commission's review the issue of whether applicant Private Fuel Storage, L.L.C.'s request for exemption from the agency's seismic hazards analysis regulations should be adjudicated. See LBP-01-03, 53 NRC ___, (2001). See 10 C.F.R. § 2.718(i). The Board also referred to the Commission the Board's holding that Utah's exemption related issues would be admissible were we to allow the Board to entertain Utah's exemption challenge. See 10 C.F.R. § 2.730(f). Consistent with our policy to accept Board certifications and referrals where "early resolution" of issues is desirable, we grant review and set the case for briefing. See Private Fuel Storage, CLI-00-03, 52 NRC 23, 28-29 (2000).

The applicant, Private Fuel Storage, L.L.C., seeks a license to operate an independent spent fuel storage installation (ISFSI) on the Skull Valley Goshute Indian Reservation in Utah. It

has requested an exemption from our regulations requiring ISFSI licensees to meet the same seismic hazards analysis standards applicable to nuclear power facilities.¹ See 10 C.F.R. Part 72. In its September 29, 2000 final Safety Evaluation Report, the NRC staff found acceptable the alternative seismic analysis proposed by PFS.

The State of Utah contests the exemption request. It seeks to amend Contention Utah L (geotechnical) to encompass the issues raised by PFS's exemption request. The exemption and admissibility questions arise in that context.

The parties should submit briefs as follows:

All parties should submit electronic copies of briefs, with paper copies to follow, by March 2, 2001. The briefs should be no more than 20 pages in length. The briefs should address both the exemption and the admissibility questions.

¹An ISFSI located west of the Rocky Mountain Front is required to meet the standards applicable to nuclear power facilities found in 10 C.F.R. Part 100, Appendix A. Appendix A calls for the use of a deterministic seismic hazard analysis. In 1997, Part 100 was amended to allow nuclear power reactor licensees to use a probabilistic analysis. See 10 C.F.R. 100.23. The NRC staff is currently revising Part 72 to conform to this change and allow new ISFSI licensees the option to use a probabilistic analysis. See "Rulemaking Plan: Geological and Seismological Characteristics for Siting and Design of Dry Cask Independent Spent Fuel Storage Installations, 10 C.F.R. Part 72," SECY-98-126. The exemption approved by the staff, however, allows PFS to design the ISFSI to standards that do not conform to either Appendix A or to the proposed rule.

Reply briefs should be submitted no later than March 12, 2001. Reply briefs should not exceed 10 pages in length.

IT IS SO ORDERED.

For the Commission²

/RA/

ANNETTE L. VIETTI-COOK
Secretary of the Commission

Dated at Rockville, Maryland
this 14th day of February, 2001

²Commissioner Diaz was not present at the affirmation of this Order. Had he been present, he would have affirmed his prior vote to approve this Order.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION ORDER (CLI-01-06) have been served upon the following persons by deposit in the U.S. mail, first class, as indicated by an asterisk (*) or through deposit in the Nuclear Regulatory Commission's internal mail system as indicated by double asterisks (**), with copies by electronic mail.

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COMMISSION ORDER
(CLI-01-06)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 14th day of February 2001