

RAS 3136

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

DOCKETED 06/15/01

SERVED 06/15/01

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

June 15, 2001

MEMORANDUM AND ORDER
(Requesting Joint Scheduling Report and
Delineating Contention Utah L)

In a June 14, 2001 ruling, CLI-01-12, 53 NRC __ (June 14, 2001), in response to a question certified by the Licensing Board in LBP-01-03, 53 NRC 84 (2001), the Commission directed the Board to adjudicate the matters relating to a request by applicant Private Fuel Storage, L.L.C., (PFS) for an exemption from the seismic hazards analysis requirements of 10 C.F.R. § 72.102(b), (f) that the Board identified as potentially litigable in LBP-01-03. Pursuant to this Commission order, the Board requests that on or before Friday, June 22, 2001, PFS, intervenor State of Utah (State) and the NRC staff provide the Board with a joint report outlining a proposed schedule for litigation of this matter, bearing in mind the Commission's statement that it "expects the new exemption-related contentions, if they go to hearing, to be included in the hearing contemplated for other admitted issues." CLI-01-12, 53 NRC at __ (slip op. at 22). As part of that report, the Board requests that the parties also provide an estimate of the time necessary to conduct an evidentiary hearing on the matters still in controversy relative to contention Utah K/Confederated Tribes B, Inadequate Consideration of Credible

Accidents, in light of the Board's May 31, 2001 summary disposition ruling, LBP-01-19, 53 NRC ___ (May 31, 2001).

Additionally, to clarify the existing matters at issue relative to contention Utah L, Geotechnical, which the State requested be amended relative to the seismic hazards analysis requirements addressed in LBP-01-03 and CLI-01-12, we set forth below the terms of contention Utah L as it currently is subject to litigation in this proceeding:

Utah L -- Geotechnical

A. The Applicant has not demonstrated the suitability of the proposed independent spent fuel storage installation (ISFSI) site because the License Application and the Safety Analysis Report do not adequately address site and subsurface investigations necessary to determine geologic conditions, potential seismicity, ground motion, soil stability and foundation loading.

B. Relative to the PFS seismic analysis supporting its application and the PFS April 9, 1999 request for an exemption from the requirements of 10 C.F.R. § 72.102(f) to allow PFS to employ a probabilistic rather than a deterministic seismic hazards analysis, PFS should be required either to use a probabilistic methodology with a 10,000-year return period or comply with the existing deterministic analysis requirement of section 72.102(f), or, alternatively, use a return period significantly greater than 2000 years, in that:

1. The requested exemption fails to conform to the SECY-98-126 (June 4, 1998) rulemaking plan scheme, i.e., only 1000-year and 10,000-year return periods are specified for design earthquakes for safety-important systems, structures, and components (SSCs) -- SSC Category 1 and SSC Category 2, respectively -- and any failure of an SSC that exceeds the radiological requirements of 10 C.F.R. § 72.104(a) must be designed for SSC Category 2, without any explanation regarding PFS SSC compliance with section 72.104(a).
2. PFS has failed to show that its facility design will provide adequate protection against exceeding the section 72.104(a) dose limits.
3. The staff's reliance on the reduced radiological hazard of stand-alone ISFSIs as compared to commercial power reactors as justification for granting the PFS exemption is based on incorrect factual and technical assumptions about the PFS facility's mean annual probability of exceeding a safe shutdown earthquake (SSE), and the relationship between the median and mean probabilities for exceeding an SSE for central and eastern United States commercial power reactors and the median and mean probabilities for exceeding an SSE for the PFS facility.

4. In supporting the grant of the exemption based on 2000-year return period, the staff relies upon the United States Department of Energy (DOE) standard, DOE-STD-1020-94, and specifically the category-3 facility SSC performance standard that has such a return period, notwithstanding the fact the staff categorically did not adopt the four-tiered DOE category scheme as part of the Part 72 rulemaking plan.
5. In supporting the grant of the exemption based on the 2000-year return period, the staff relies upon the 1998 exemption granted to DOE for the Idaho National Engineering and Environmental Laboratory (INEEL) ISFSI for the Three Mile Island, Unit 2 (TMI-2) facility fuel, which was discussed in SECY-98-071 (Apr. 8, 1998), even though that grant was based on circumstances not present with the PFS ISFSI, including (a) existing INEEL design standards for a higher risk facility at the ISFSI host site; and (b) the use of a peak design basis horizontal acceleration of 0.36 g that was higher than the 2000-year return period value of 0.30 g.
6. Because (a) design levels for new Utah building construction and highway bridges are more stringent; and (b) the PFS return period is based on the twenty-year initial licensing period rather than the proposed thirty- to forty-year operating period, the 2000-year return period for the PFS facility does not ensure an adequate level of conservatism.

In this regard, we note that paragraph A encompasses the matters originally admitted under contention Utah L, which currently are the subject of a pending PFS dispositive motion, while

paragraph B includes the items that are subject to litigation before the Board in the wake of the Commission's determination in CLI-01-12.

It is so ORDERED.

FOR THE ATOMIC SAFETY^{*}
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

June 15, 2001

* Copies of this memorandum and order were sent this date by Internet e-mail transmission 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.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (REQUESTING JOINT SCHEDULING REPORT AND DELINEATING CONTENTION UTAH L) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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Docket No. 72-22-ISFSI
LB MEMORANDUM AND ORDER
(REQUESTING JOINT SCHEDULING
REPORT AND DELINEATING
CONTENTION UTAH L)

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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 15th day of June 2001