

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

JOINT SCHEDULING REPORT AND
REQUEST FOR LEAVE TO FILE A FURTHER REPORT

Pursuant to 10 C.F.R. § 2.730(c), the NRC Staff ("Staff"), State of Utah ("State") and Private Fuel Storage, L.L.C. ("PFS" or "Applicant") hereby file a joint report on matters pertaining to schedule, in accordance with the Licensing Board's "Memorandum and Order (Requesting Joint Scheduling Report and Delineating Contention Utah L)," dated June 15, 2001.¹ In addition, the parties request leave to file a further scheduling report by July 26, 2001, as set forth below.

DISCUSSION

1. In a decision issued on June 14, 2001, the Commission affirmed the Licensing Board's ruling on the admissibility of the State's proposed modification of Contention Utah L, challenging the Applicant's seismic exemption request, and remanded this issue to the Board for adjudication as part of Contention Utah L.² In a Memorandum and Order dated June 15, 2001, the Licensing Board requested that, on or before Friday, June 22, 2001, PFS, the State and the Staff file a joint scheduling report, as follows:

¹ This report is filed pursuant to an extension of time provided by the Licensing Board in its "Order (Granting Request to Extend Time for Joint Scheduling Report," dated June 25, 2001.

² *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC ____ (June 14, 2001), *aff'g* LBP-01-03, 53 NRC 84 (2001).

[T]he 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 [*i.e.*, the State's challenge to PFS's seismic exemption request], 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 this 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).

Id. at 1-2. In response to the Board's Order, the Staff, State and PFS wish to provide the following information to the Licensing Board.

2. As described in a letter from Staff Counsel to the Licensing Board on June 20, 2001, the Staff has concluded its acceptance review of PFS's geotechnical license application amendment, and provided a schedule for its review of the amendment. That schedule anticipated completion of the Staff's review of geotechnical issues and publication of a Supplement to the Safety Evaluation Report ("SER") on January 31, 2002. Further, the Staff anticipated that its Final Environmental Impact Statement ("FEIS") would be issued on January 31, 2002; and that the Staff's review of aircraft issues may be completed prior to that date.³

3. As stated in the parties' joint request for an extension of time, filed on June 22, 2001, the Staff is evaluating the possibility that its review of certain issues may be completed in time for hearings to proceed on those issues prior to hearings on other issues, mindful of the Licensing Board's concern about "backloading" this proceeding.⁴ The Staff is continuing its review of aircraft and geotechnical issues at this time, and expects to be in a position to better predict its

³ See Letter from Sherwin E. Turk to the Licensing Board, dated June 20, 2001, at 2, and Enclosure 4 thereto.

⁴ "Joint Request for Deferral of Date to File Joint Scheduling Report," dated June 22, 2001 ("Deferral Request"), at 3 n.4.

aircraft review completion date within the next several weeks. The Staff is also considering whether its FEIS could be issued prior to completion of all remaining safety issues, and will inform the Licensing Board in a timely manner if it determines that its FEIS publication date changes.

4. The parties recognize that changes in the Staff's schedule for completion of its review are likely to affect the hearing schedule. Accordingly, the parties request an opportunity to provide a further report to the Licensing Board on or before July 26, 2001, as to whether there are any changes in the Staff's review schedule, and whether the parties conclude that the current hearing schedule should be changed.⁵

5. In response to the Licensing Board's request, the parties expect that a total of three to five days will be required for hearings on the remaining aircraft issues (Contention Utah K/ Confederated Tribes B). The parties further note that they are not yet able to predict the amount of time that will be required for hearings on the seismic exemption request (Contention Utah L, subpart B); and that the amount of time required for hearings on environmental and geotechnical

⁵ In this regard, it is noted that hearings are currently scheduled to be held on all remaining aircraft, geotechnical, and environmental issues from November 26 - December 21, 2001. See "Attachment A" to "Memorandum (General Schedule Revision)," dated February 22, 2001. Currently, the schedule allows for a 30-day discovery period against the Staff on new issues related to Contention Utah K and a 38-42 day discovery window on FEIS-related issues. The State is of the view that it is not feasible to proceed to hearings during November - December 2001, whereas the Applicant believes that a hearing in that time frame is feasible. In any event, the Staff and Applicant wish to defer this issue until a further scheduling report is filed on July 26, 2001, when more information may be available. In addition, for scheduling purposes, the State notes that its prime witness on the seismic exemption request will be unavailable during the week of December 10-14, 2001.

issues could change, depending on the Board's ruling on the Applicant's motions for summary disposition of those contentions.⁶

6. The parties believe that a 60-day period for PFS, Staff and State discovery on matters pertaining to the seismic exemption request (Contention Utah L, subpart B), should be provided. The parties will provide additional information concerning their views on a schedule for litigation of this contention in the further scheduling report to be filed on July 26, 2001.

7. The current hearing schedule anticipates that the Staff will issue a Supplement to its Safety Evaluation Report relating to Contention Utah K on June 30, 2001, and provides that the State will have a 30-day period for discovery against the Staff from July 1 to July 31, 2001 on new issues relating to Contention Utah K. The parties believe that the schedule will need to be revised to provide the State with a 30-day discovery period against the Staff to commence upon the State's receipt of documentation concerning this matter. Such a revision to the schedule need not be made now, but may await the parties' further scheduling report requested herein.

Respectfully submitted,

/RA/

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 29th day of June 2001

⁶ As the Licensing Board is aware, one late-filed contention is pending: Utah QQ (seismic stability), and a proposed modification thereof. Two safety contentions remain (Utah K/ Confederated Tribes B, and Utah L (subparts A and B). Nine environmental contentions remain: Contentions Utah O (hydrology), Utah T (permits), Utah V (transportation impacts), Utah W (ITP flooding), Utah Z (no action alternative) Utah AA (range of alternatives), Utah DD (ecology and species), OGD O (environmental justice), and SUWA B (rail corridor alternatives). Motions for summary disposition are pending with respect to five contentions: Contentions Utah L (subpart A), Utah V, Utah Z, Utah AA, and OGD O; and additional motions for summary disposition are expected to be filed by the Applicant today.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "JOINT SCHEDULING REPORT AND REQUEST FOR LEAVE TO FILE A FURTHER REPORT" in the above captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 29th day of June, 2001:

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