

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 TO FILE A FURTHER REPORTINTRODUCTION

In accordance with the Licensing Board's Orders of June 15 and July 3, 2001,¹ 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 addition, for the reasons set forth below, the parties request an opportunity to file a further joint scheduling report within approximately 45 days, *i.e.*, on or before September 10, 2001.

BACKGROUND

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 an Order dated June 15, 2001, the Licensing Board requested that the Staff, PFS, and the State file a joint scheduling report in which they (a) outline "a proposed

¹ See "Memorandum and Order (Requesting Joint Scheduling Report and Delineating Contention Utah L)," dated June 15, 2001 ("June 15 Order"); and "Order (Granting Leave to File Additional Scheduling Status Report)," dated July 3, 2001. See *also*, "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).

schedule for litigation” of the seismic exemption issue remanded by the Commission in CLI-01-12, “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’”; and (b) “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,” in light of the Board’s summary disposition ruling in LBP-01-19, 53 NRC 416 (2001). June 15 Order, at 1-2.

On June 29, 2001, the Staff, State and PFS provided an initial report to the Licensing Board. Therein, the Staff stated that it had developed a review schedule which would lead to publication by January 31, 2002, of a Supplement to its Safety Evaluation Report (“SER”), dated September 29, 2000, concerning PFS’s geotechnical license application amendment of March 30, 2001. In addition, the Staff stated that it anticipated that its Final Environmental Impact Statement (“FEIS”) would be issued by January 31, 2002, and that its review of aircraft issues “may be completed prior to that date.”³ Further, the parties requested an opportunity to file a further scheduling report, on or before July 26, 2001; this request was granted by the Licensing Board in its Order of July 3, 2001.

Staff Review Dates and Hearing Schedule

As the Licensing Board is aware, the Staff reopened its review of aircraft crash and geotechnical issues following its receipt of new information from the Applicant concerning those matters. The Staff has been 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

³ See “Joint Scheduling Report and Request for Leave to File a Further Report,” dated June 29, 2001; see *also*, Letter from Sherwin E. Turk to the Licensing Board, dated June 20, 2001, at 2, and Enclosure 4 thereto (setting out the Staff’s anticipated review schedule).

of the Licensing Board's concern about "backloading" this proceeding.⁴ In this regard, the Staff has attempted to "de-couple" its review of aircraft crash, geotechnical, and environmental issues, and to develop separate schedules and completion dates for each of those areas. In addition, the Staff has attempted to determine whether it would be able to proceed to hearing on any of those issues during the period of November 26 - December 21, 2001, as set forth in the Licensing Board's scheduling Order of February 22, 2001.⁵

At this time, based on a preliminary review of PFS's post-SER submittals on aircraft crash issues,⁶ the Staff has determined that it should be able to conclude its review of those issues prior to January 2002; however, the Staff does not expect its review to be completed in time for it to take a position on those issues at hearings in November-December 2001. Similarly, the Staff expects to be able to publish the FEIS prior to January 2002, but does not expect to be able to publish the FEIS in time to allow the Staff to present its position on environmental issues at hearings in November-December 2001.⁷

⁴ See, e.g., Order of July 3, 2001, at 1.

⁵ See "Attachment A" to "Memorandum (General Schedule Revision)," dated February 22, 2001.

⁶ On January 19, 2001, PFS submitted License Application ("LA") Amendment No. 20, concerning aircraft crash hazards, and an Addendum to its "Aircraft Crash Impact Hazard Report." These were followed by two submittals on January 25 ("Risk Assessment of Accidents Involving Cruise Missiles," and LA Amendment No. 21); a Staff RAI on March 9; a submittal on March 30 ("[RAI] on Aircraft Hazards - Partial Response"); a submittal on May 15 ("Clarification" in response to teleconference questions); a submittal on May 31 ("[RAI] on Aircraft Hazards - Remaining Response and Clarification"); and a submittal on July 20, 2001 ("[RAI] on Aircraft Hazards - Clarification and Revised Addendum to Aircraft Crash Hazard Report").

⁷ The current hearing 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. In order to permit time for discovery and the filing of testimony and motions *in limine* prior to December 15, 2001 (*i.e.*, the last week contemplated in the current hearing schedule), the Staff would have to file its position on aircraft issues by September 15, 2001, and would have to publish the FEIS by early September 2001. The Staff does not expect to be able to file its position on aircraft crash issues or to publish the FEIS by those dates.

With respect to geotechnical issues, the Staff is reviewing PFS's LA Amendment of March 30, 2001, and its subsequent submittals concerning these matters.⁸ The Staff expects to complete its review of these issues after completing its review of aircraft crash hazards, but the Staff is not yet able to provide a date by which it expects to complete its review. However, the Staff does not expect to be able to conclude its review of geotechnical issues in time to permit it to proceed to hearings on those issues in November-December 2001.

Accordingly, in view of the Staff's current review schedule, the parties do not believe that the hearings scheduled to be held in November-December 2001 can be held at that time. Further, because the Staff has not yet announced firm dates for the publication of its FEIS or its positions on aircraft crash and geotechnical issues, the parties do not believe that it is possible to propose a firm hearing schedule at this time. Rather, the parties request an opportunity to provide a further report to the Licensing Board in approximately 45 days, *i.e.*, on or before September 10, 2001, in which they would attempt to provide a more precise hearing schedule proposal.

Other Matters

In their Joint Report of June 29, 2001, the parties provided their view 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 also indicated that they were 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 they noted that the amount of time required for hearings on environmental

⁸ These included two submittals on April 5 ("Calculation Package and Report," and "PFSF Site Specific Analyses by Holtec International"); two submittals on April 10 ("Calculation Package" and "Update of Deterministic Ground Motion Assessments"); a submittal on April 13 ("Calculation Package"); a submittal on April 16 ("Summary of Changes for PFSF License Application"); a public meeting in San Antonio, TX, on April 18; a submittal on May 1 ("Response to April 18, 2001 Meeting Issues"); a public meeting on May 25; two submittals on May 31, 2001 ("Data Needed for NRC Review of [LA Amendment] # 22") and "PFSF Site-Specific Hi-Storm Evaluation"); and a submittal on July 20, 2001 ("Data Needed for NRC Review").

and geotechnical issues could change, depending on the Board's rulings on the Applicant's motions for summary disposition of those contentions.⁹ The parties' views as to these matters have not changed.

Further, the parties indicated their view 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, and that they would provide additional information concerning a schedule for litigation of this contention in this report. The parties request that they be permitted to address this matter in the further report which they propose to file on or before September 10, 2001.

Finally, in their Joint Report of June 29, 2001, the parties noted their view that the current hearing schedule will need to be revised to provide the State with a 30-day discovery period against the Staff on new issues relating to Contention Utah K, following publication of the Staff's SER Supplement on aircraft crash issues, in lieu of the current schedule's provision of a discovery period against the Staff of July 1 to July 31, 2001. The parties request that they be permitted to address this matter in the further scheduling report discussed herein.

Respectfully submitted,

/RA/

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 26th day of July 2001

⁹ As the Licensing Board is aware, motions for summary disposition are pending with respect to nine contentions: Contentions Utah E (model service agreement aspects of financial assurance), Utah L (subpart A), Utah O (hydrology), Utah V (transportation impacts), 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). An additional motion for summary disposition will be filed by PFS by July 27, 2001, on Contention Utah W (ITP flooding).

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CERTIFICATE OF SERVICE

I hereby certify that copies of "JOINT SCHEDULING REPORT AND REQUEST 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 26th day of July, 2001:

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