

RAS 3976

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 03/01/02

SERVED 03/01/02

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Michael C. Farrar, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

In the Matter of

PRIVATE FUEL STORAGE, LLC

(Independent Spent Fuel
Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

March 1, 2002

NOTICE OF EVIDENTIARY HEARING
and of
Opportunity to Make Limited Appearance Statements

This Atomic Safety and Licensing Board hereby gives notice that, beginning on Monday, April 8, 2002, it will convene an evidentiary hearing in Salt Lake City, Utah, to receive testimony and exhibits and to allow the cross-examination of witnesses relating to certain matters at issue in this proceeding. The hearing involves the June 1997 application of Private Fuel Storage, L.L.C. (PFS) for a license under 10 C.F.R. Part 72 to construct and operate an independent spent fuel storage installation (ISFSI) on the reservation of the Skull Valley Band of Goshute Indians in Skull Valley, Utah.

The State of Utah and three organizations -- Ohngo Gaudadeh Devia (OGD), Confederated Tribes of the Goshute Reservation, and the Southwest Utah Wilderness Alliance (SUWA) -- are among those who intervened in the proceeding to oppose the plans of PFS (which is a consortium of electric utility companies) to construct within the State's borders a temporary storage facility for spent fuel generated from various nuclear power plants in the United States. At the hearing, the Board will receive

evidence on their challenges to the PFS license application concerning several contentions, or issue statements, involving geotechnical/seismic stability, “credible accident” scenarios, hydrological impact, species affected by the facility, placement of the connecting railroad to the facility, and environmental justice.

In addition, the Board gives notice that, in accordance with 10 C.F.R. § 2.715(a), it will also entertain oral limited appearance statements from members of the public in connection with this proceeding. Information about these statements appears in Section B below.

A. Nature, Timing and Location of Evidentiary Hearing

The evidentiary hearing is currently scheduled to cover six issues. Two of these are safety related. The first, embodied in Contention Utah K/Confederated Tribes B, “Inadequate Consideration of Credible Accidents,” involves the possible hazards created from aircraft and ordnance originating from sources nearby to the facility. The second, embodied in Contention Utah L, “Geotechnical,” and Contention Utah QQ, “Seismic Stability,” questions the ability of the PFS facility to withstand possible earthquakes.

In addition to the safety matters, the Board will hear evidence concerning the adequacy of the analysis of certain environmental issues in the Environmental Impact Statement mandated by the National Environmental Policy Act. Three of these address the natural environment. Contention Utah O, “Hydrology,” focuses on potential contamination of groundwater from non-radiological waste sources at the facility. Contention Utah DD, “Ecology and Species,” concerns whether the facility will disrupt the nesting habits of a pair of peregrine falcons located near the facility. Contention SUWA B, “Low Rail Line Alternatives,” questions whether the Environmental Impact Statement adequately addresses alternatives to the placement of the proposed connecting railway to the facility. The fourth environmental contention, OGD O,

“Environmental Justice Issues Are Not Addressed,” concerns claims of that nature made by certain members of the Skull Valley Band who oppose the project.

To accommodate the State’s request that the entire hearing take place in Utah rather than at the Licensing Board’s Hearing Room in Rockville, Maryland, and because of the difficulty encountered in reserving suitable hearing space for lengthy periods, the hearing will take place at several different locations in Salt Lake City. The hearing schedule set out below accommodates other planned activities, the availability of witnesses, and the availability of space. The specific dates, times, and locations of the hearing, along with the subject matter now scheduled to be addressed each day, are as follows (all times are Mountain Daylight Time):

1. DATE: Monday, April 8, 2002

LOCATION: Salt Palace Convention Center
Room 251
100 South West Temple
Salt Lake City, Utah 84101

TIME: 9:00 a.m. to Noon*

TOPIC: Opening Statements

* Afternoon and evening sessions will be devoted to limited appearance statements (see Section B below)

2. DATE: Tuesday, April 9, 2002

LOCATION: Little America Hotel
Ballroom C
500 South Main Street
Salt Lake City, Utah 84101

TIME: 3:30 p.m. to 7:30 p.m.

TOPIC: Safety Contention Utah K/Confederated Tribes B
("Credible Accidents")

3. DATES: Wednesday, April 10, through Saturday, April 13, 2002

LOCATION: Utah State Capitol
Room 129
350 North Main
Salt Lake City, Utah 84114

TIMES: 10:30 a.m. to 5:30 p.m. on Wednesday
9:00 a.m. to 5:30 p.m. Thursday through Saturday

TOPIC: Continuation of Utah K/Confederated Tribes B

4. DATES: Monday, April 22 through Thursday, April 25, 2002

LOCATION: Sheraton City Centre Hotel
Wasatch Room
150 West 500 South
Salt Lake City, Utah 84101

TIME: 9:00 a.m. to 5:30 p.m.

TOPICS: Environmental Contentions (see above)

5. DATES: Monday, April 29 through Friday, May 3, 2002
(and Saturday, May 4, 2002 if needed)

Monday, May 6 through Friday, May 10, 2002
(and Saturday, May 11, 2002 if needed)

LOCATION: Sheraton City Centre
Wasatch Room
150 West 500 South
Salt Lake City, Utah 84101

TIME: 9:00 a.m. to 5:30 p.m.

TOPICS: Safety Contentions Utah L and Utah QQ
(Geotechnical and Seismic Stability)

6. DATES: Monday, May 13 through Friday, May 17, 2002

LOCATION: Sheraton City Centre Hotel
Wasatch Room
150 West 500 South
Salt Lake City, Utah 84101

TIME: 9:00 a.m. to 5:30 p.m.

TOPIC: If needed to complete other issues

The hearing on these issues shall continue from day-to-day until concluded. As the hearing proceeds, the Board may make changes in the proposed schedule, lengthening or shortening each day's session or canceling a session, as deemed appropriate to allow for witnesses' availability and other matters arising during the course of the proceeding. The Board will attempt to make these day-to-day scheduling adjustments accessible on the NRC website at <<http://www.nrc.gov>>, which is being rebuilt because of security concerns; in any event, news media covering the hearing will be alerted to any schedule changes.

Members of the public are encouraged to attend any and all of the sessions listed above, but should note that those sessions are adjudicatory proceedings open to the public for observation only. (Those who wish to participate are invited to offer limited appearance statements as provided in Section B, below.) Conduct of members of the public at NRC adjudicatory proceedings is governed by 66 Fed. Reg. 31719 (June 12, 2001), an excerpt from which follows this notice.

Attendees are strongly advised to arrive sufficiently early to allow time to pass through a security screening checkpoint. Further, in the interest of permitting prompt access to the hearing room, attendees are requested to refrain from bringing any unnecessary hand carried items (such as packages, briefcases, backpacks, and other items that might need to be examined individually). There will be no facilities available

for storing any items outside the hearing room, and attendees with items requiring inspection may be delayed in obtaining entry. Items that could readily be used as weapons will not be permitted in the hearing room.

B. Oral Limited Appearance Statement Sessions

1. Date, Time, and Location

The Board will conduct sessions to provide members of the public with an opportunity to make oral limited appearance statements on the following dates at the specified locations and times:

a. DATE: Monday, April 8, 2002

LOCATION: Salt Palace Convention Center
Room 251
100 South West Temple
Salt Lake City, Utah 84101

TIMES: Afternoon Session -- 2:00 p.m. to 5:00 p.m.
Evening Session -- 7:00 p.m. to 9:30 p.m.

b. DATE: Friday, April 26, 2002

LOCATION: Tooele High School Auditorium
240 West 100 South
Tooele, Utah 84074

TIMES: Afternoon Session -- 3:30 p.m. to 5:30 p.m.
Evening Session -- 7:00 p.m. to 9:30 p.m.

2. Participation Guidelines for Oral Limited Appearance Statements

Any person not party to the proceeding has the opportunity, as specified below, to make an oral statement setting forth his or her position on matters of concern relating to this proceeding. Although these statements will be transcribed, and will become part of the record of the proceeding for future reference, they do not constitute evidence upon which a decision may be based.

Oral limited appearance statements will be entertained during the hours specified above, or such lesser time as may be sufficient to accommodate the speakers who are present (if all scheduled and unscheduled speakers present at a session have made a presentation, the Licensing Board reserves the right to terminate the session before the ending times listed above). The Licensing Board also reserves the right to cancel any session scheduled above if there has not been a sufficient showing of public interest as reflected by the number of preregistered speakers.

In order to accommodate as many speakers as feasible, the time allotted for each statement normally will be no more than three minutes. That time limit may be altered, depending on the number of written requests that are submitted in accordance with subsection 3 below, and/or the number of persons present at the designated times. The same security guidelines applicable to the hearing will be applicable to the limited appearance sessions as well, although the limited appearance sessions are not deemed to be "adjudicatory proceedings" within the meaning of those guidelines.

3. Submitting a Request to Make an Oral Limited Appearance Statement

Persons wishing to make an oral statement who have submitted a timely written request to do so will be given priority over those who have not filed such a request. In order to be considered timely, a written request to make an oral statement must be mailed, faxed, or sent by e-mail so as to be received at NRC Headquarters by 4:30 p.m. EST on Monday, April 1, 2002. In light of possible mail delivery delays, persons able to do so may wish to use fax or e-mail to assure that their requests are timely received.

The request must specify the day and time of the session at which the oral statement is to be made (specify Monday, April 8 or Friday, April 26, 2002, and specify afternoon or evening). Based on its review of the requests received at NRC headquarters by April 1, 2002, the Licensing Board may, as noted above, decide to

cancel one or more sessions due to lack of interest. Any such cancellation will be communicated to local news media and, if possible, posted on the NRC website.

Written requests to make an oral statement are to be submitted to:

Mail: Office of the Secretary
Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Fax: (301) 415-1101 (verification (301) 415-1966)

E-mail: hearingdocket@nrc.gov

In addition, using the same method of service, a copy of the request must be sent to the Licensing Board as follows:

Mail: PFS Limited Appearance Box
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Fax: (301) 415-5599 (verification (301) 415-7550)

E-mail: mrm@nrc.gov

Phone requests to make limited appearance statements will not be accepted.

4. Submitting Written Limited Appearance Statements

A written limited appearance statement may be submitted at any time. Such statements should be sent to the Office of the Secretary using the methods prescribed above, with a copy to the Licensing Board as noted above.

* * * * *

Documents relating to the PFS license application at issue in this proceeding are now on file at the Commission's Public Document Room, 11545 Rockville Pike, Rockville, Maryland, 20850, and at the University of Utah, Marriott Library, Documents Division, 295 S. 1500 East, Salt Lake City, Utah 84112-0860, and may also be obtained

through ADAMS, the electronic Agencywide Documents Access and Management System, accessible through the NRC website.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael C. Farrar
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 1, 2002

Excerpt from Federal Register notice published on June 12, 2001 (66 Fed. Reg. 31719):

In order to balance the orderly conduct of government business with the right of free speech, the following procedures regarding attendance at NRC public meetings and hearings have been established:

Visitors (other than properly identified Congressional, press, and government personnel) may be subject to personnel screening, such as passing through metal detectors and inspecting visitors' briefcases, packages, etc.

Signs, banners, posters and displays will be prohibited from all NRC adjudicatory proceedings (Commission and Atomic Safety and Licensing Board Panel hearings) because they are disruptive to the conduct of the adjudicatory process. Signs, banners, posters and displays not larger than 18" X 18" will be permitted at all other NRC proceedings, but cannot be waved, held over one's head or generally moved about while in the meeting room. Signs, banners, posters and displays larger than 18" X 18" will not be permitted in the meeting room because they are disruptive both to the participants and the audience. Additionally, signs, banners, posters, and displays affixed to any sticks, poles or other similar devices will not be permitted in the meeting room.

The presiding official will note, on the record, any disruptive behavior and warn the person to cease the behavior. If the person does not cease the behavior, the presiding official may call a brief recess to restore order and/or ask one of the security personnel on hand to remove the person.

Copies of this notice were sent this date by Internet e-mail transmission to counsel for (1) Applicant PFS; (2) intervenors Skull Valley Band, Ohngo Gaudadeh Devia, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State of Utah; and (3) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB NOTICE OF EVIDENTIARY HEARING AND OF OPPORTUNITY TO MAKE LIMITED APPEARANCE STATEMENTS have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

| | |
|---|--|
| Office of Commission Appellate Adjudication U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 | Administrative Judge Michael C. Farrar, Chairman Atomic Safety and Licensing Board Panel Mail Stop - T-3 F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 |
| Administrative Judge Jerry R. Kline Atomic Safety and Licensing Board Panel Mail Stop - T-3 F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 | Administrative Judge Peter S. Lam Atomic Safety and Licensing Board Panel Mail Stop - T-3 F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 |
| Sherwin E. Turk, Esquire Catherine L. Marco, Esquire Office of the General Counsel Mail Stop - 0-15 D21 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 | Diane Curran, Esquire Harmon, Curran, Spielberg & Eisenberg, L.L.P. 1726 M Street, NW, Suite 600 Washington, DC 20036 |
| Joro Walker, Esquire Director, Utah Office Land and Water Fund of the Rockies 1473 South 1100 East, Suite F Salt Lake City, UT 84105 | Martin S. Kaufman, Esquire Atlantic Legal Foundation 205 E. 42 nd St. New York, NY 10017 |

Docket No. 72-22-ISFSI
 LB NOTICE OF EVIDENTIARY HEARING AND
 OF OPPORTUNITY TO MAKE LIMITED
 APPEARANCE STATEMENTS

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
 this 1st day of March 2002