

RAS 4085

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

DOCKETED 03/13/02

Before Administrative Judges:

SERVED 03/13/02

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 13, 2002

NOTICE OF ORAL ARGUMENT
(Regarding "Contention Utah SS -- Revised Cost-Benefit Balance")

Following on the heels of the NRC Staff's publication of its Final Environmental Impact Statement (FEIS), the State of Utah filed on February 11, 2002, a request to admit into this proceeding a new contention, Utah SS, challenging certain aspects of the revised cost-benefit balance contained in the FEIS. Although that contention was filed within the applicable time limit after publication of the FEIS, it nonetheless is "late-filed" in terms of the original deadlines for filing contentions in this proceeding.

On February 21, 2002, the Applicant PFS responded to the State's request, opposing the admission of Utah SS on the grounds it did not meet the "good cause" and other criteria governing late-filed contentions. The Applicant also opposed the request on the ground that it would not entitle the State to any relief and thus failed one of the tests applicable to all contentions, be they late-filed or timely.

On February 26, 2002, the NRC Staff also filed an opposition to the State's request. The Staff, like the Applicant, argued that the proposed contention did not meet the late-filed criteria. The Staff took no position, however, on whether the contention was otherwise admissible (Response, p. 6, n. 6).

The Board has reviewed the parties' filings, including the Staff's substantive "Errata" submitted on March 7, 2002. We find that those filings do not provide sufficiently clear factual presentations about the matters at issue, and do not sufficiently address potentially controlling regulatory requirements, to allow us to resolve the matter solely on the papers before us. Fortunately, at this stage of the proceeding an immediate decision is not required for, even if Contention Utah SS were to be admitted today, it could not -- in light of the other steps that would have to be taken before it was ready for hearing -- be heard at the upcoming April/May hearing session in Salt Lake City.

The parties and the Board are now engaged in preparation for the hearing of a number of other safety and environmental issues. Under the circumstances, the efficient management of the overall proceeding, as well as the conservation of the parties' resources, precludes calling for additional briefs on this matter. Rather, we find that an oral argument regarding the various factual and legal facets of the contention at issue would be the best vehicle to provide the Board with the needed opportunity to have these matters further addressed.

That oral argument can conveniently be held in Salt Lake City during the week of April 22, 2002, the period during which the three pending environmental contentions (SUWA B: "Low Rail Line Alternatives"; Utah O: "Hydrology"; and Utah DD: "Ecology and Species") are set for hearing. Although the precise schedule for that week has not been set because one or more of those pending issues is the subject of settlement discussions, it should be an easy matter -- once (1) settlement status is determined, (2) the prefiled testimony due on Monday, March 18,

is in hand, and (3) witness availability is known -- to schedule a 60 to 90 minute period that week for an oral argument on the admissibility of Contention Utah SS.

In order to prepare for that oral argument, the parties should consider and be prepared to address, along with the other topics at issue, the following matters:

1. Comparison of the material presented in Chapter 7 of the Applicant's Environmental Report regarding "Benefits" (§ 7.2, pp. 7.2-1 through 7.2-7 of Revision 13) with that presented in Chapter 8 of the FEIS ("Benefits and Costs of the Proposed Action"), particularly § 8.1, pp. 8-1 through 8-11. See also FEIS § 8.3, middle paragraph, p. 8-12.
2. The impact, on the "20 year v. 40 year" and "receipt v. storage" questions before us, of the Commission's 10 C.F.R. Part 51 regulations on environmental matters, including the preparation of Environmental Impact Statements, particularly §§ 51.23, 51.61 and 51.97(a). See also Appendix A to Subpart A of Part 51.

At this point, the Board would expect to devote more time during the oral argument to the issue raised by the Applicant about whether the contention would entitle the State to any relief (see 10 C.F.R. § 2.714(d)(2)(ii)), than to questions about whether there was good cause for late filing and how that balances with the other late-filing factors (see 10 C.F.R. § 2.714(a)(1)). But the parties should also be prepared to address those late-filing criteria.

Accordingly, on this 13th day of March, 2002, the parties are advised that the Board will conduct an oral argument in Salt Lake City to entertain party presentations concerning the possible admission of Contention Utah SS, at a time during the week of April 22, 2002 to be set after the precise schedule is established for hearing the three pending environmental contentions.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael C. Farrar
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 13, 2002

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, OGD, 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

In the Matter of)	
)	
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 ORAL ARGUMENT (REGARDING "CONTENTION UTAH SS -- REVISED COST-BENEFIT BALANCE") 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. 42nd St.
New York, NY 10017

Docket No. 72-22-ISFSI
LB NOTICE OF ORAL ARGUMENT
(REGARDING "CONTENTION UTAH SS --
REVISED COST-BENEFIT BALANCE")

Denise Chancellor, Esquire
Assistant Attorney General
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, UT 84114

Jay E. Silberg, Esquire
D. Sean Barnett, Esquire
Shaw Pittman
2300 N Street, NW
Washington, DC 20037-1128

John Paul Kennedy, Sr., Esquire
David W. Tufts, Esquire
Confederated Tribes of the Goshute
Reservation and David Pete
Durham Jones & Pinegar
111 East Broadway, Suite 900
Salt Lake City, UT 84105

Richard Wilson
Department of Physics
Harvard University
Cambridge, MA 02138

Tim Vollmann, Esquire
3301-R Coors Road N.W., #302
Albuquerque, NM 87120

Paul C. EchoHawk, Esquire
ECHOHAWK LAW OFFICES
151 North 4th Avenue, Suite A
P.O. Box 6119
Pocatello, ID 83205-6119

Marlinda Moon, Chairman
Sammy Blackbear, Sr., Vice-Chairman
Miranda Wash, Secretary
Skull Valley Band of Goshute Indians
P.O. Box 511132
Salt Lake City, UT 84151-1132

Stephen Simpson, Esquire
Office of the Solicitor
Department of the Interior
Division of Indian Affairs
1849 C Street, NW
Washington, DC 20240

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 13th day of March 2002