

RAS 4706

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

DOCKETED 08/01/02

SERVED 08/01/02

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

August 1, 2002

MEMORANDUM AND ORDER
(Summary Disposition Supplemental Filings
Regarding Contention Security-J)

Pending before the Licensing Board are an April 30, 2002 motion filed by applicant Private Fuel Storage, L.L.C., (PFS) requesting that summary disposition be entered in its favor regarding contention Security-J, Law Enforcement Assistance, as well as the respective May 31, 2002 and July 22, 2002 motion responses of intervenor State of Utah (State) and the NRC staff. In this contention, intervenor State of Utah challenges PFS compliance with agency regulatory provisions in light of Utah legislative enactments that, among other things, prohibit any local governmental entity, including Tooele County, Utah, in which the PFS independent spent fuel storage installation (ISFSI) facility is to be sited, from entering into an arrangement to provide municipal services, including law enforcement assistance, to an ISFSI. This issuance addresses the schedule for additional filings in light of a recent, potentially significant development regarding that contention.

Previously, the Licensing Board had received a series of status reports from the litigants regarding a pending federal district court cause in which PFS and intervenor Skull Valley Band

of Goshute Indians (Skull Valley Band) have sought to have declared unconstitutional various legislative provisions they assert would adversely affect the licensing and operation of the proposed PFS facility, including those relevant to contention Security-J. In a July 31, 2002 filing, the State has brought to the Board's attention a July 30, 2002 ruling by the United States District Court for the District of Utah in this lawsuit. See State of Utah's Notification of Actions Relative to Contention Utah Security J (July 31, 2002) at 1. In its decision, the court declared the Utah legislative provisions relating to county regulation and municipal services at issue before the Board to be unconstitutional under the federal Constitution's Supremacy Clause as preempted by the Atomic Energy Act of 1954. See Skull Valley Band of Goshute Indians v. Leavitt, Case No. 2:01-CV-270C, slip op. at 21-23 (D. Utah July 30, 2002). Apparently recognizing the potential significance of this ruling to contention Security-J and the pending PFS dispositive motion, the State now requests that we take no further action relative to the dispositive motion pending the planned submission of a motion for reconsideration of the federal court's ruling and the filing of the State's scheduled August 9, 2002 reply to the staff's response to the PFS motion.

The State should proceed to submit its scheduled reply filing. Under the circumstances, the Board also directs that PFS may submit a supplement to its dispositive motion, which shall not exceed ten pages in length, that provides its views on the significance of the court's ruling to its dispositive motion in accordance with the following schedule: if no motion requesting reconsideration of the court's ruling is submitted, within ten days of date upon which the time expires for filing such a motion or, if a reconsideration motion is filed, within ten days of the date upon which that reconsideration motion is denied. Thereafter, the State and the staff shall have ten days to file a response, not to exceed ten pages in length, to any PFS supplement. If, however, a reconsideration motion is submitted and granted, upon receiving notice of the

court's action from the parties the Board will provide additional guidance regarding further filings concerning the pending PFS dispositive motion on contention Security-J.

It is so ORDERED.

FOR THE ATOMIC SAFETY^{*}
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

August 1, 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, 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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Installation))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (SUMMARY DISPOSITION SUPPLEMENTAL FILINGS REGARDING CONTENTION SECURITY-J) 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
G. Paul Bollwerk, III, 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 MEMORANDUM AND ORDER (SUMMARY
DISPOSITION SUPPLEMENTAL FILINGS
REGARDING CONTENTION SECURITY-J)

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

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

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