

June 10, 2003 (11:13AM)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONOFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFFBEFORE THE COMMISSIONERS

In the Matter of:

Docket No. 72-22-ISFSI

PRIVATE FUEL STORAGE, LLC
(Independent Spent Fuel
Storage Installation)

ASLBP No. 97-732-02-ISFSI

May 30, 2003

STATE OF UTAH'S REQUEST FOR AN EXTENSION OF TIME FOR FILING
ITS COMBINED PETITION FOR REVIEW OF THE BOARD'S PARTIAL
INITIAL DECISIONS ON CONTENTIONS UTAH E AND UTAH S AND ON
ALL ISSUES RELATING TO CONTENTIONS E AND S, INCLUDING
DECISION ON SUMMARY DISPOSITION RELATING TO REMAND FROM
CLI-00-13 AND FOR AN ENLARGEMENT OF THE PAGE LIMITATION

On May 27, 2003 the Bollwerk Licensing Board issued its Partial Initial Decisions on Contention Utah E/Confederated Tribes F (Financial Assurance) and Contention Utah S (Decommissioning), as well as its ruling on Applicant's motion for summary disposition on matters remanded by CLI-00-13.¹ Although the Board's partial initial decisions on Contentions Utah E and S come almost three years after the issues went to hearing, and the Board's other decision comes about two years and ten months after the Commission August 1, 2000 remand, the date for filing a petition on these decisions falls on the same date, June 11, as the filing date for review of the Farrar's Board's 372 page decision on Utah Contention L/QQ (Geotechnical). The Bollwerk Board's three decisions are currently to be

¹ Partial Initial Decision (Contention Utah E/Confederated Tribes F, Financial Assurance); Partial Initial Decision (Contention Utah S, Decommissioning); and Memorandum and Order (Rulings on Summary Disposition Motion and Other Filings Relating to Remand from CLI-00-13) (May 27, 2003).

handled as "proprietary information pending review."² Therefore, any petition the State files with the Commission prior to the Board's determination of public disclosure must necessarily be filed as a confidential document.

In accordance with the Commission's Memorandum, CLI-00-24, 52 NRC 351, and 10 C.F.R. § 2.786(b)(1), the State must petition the Commission for review of all issues relating to Contentions Utah E and Utah S within 15 days of the Board's decision.³ Under 10 C.F.R. § 2.786(b)(2) the page limitation for a petition for review of an initial decision or other decision eligible for review is ten pages. Given the complexity of the issues raised by the Board's lengthy and long-deliberated decisions, those raised in previous decisions by the Board, and the complicated procedural path by which those issues have been raised, the regulation's time and page limitations would severely constrain the ability of the State to present a petition on these important issues to the Commission. The State, therefore, respectfully requests an extension of time to June 30, 2003 to file a petition for review of the Board's Partial Initial Decisions on Contentions Utah E and Utah S and all related issues, and an enlargement of the page limitation to 20 pages plus a reference appendix for that combined petition.

²As presented in the Board's May 27, 2003 Memorandum (Notice Regarding Issuances Concerning Contentions Utah E/Confederated Tribe F and Contention Utah S), the parties are to submit their views on public disclosure of all three decisions on June 20, with party responses due June 30. After that time the Board will make a determination about public release of the decisions as well as disclosure of the hearing transcript. The State has taken the consistent position that the entire record should be public.

³The State believes it would be more expedient to file a joint petition on Utah E and S. They both went to hearing at the same time, share the same evidentiary record, and have overlapping issues.

The State will not attempt a complete description of the matters raised by Contentions Utah E and Utah S at this juncture, but a brief outline of the proceeding will allow the Commission to glimpse the breadth of the issues that the State must consider as it formulates its request.

First, the Board's March 10, 2000 partial summary disposition decision dismissed most of the bases of Contention Utah E, leaving for hearing only Basis 6 and part of Bases 5 and 10 challenging the Applicant's analysis of costs and insurance. LBP-00-06, 51 NRC 101, 117-133 (2000).

Second, as part of the Board's summary disposition decision, the Board certified its decision approving partial summary disposition to the Commission for review of the "application and interpretation of the reasonable assurance standard of 10 C.F.R. § 72.22(e)." LBP-00-06, 51 NRC at 136. It also denied the State's request to delay the hearing on costs and insurance until the Commission ruled on the certified question. Memorandum and Order (March 24, 2000). The Commission considered the matter and issued a decision directing PFS to produce a sample service contract and directing that the State be given the opportunity to address the adequacy of the sample contract. CLI-00-13, 52 NRC 23, 35 (2000). PFS submitted its initial Model Service Agreement ("MSA") on September 29, 2000. Subsequently, in response to the Board's October 3, 2000 Order, it also filed a document identifying all MSA provisions that departed from previous representations PFS had made during the evidentiary hearing, and in other documents. Finally, in conjunction with another motion for partial summary disposition PFS filed on December 4, 2000, it filed yet another version of its MSA. Briefing on the matter was completed on January 16, 2001. PFS's

motion was granted by the Board concurrently with its May 27, 2003 Partial Initial Decisions.

Third, concurrent with the Board's summary disposition decision of March 10, 2000, the Board denied the State's request to admit three additional bases to Contention Utah E based on proposed license conditions, LC17-1 and LC17-2, contained in the Staff's December 1999 Safety Evaluation Report, corrected on January 7, 2000. LBP-00-7, 51 NRC 139 (2000).

Fourth, also concurrent with its March 10, 2000 summary disposition decision, the Board denied five motions to compel discovery, three of which the State filed against the Applicant and two of which it filed against the Staff. Board's March 10, 2000 Memorandum and Order (Ruling on Discovery Requests)

Fifth, the Board's May 27, 2003, decision on summary disposition includes a denial of the State's November 7, 2000 Motion to Reopen the Hearing Record on Contention Utah E. See Ruling on Summary Disposition at 78-80.

Finally, all of the matters in Contentions Utah E and Utah S that went to hearing on June 19-27, 2000, and on which the Board ruled in its May 27, 2003 decisions, must be considered: costs to construct, operate and maintain the ISFSI, on-site insurance and decommissioning, as well as bases in Utah S that were rejected at the contention-filing stage.

In general, a petition for review must contain a summary of the decision or action for which review is sought; a statement, with citations, where the issues have been raised below; a statement why the decision or action is erroneous; and a statement why Commission review should be exercised. 10 C.F.R. § 2.786(b)(2). The scope of the Board's

decisions, the concurrent filing date for petitions on seismic and Utah E and S, and the long (albeit incomplete) list of potentially appealable issues for Contentions Utah E and Utah S compel the conclusion that the ten page and 15 day time limitations for a joint petition to review these matters will not allow the State to cogently address the four factors in section 2.786(b)(2). The State believes that given the complexity of the procedural and substantive issues in Utah E and Utah S, it reasonably needs 20 pages plus an appendix for citations to the record⁴ to succinctly address the four factors in section 2.786(b)(2) in its petition for review. A significantly shorter petition would, by necessity, be of such a summary nature that it is unlikely to aid the Commission in deciding whether to accept review and briefing of the important and novel issues relating to financial assurance under 10 C.F.R. § 72.22(e).

With respect to the confidential nature of the Board's decisions and the Contention Utah E and S record, the State would be amenable to awaiting the Board's ruling on those matters and filing its petition three working days later. In this way it may obviate the need to file a petition as a confidential document. If, however, such is not the case, the State requests the opportunity to file a supplement to its petition for review relating to the Board's public disclosure ruling. Counsel for the Application has advised it would prefer the State not await the Board's public disclosure ruling before filing a petition because it would

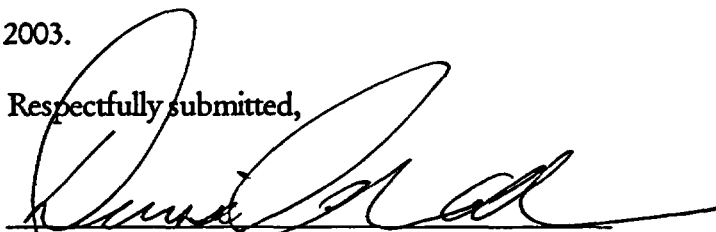
⁴The requested reference appendix to the State's petition is to facilitate addressing 10 C.F.R. § 2.786(b)(ii) – where the issues have previously been raised in the record. An appendix will allow ease of reference in the petition to where a matter was raised by citing to the appendix, without encumbering the petition with lengthy citations. Thus, placing extended citations to the record in an appendix should make for a more readable petition. Furthermore, given the long procedural history of the issues that the State may raise in its petition, it is difficult to ascertain the number of pages needed solely for references to the record.

involve unnecessary delay of unknown duration.

Counsel for the Applicant has also advised that it does not oppose the State's request for an extension of time or the enlargement of pages and reference appendix provided the Applicant is allowed the same 20 pages and reference appendix for its response to the State's petition. As advised by counsel, the NRC Staff will file a written response to the State's motion.

DATED this 30th day of May, 2003.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Denise Chancellor", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S REQUEST FOR AN EXTENSION OF TIME FOR FILING ITS COMBINED PETITION FOR REVIEW OF THE BOARD'S PARTIAL INITIAL DECISIONS ON CONTENTIONS UTAH E AND UTAH S AND ON ALL ISSUES RELATING TO CONTENTIONS E AND S, INCLUDING DECISION ON SUMMARY DISPOSITION RELATING TO REMAND FROM CLI-00-13 AND FOR AN ENLARGEMENT OF THE PAGE LIMITATION was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 30th day of May, 2003:

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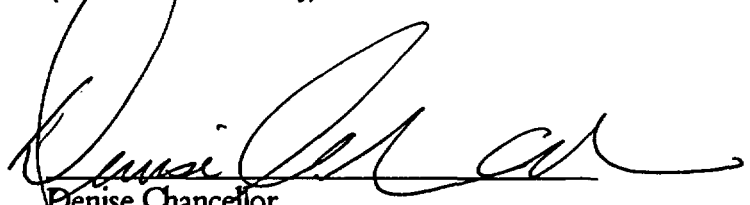
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