

June 6, 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board

June 10, 2003 (11:13AM)

In the Matter of

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

PRIVATE FUEL STORAGE L.L.C.

)

Docket No. 72-22-ISFSI

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(Private Fuel Storage Facility)

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ASLBP No. 97-732-02-ISFSI

APPLICANT'S MOTION FOR CLARIFICATION AND/OR RECONSIDERA-
TION OF MEMORANDUM AND ORDER (RULINGS ON SUMMARY DISPO-
SITION MOTION AND OTHER FILINGS RELATING TO REMAND FROM
CLI-00-13) AND PARTIAL INITIAL DECISION (CONTENTION
UTAH E/CONFEDERATED TRIBES F)
[NON-PROPRIETARY VERSION]

In a May 27, 2003 Memorandum and Order, the Atomic Safety and Licensing Board ("Licensing Board" or "Board") granted Applicant Private Fuel Storage, L.L.C.'s ("PFS") motion for summary disposition on Contention Utah E/Confederated Tribes F ("Utah E") related to the Model Service Agreement ("MSA").¹ The same day the Board also issued a Partial Initial Decision on Contention Utah E/Confederated Tribes F regarding construction and operating cost estimates and on-site property insurance requirements.² PFS hereby requests clarification of the MSA M&O regarding the financial assurance license conditions to be applied to PFS and clarification and/or reconsideration of the Utah E PID regarding the projected operating costs for which PFS must have customer service agreements before being allowed to operate the Private Fuel Storage Facility ("PFSF").

¹ Memorandum and Order (Rulings on Summary Disposition Motion and Other Filings Relating to Remand from CLI-00-13) (May 27, 2003) ("MSA M&O").

² Partial Initial Decision (Contention Utah E/Confederated Tribes F, Financial Assurance) (May 27, 2003) ("Utah E PID").

I. BACKGROUND

On March 10, 2000, the Board granted summary disposition of Utah E in most respects as sought by PFS.³ Underlying the Board's decision was its determination that PFS's financial commitments, codified in the NRC Staff's proposed license conditions, provided reasonable assurance that PFS's construction, operating, and decommissioning costs would be covered. PFS did not move for summary disposition with respect to the adequacy of the cost estimates for the PFSF. Those estimates (together with the adequacy of PFS's on-site property insurance coverage) were litigated at the evidentiary hearing in June 2000.

On August 1, 2000, the Commission affirmed the Board's grant of summary disposition in part, ruling that License Conditions LC 17-1 and LC 17-2 could be used to satisfy the financial assurance requirements of 10 C.F.R. Part 72. CLI-00-13, 52 NRC 23, 32 (2000). Pertinent here, the Commission revised LC 17-2 to read that

PFS shall not proceed with the Facility's operation unless it has in place Service Agreements covering the entire term of the license, with prices sufficient to cover the operating, maintenance, and decommissioning costs of the Facility for the entire term of the license.

Id. The Commission reversed the Board's decision, however, with respect to the need for a sample customer service agreement and remanded "(1) requir[ing] PFS to produce a sample service contract that meets all financial assurance license conditions, and (2) giv[ing] [i]ntervenors an opportunity to address the adequacy of the service contract to meet the concerns raised in Contention E." Id. at 35.

On September 29, 2000, PFS filed the MSA with the Board and the parties. Utah E PID at 13. The State of Utah ("State") then filed its objections to the MSA challenging its adequacy to meet the 10 C.F.R. Part 72 financial assurance requirements. Id. at 14.

³ Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-00-6, 51 NRC 101, 109 (2000). The entire procedural history of Contention Utah E is summarized in the Utah E PID, at 1-16.

On December 4, 2000, PFS filed an updated version of the MSA and moved for summary disposition of the issues remanded in CLI-00-13. Id. at 15.

In its MSA M&O, the Board determined that the MSA would provide reasonable assurance that PFS would have sufficient funds to build and operate the PFSF and to meet the financial license conditions set forth in CLI-00-13. Based on this determination, the Board granted PFS's summary disposition motion. MSA M&O at 81. The MSA M&O, however, rephrased the financial assurance license conditions LC-1 and LC-2 using language somewhat different than that in CLI-00-13. See id. at 3-4; compare CLI-00-13, 52 NRC at 27, 32.⁴

In the Utah E PID, the Board found, in pertinent part, that (with the exception of certain host payments) PFS had provided reasonable estimates of the construction and operations and maintenance ("O&M") costs for the PFSF. Utah E PID at 102. The Board then ruled that PFS had provided reasonable assurance that it was financially qualified to build and operate the facility. Id. at 101-02. Consistent with license condition LC-2, the Board stated that PFS may not commence operations before service agreements for the life of the license were in place with prices adequate to fund operations, maintenance and decommissioning. Id. at 95. The Board, however, specified the total amount that the agreements were required to cover ([redacted]⁵), based on the lifetime O&M and decommissioning costs estimated at the hearing for a full capacity facility, i.e., 40,000 metric tons uranium ("MTU") (4,000 spent fuel casks), divided by two to take into account that the lifetime of the PFSF is planned to extend over two 20-year license periods.

⁴ For ease of reference, the Board renumbered conditions LC 17-1 and LC 17-2 as LC-1 and LC-2. MSA M&O at 3 n.1.

⁵ The [redacted] was equal to half of PFS's estimated lifetime O&M and decommissioning costs for the full-capacity facility. See Utah E PID at 86. The [redacted] was equal to half of the [redacted] by which the Board found that PFS had underestimated host payments. Id. at 95.

II. DISCUSSION

A. Standard for Clarification and Reconsideration

The Board has previously stated the standard for motions for reconsideration/clarification:

[While] a party may not base a reconsideration motion on new information or a new thesis, see [Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation),] LBP-98-10, 47 NRC [288], 292 [(1999)] (citing Louisiana Energy Services, L.P. (Claiborne Enrichment Center), CLI-97-2, 45 NRC 3, 4 (1997)), a request to reexamine existing record material that may have been misunderstood or overlooked, or to clarify a matter that the party believes is unclear, is appropriate, see id. at 296-97 (citing Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-83-25, 17 NRC 681, 687 (1983)).

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-99-39, 50 NRC 232, 237 (1999).

B. Clarification of Financial License Conditions Applicable to PFS

As noted above, the MSA M&O restated the financial license conditions that the Commission ordered applied to PFS. MSA M&O at 3-4. In doing so, however, the Board stated conditions LC-1 and LC-2 somewhat differently than they had been set forth by the Commission. See id. at 3-4; compare CLI-00-13, 52 NRC at 27, 32. PFS requests clarification that LC-1 and LC-2 shall be applied to PFS as they were stated by the Commission in CLI-00-13.

In its MSA M&O, the Board restated condition LC-1 as follows:

[LC-1. PFS shall] not commence construction before funding, in the amount to be determined at hearing, is adequately committed.

MSA M&O at 3. By comparison, the Commission stated condition LC-1 as:

LC17-1 Construction of the Facility shall not commence before funding (equity, revenue, and debt) is fully commit-

ted that is adequate to construct a facility with the initial capacity as specified by PFS to the NRC. Construction of any additional capacity beyond the initial capacity amount shall commence only after funding is fully committed that is adequate to construct such additional capacity.

CLI-00-13, 52 NRC at 27.⁶ The language used by the Board was the language that the Commission had used at the end of its ruling to summarize PFS's commitments. See id. at 36. The significance of the difference is that the more complete statement of the condition by the Commission provides that PFS's committed funding can be in the form of equity, revenue, or debt. It also explicitly reflects that PFS plans to build the PFSF in stages and that committed funding is only required on a phase-by-phase basis.

In its MSA M&O, the Board stated license condition LC-2 as:

[LC-2. PFS shall] not commence operations before service agreements for the life of the license, with prices adequate to fund operations, maintenance, and decommissioning, in the amount to be determined at hearing, are in place.

MSA M&O at 3. By comparison, and indeed as the Board noted, MSA M&O at 3 n.2, the Commission stated condition LC-2 as:

PFS shall not proceed with the Facility's operation unless it has in place Service Agreements covering the entire term of the license, with prices sufficient to cover the operating, maintenance, and decommissioning costs of the Facility for the entire term of the license.

CLI-00-13, 52 NRC at 32. Again, the Board's text was the language that the Commission used at the end of its ruling to summarize PFS's commitments, see id. at 36, rather than the full text of the condition. The significance of the difference is that the Board's statement of LC-2 could be read to require PFS to have service agreements in place with prices adequate to fund the exact dollar amount of O&M and decommissioning costs that were determined at the hearing, where such costs were determined for a full-scale, 4,000-

⁶ In its first order granting summary disposition of Utah E, the Board had stated LC 17-1 nearly identically to the Commission's wording. See LBP-00-6, 51 NRC at 109.

cask facility. See Utah E PID at 85-86, 95. This reading would be inconsistent with the license condition as approved by the Commission. In compliance with the condition as worded in CLI-00-13, condition LC-2 (like LC-1) should allow PFS to operate (as established in the evidentiary record) a facility at other than full capacity.

C. Reconsideration/Clarification of Amount of Service Agreements Required for PFS to Operate

As discussed above, the Utah E PID stated, pursuant to condition LC-2, that PFS may not commence operations before service agreements for the life of the license were in place with prices adequate to fund O&M and decommissioning costs. Utah E PID at 95. The Utah E PID went on to specify the total amount that the agreements must cover ([redacted], see supra note 5), based on estimated lifetime O&M and decommissioning costs for a full-capacity, 4,000-cask facility, divided by two to reflect two 20-year license periods. See id. at 86, 95. PFS requests reconsideration and/or clarification of that ruling to reflect

[redacted]

In the alternative, PFS requests reconsideration of the specification of the dollar amount on the grounds that LC-2 as stated by the Commission only requires PFS to have service agreements in place sufficient to cover actual O&M and decommissioning costs and, as the Board recognized, a facility operated at less than full capacity would have significantly lower O&M costs than one with 4,000 casks.

1. [redacted]

[redacted]

2. In the Alternative, MSAs Need Only Cover O&M Costs for the Facility as Actually Built

In the alternative, [redacted], PFS requests that the Board reconsider and/or clarify the Utah E PID to make clear that prior to beginning operations, PFS need only have

service agreements in place sufficient to cover O&M and decommissioning costs for the size facility that it plans to build and operate. As discussed, the Commission's wording of LC-2 required that prior to operations PFS have sufficient customer agreements in place to cover its O&M and decommissioning costs. The Commission's decision did not require PFS to have agreements in place sufficient to cover all costs for a full-capacity facility. CLI-00-13, 52 NRC at 32. The language of the PID, however, could be read to require that PFS's agreements cover the costs for a full-capacity facility, even if the facility that is ready to operate is designed or limited to less than 4,000 casks. See Utah E PID at 85-86, 95.

PFS's testimony showed (and the Board's PID recognized) that PFS might build a smaller facility or be built in stages. See, e.g., id. at 85 (effect on O&M costs of operating [redacted] MTU facility), 68-69, 72 (Phase I construction of [redacted] MTU facility). Indeed, license condition LC-1 explicitly recognizes that construction funding need only be committed for the capacity of the facility to be built at that time.⁷ Because PFS presented its O&M cost estimates by category, with some cost categories obviously proportional to the number of casks stored at the site, see id. at 42, it is possible to estimate the O&M costs for a smaller facility. Canister and overpack costs and rail fees make up [redacted] percent of total O&M and decommissioning costs. See Utah E PID at 86. Indeed, because customers would be entitled to purchase casks and canisters independent of PFS (for example, some utilities already own and are using the Holtec casks and canisters covered by the PFS license application), the costs of the casks and canisters may never be PFS O&M costs. See MSA § 13.3. Since the actual service agreements would be in place when LC-2 compliance is determined, it would be a ministerial task for the NRC Staff to determine whether the agreement need cover a particular customer's casks

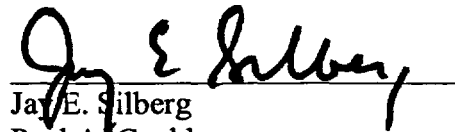
⁷ It would make little sense for LC-1 to be based on the funds needed to construct a less-than-full-sized facility while LC-2 would be based on O&M funds for a facility larger than is actually built.

and canisters. In any event, the remaining, fixed, O&M costs only make up [redacted] percent of the total. Thus, it would be unreasonable to require PFS to have in place service agreements sufficient to cover the costs of a full-capacity facility if PFS had not built one. Therefore, PFS requests (in the alternative) that the Utah E PID be modified to provide language such as the following: "PFS may not commence . . . in the amount of [redacted] plus [redacted] per spent fuel cask (not purchased by customers) to be stored at the facility⁸ [redacted] (to be escalated from 1997 dollars to present day value) plus [redacted] for Tooele County host payments (adjusted for member and non-member casks)⁹." Compare Utah E PID at 95.

III. CONCLUSION

In accordance with the foregoing, PFS requests clarification and reconsideration of the Board's Memorandum and Order related to MSA issues and its Utah E PID.

Respectfully submitted,



Jay E. Silberg
Paul A. Gaukler
D. Sean Barnett
SHAW PITTMAN, LLP
2300 N Street, N.W.
Washington, DC 20037
(202) 663-8000
Counsel for Private Fuel Storage L.L.C.

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⁸ Canister and overpack costs and rail fees amount to [redacted] per cask over each license term of the facility. See *id.* at 86 ([redacted] x [redacted]% / 4,000 casks / 2 license terms). Remaining costs amount to [redacted] per license term. See *id.* ([redacted] x [redacted]% / 2 terms).

⁹ The actual host payments for member and non-member casks, see Utah E PID at 91-92, will be readily discernable at the time of operation from PFS's actual contracts for spent fuel storage.

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In the Matter of)	
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PRIVATE FUEL STORAGE L.L.C.)	Docket No. 72-22
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(Private Fuel Storage Facility))	ASLBP No. 97-732-02-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the Applicant's Motion for Clarification and/or Re-consideration of Memorandum and Order (Rulings on Summary Disposition Motion and Other Filings Related to Remand from CLI-00-13) and Partial Initial Decision (Contention Utah E/Confederated Tribes F) [*Non-Proprietary Version*] were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S.

Mail, first class, postage prepaid, this 6th day of June, 2003.

G. Paul Bollwerk III, Esq., Chairman Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: GPB@nrc.gov

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: JRK2@nrc.gov; kjerry@erols.com

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: PSL@nrc.gov

*Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and Adjudications Staff
e-mail: hearingdocket@nrc.gov
(Original and two copies)

* Adjudicatory File
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Catherine L. Marco, Esq.
Sherwin E. Turk, Esq.
Office of the General Counsel
Mail Stop O-15 B18
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
e-mail: pfscase@nrc.gov

John Paul Kennedy, Sr., Esq.
David W. Tufts, Esq.
Confederated Tribes of the Goshute
Reservation and David Pete
Durham Jones & Pinegar
111 East Broadway, Suite 900
Salt Lake City, Utah 84105
e-mail: dtufts@djplaw.com

Diane Curran, Esq.
Harmon, Curran, Spielberg &
Eisenberg, L.L.P.
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
e-mail: dcurran@harmoncurran.com


Paul EchoHawk, Esq.
Larry EchoHawk, Esq.
Mark EchoHawk, Esq.
EchoHawk PLLC
P.O. Box 6119
Pocatello, ID 83205-6119
e-mail: paul@echohawk.com

Denise Chancellor, Esq.
Assistant Attorney General
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, Utah 84114-0873
e-mail: dchancellor@utah.gov

Joro Walker, Esq.
Land and Water Fund of the Rockies
1473 South 1100 East
Suite F
Salt Lake City, UT 84105
e-mail: lawfund@inconnect.com

Tim Vollmann, Esq.
Skull Valley Band of Goshute Indians
3301-R Coors Road, N.W.
Suite 302
Albuquerque, NM 87120
e-mail: tvollmann@hotmail.com

* By U.S. mail only


Jay E. Silberg