

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 7414

DOCKETED 03/02/04

COMMISSIONERS

SERVED 03/02/04

Nils J. Diaz, Chairman
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

In the Matter of)
)
)

PRIVATE FUEL STORAGE L.L.C.)

Docket No. 72-22-ISFSI

(Independent Spent Fuel)
Storage Installation))
_____)

CLI-04-07

MEMORANDUM AND ORDER

This order concerns the William D. Peterson's appeal from the Board's January 30, 2004 Memorandum and Order (Dismissing Petition to License Pigeon Spur Interim Spent Fuel Storage Facility). In that order, the Board found that it has no jurisdiction to consider licensing a facility other than the proposed PFS facility that was the subject of the proceeding before it. As such, the Board had no authority to consider Peterson's request for a license of some other facility.

In 1998, William D. Peterson filed an application for a license to store spent fuel at a site in Pigeon Spur, Box Elder County, Utah. That application was assigned a docket number, but no notice of hearing was issued. The staff concluded in 1999 that the application was substantially inadequate and terminated its review. Therefore, no Licensing Board was ever constituted to review Peterson's application.

In 2000, Peterson attempted to intervene in the PFS matter but was denied entry because he did not show good cause for late filing, did not have standing, and did not offer a single litigable contention.¹ The Commission affirmed that conclusion on appeal.²

According to his appeal, Peterson proposes to build a combination 300-year storage facility and spent fuel reprocessing facility. Peterson's appeal asks the Commission to consider the country's great need for more power, specifically nuclear, and its corresponding need for more spent fuel storage.

The PFS licensing proceeding is not an open forum for discussing the country's need for energy and spent fuel storage. Our regulations provide procedures for qualified applicants to obtain licenses for safely operated nuclear facilities. If Peterson believes he is qualified to operate a nuclear storage or reprocessing facility, he must comply with those prescribed licensing procedures.

The Board, therefore, was correct in dismissing Peterson's "Petition to License Pigeon Spur Interim Spent Nuclear Fuel Storage Facility," and we affirm.

IT IS SO ORDERED.

For the Commission

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, MD
this 2nd day of March 2004

¹Private Fuel Storage L.L.C., (*Independent Spent Fuel Storage Installation*), LBP-00-23, 52 NRC 114 (2000), *reconsideration denied*, unpublished order, Sept. 25, 2000.

²Private Fuel Storage L.L.C., (*Independent Spent Fuel Storage Installation*), CLI-00-21, 52 NRC 261 (2000).

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 COMMISSION MEMORANDUM AND ORDER (CLI-04-07) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution with copies by electronic mail or facsimile as indicated.

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
E-mail: gpb@nrc.gov

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
E-mail: jrk2@nrc.gov

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
E-mail: psl@nrc.gov

Sherwin E. Turk, Esquire
Catherine L. Marco, Esquire
Laura C. Zaccari, Esquire
Office of the General Counsel
Mail Stop - 0-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: pfscase@nrc.gov

Diane Curran, Esquire
Harmon, Curran, Spielberg
& Eisenberg, L.L.P.
1726 M Street, NW, Suite 600
Washington, DC 20036
E-mail: dcurran@harmoncurran.com

Docket No. 72-22-ISFSI
 COMMISSION MEMORANDUM AND ORDER
 (CLI-04-07)

Joro Walker, Esquire
 Director, Utah Office
 Western Resource Advocates
 1473 South 1100 East, Suite F
 Salt Lake City, UT 84105
 E-mail: jwalker@westernresources.org

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
 E-mail: dchancellor@utah.gov;
jbraxton@utah.gov; attygen@xmission.com

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
 E-mail: dtufts@djplaw.com

Tim Vollmann, Esquire
 3301-R Coors Road N.W. #302
 Albuquerque, NM 87120
 E-mail: tvollmann@hotmail.com

Martin S. Kaufman, Esquire
 Atlantic Legal Foundation
 205 E. 42nd St.
 New York, NY 10017
 E-mail: mskaufman@yahoo.com

Jay E. Silberg, Esquire
 D. Sean Barnett, Esquire
 Shaw Pittman
 2300 N Street, NW
 Washington, DC 20037-1128
 E-mail: jay.silberg@shawpittman.com;
sean.barnett@shawpittman.com

Richard Wilson
 Department of Physics
 Harvard University
 17 Oxford St.
 Cambridge, MA 02138
 E-mail: wilson@huhepl.harvard.edu

Paul C. EchoHawk, Esquire
 ECHOHAWK LAW OFFICES
 151 North 4th Avenue, Suite A
 P.O. Box 6119
 Pocatello, ID 83205-6119
 E-mail: larry@echohawk.com;
paul@echohawk.com; mark@echohawk.com

Docket No. 72-22-ISFSI
COMMISSION MEMORANDUM AND ORDER
(CLI-04-07)

Joseph R. Egan, Esquire
Martin G. Malsch, Esquire
Egan Fitzpatrick & Malsch, PLLC
7918 Jones Branch Dr., Suite 600
McLean, VA 22102
E-mail: eganpc@aol.com;
mmalsch@nuclearlawyer.com

Stephen L. Simpson, Esquire
Office of the Solicitor
Department of the Interior
Division of Indian Affairs
1849 C Street, NW, Mailstop 6456-MIB
Washington, DC 20240
Fax: 202-208-3490

William D. Peterson
P&A Engineers
Pigeon Spur Fuel Bank
2800 Adams St., No. 16
Salt Lake City, UT 84115
E-mail: paengineers@juno.com

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 2nd day of March 2004