

RAS 8941

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Michael C. Farrar, Chairman

Dr. Peter S. Lam

Dr. Paul Abramson

DOCKETED 12/07/04

SERVED 12/07/04

In the Matter of

PRIVATE FUEL STORAGE, LLC

(Independent Spent Fuel Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

December 7, 2004

ORDER REGARDING "CONTENTION UTAH UU"

The Board has received the December 6 response of the Applicant PFS to the intervenor State of Utah's request that newly-presented Contention Utah UU be admitted into the proceeding at this late stage. Among other arguments, the Applicant's response provides documentary evidence that it relies upon to take serious issue with the factual underpinning of the State's assertion in that contention that the U.S. Department of Energy will not accept at the proposed Yucca Mountain permanent repository any spent fuel packaged for and received at the proposed Skull Valley temporary storage facility.¹

The Board's Order of November 17 contemplated (in footnote 1) that we might at this point call for oral argument on this matter (we had there indicated that such argument, if warranted, would likely be held on Wednesday, December 15, 2004). Given the nature of the Applicant's response, the Board has now determined that its decision-making process would be better served, not by oral argument at this juncture, but by providing the State a chance to respond to the factual matters the Applicant has just presented. A determination on whether oral argument is useful will abide our receipt of that response.

¹ Under the schedule previously established, the response of the NRC Staff is due this Friday, December 10. In that response, the Staff is to address whether any DOE documents were previously introduced into our proceeding, or otherwise available to the Applicant or the Staff, to indicate that PFS-stored fuel would or would not be acceptable at Yucca Mountain.

Accordingly, given the requirements of our Rules of Practice on contention admissibility at this stage, the State is DIRECTED TO RESPOND by Friday, December 17, 2004 (one week after the filing of the Staff's papers) to the Applicant's documentary evidence that the proposed Yucca Mountain facility will accept spent fuel from the proposed PFS facility. The State's response may be based on either or both (1) other documents (or other portions of the same documents) or (2) other interpretations of the same documents. The State is also to address the Applicant's arguments that the existing Final Environmental Impact Statement is adequate.

Although parties are always free for good cause to seek extensions of time by motion filed before a deadline expires, we have attempted at this late stage to move this newly-emerging matter, as well as one other,² at a rapid pace. Accordingly, we make special note here that if the State is otherwise unable to obtain prompt access to the complete version of documents referred to by the Applicant in its December 6 response (or by the Staff in its upcoming response), a timely motion for an extension may prove appropriate. To avoid such time extensions to the greatest extent possible, and without authorizing any discovery process, we direct the Applicant and Staff to make any such documents available to the State, upon request, as rapidly as possible.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Rockville, Maryland
December 7, 2004

By Michael C. Farrar, Chairman
ADMINISTRATIVE JUDGE

Copies of this Order were sent this date by Internet e-mail transmission to counsel for Applicant PFS; Intervenor State of Utah; and the NRC Staff.

² See our December 1, 2004 Order directing that the record be clarified with regard to what appears to be a new approach to analysis of the ASME Code issues involved in the merits of the aircraft crash issue that was the subject of an evidentiary hearing in late summer.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER REGARDING "CONTENTION UTAH UU" have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 7th day of December 2004