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**UNITED STATES OF AMERICA**  
**NUCLEAR REGULATORY COMMISSION**

**Title: PRIVATE FUEL STORAGE, LLC  
CONFERENCE CALL**

**Location: Rockville, Maryland**

**Date: Tuesday, February 22, 2000**

**Pages: 1288 - 1306**

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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In the Matter of: :  
PRIVATE FUEL STORAGE, L.L.C. : Docket No. 72-22-ISFSI  
(Independent Spent Fuel : ASLBP No. 97-732-02-ISFSI  
Storage Installation) :

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U.S. Nuclear Regulatory Commission  
Two White Flint  
Room T-3 B45  
Rockville, Maryland  
Tuesday, February 22, 2000

The above-entitled matter came on for telephonic  
pre-hearing conference, pursuant to notice, at 11:35 a.m.

BEFORE:

THE HONORABLE G. PAUL BOLLWERK, III,  
Administrative Judge  
Atomic Safety & Licensing Board Panel  
DR. JERRY R. KLINE  
Atomic Safety & Licensing Board Panel  
DR. PETER S. LAM  
Atomic Safety & Licensing Board Panel

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## P R O C E E D I N G S

[11:35 a.m.]

1  
2  
3 JUDGE BOLLWERK: Why don't we go on the record  
4 then. This is Judge Bollwerk. We are having a pre-hearing  
5 conference call today in the Private Fuel Storage case to  
6 discuss a pleading, a filing that was made by the State last  
7 week concerning the hearing, the evidentiary hearing on  
8 Contention Utah Security C.

9 Before we start, let me go ahead and have everyone  
10 identify themselves for the record. Let's start with the  
11 State, please.

12 MS. CHANCELLOR: Denise Chancellor, Fred Nelson  
13 and Connie Nakahara for the State of Utah.

14 JUDGE BOLLWERK: All right. Thank you.

15 THE REPORTER: Your Honor, could she repeat that?

16 JUDGE BOLLWERK: Okay.

17 MS. CHANCELLOR: Denise Chancellor, Fred Nelson,  
18 Connie Nakahara.

19 THE REPORTER: Thank you.

20 JUDGE BOLLWERK: All right. Applicant, please.

21 MR. BLAKE: Ernie Blake and Paul Gaulkler for the  
22 Applicant, PFS.

23 JUDGE BOLLWERK: All right. And NRC staff.

24 MR. TURK: Sherwin Turk and Catherine Marco for  
25 the staff, Your Honor.

1 JUDGE BOLLWERK: All right. And Judge Kline, and  
2 Judge Lam are both with me here in our conference room.

3 Before we start talking about the motion itself --  
4 or the notification itself, I should say, let me just ask  
5 the staff, have you -- I take it you have had a chance to  
6 review the pleading, Mr. Turk? You received a copy?

7 MR. TURK: Yes.

8 JUDGE BOLLWERK: Do you see anything in there that  
9 contains any kind of safeguards information?

10 MR. TURK: We do not.

11 JUDGE BOLLWERK: All right. What about the  
12 Applicant?

13 MR. BLAKE: I have not seen it. Paul, can you  
14 comment on that?

15 MR. GAULKLER: I don't believe there is anything  
16 that involves safeguards either.

17 JUDGE BOLLWERK: All right. Again, I don't want  
18 to get into a problem with talking about safeguards  
19 information on an unsecured phone line, and I think our  
20 review of it, we didn't necessarily see anything either, but  
21 I wanted to check with the parties to make sure that that  
22 was the case. So, all right.

23 We originally called this pre-hearing conference,  
24 actually set it several months ago to talk about -- for  
25 scheduling and also arrangements for the evidentiary hearing

1 on Contention Security C that had been originally set for  
2 and still remains scheduled for March 14th and 15th of 2000,  
3 coming up in about two weeks. And we had begun to actually  
4 make arrangements to have the pre-hearing call -- conference  
5 when we received a call, I guess our office received a call  
6 from Ms. Chancellor indicating she was providing a document  
7 that would indicate that the State didn't intend to proceed  
8 on this contention.

9 And I guess there was some delay, and I guess we  
10 still haven't really received the regular mail copy that was  
11 sent, but we did receive an Express Mail copy on Friday that  
12 we have had a chance to review.

13 At this point, Ms. Chancellor, is there anything  
14 else you want to say about your pleadings?

15 MS. CHANCELLOR: No, Your Honor, I think the  
16 pleading speaks for itself.

17 JUDGE BOLLWERK: All right. Then let me turn then  
18 to the Applicant and the staff and see what comments they  
19 have at this point. And as you indicated, I guess I had  
20 raised the question about the provision, the rule dealing  
21 with 10 CFR, Section 2.707 and defaults, although  
22 technically, at this point, Ms. Chancellor is not in  
23 default, but she has obviously indicated that they don't  
24 intend to file their pre-filed testimony which then would  
25 arguably put them in default.

1           So with that, anything the Applicant wants to say  
2 about this?

3           MR. BLAKE: Judge Bollwerk, this is Ernie Blake.  
4 I think, given the authority that the Board has, given the  
5 State's position, given the fact that similar circumstances  
6 have occurred in the past in at least a couple of cases that  
7 we have seen, the Pilgrim case and the Seabrook case, I  
8 think the proper determination here is to -- for the Board  
9 to dismiss -- to dismiss this contention now and cancel the  
10 hearing. There is simply no need to go forward at this  
11 point.

12           The State as an Intervenor has an obligation to go  
13 forward on any contention that it raises and then, assuming  
14 that an Intervenor does state those here, the Applicant then  
15 has the burden to carry the evidence on that case. But  
16 here, without going forward, and with the State's clearly  
17 announced intentions, which I appreciate, and they have been  
18 honest about it, I think that that is the appropriate  
19 disposition now.

20           JUDGE BOLLWERK: All right. And I should mention  
21 from the Board's perspective, obviously, Ms. Chancellor,  
22 your stating this on the record prior to, you know, even the  
23 time the pre-filed testimony was due was obviously a better  
24 way to approach given your position, and we appreciate that  
25 as well.

1 Is there anything that the staff wants to say?

2 MR. TURK: We agree with the Applicant's position,  
3 Your Honor. In essence, the State, rather than withdrawing  
4 the contention, has simply advised the Board that they do  
5 not want to proceed with it. In essence, it is an  
6 abandonment, it makes the contention ripe for dismissal, and  
7 we think that it is appropriate for the contention to be  
8 dismissed and for the security plan hearings to be cancelled  
9 at this time.

10 JUDGE BOLLWERK: All right. Let me raise a  
11 question with both the Applicant and the staff and let you  
12 address that. And then, Ms. Chancellor, I will offer you an  
13 opportunity to say anything you would like about what you  
14 have heard thus far. Mr. Blake had mentioned the Seabrook  
15 case, which is LBP 90-12, if we are referring to the same  
16 Seabrook case, 31 NRC 427, and the Pilgrim case, which is  
17 LBP 76-7, 3 NRC 156.

18 In both of those cases, there was some indication  
19 that, notwithstanding the intervening parties or the  
20 determination not to go forward, that there was some duty on  
21 the Board to look at the questions raised to make sure that  
22 they didn't involve serious matters.

23 In terms of the contention that is dealt with  
24 here, Security C, Mr. Blake, anything you want to say about  
25 the Board's responsibility in that regard?



1 MR. BLAKE: Well, as you know, Judge Bollwerk, the  
2 limitations are pretty extreme. The adjectives that the  
3 Commission has used, under these circumstances, for the  
4 Board to take it up sua sponte are serious and significant,  
5 and I think it requires procedurally, if you make that  
6 determination, if the Board were to make that determination,  
7 to file it with the Commission, get their approval of it  
8 actually before carrying it on as your own issue.

9 There is nothing here about this particular  
10 contention that I think warrants that kind of treatment.  
11 And I think that the State's position really is that the  
12 contention as admitted simply is too limited and too narrow,  
13 and not significant enough. I think the State has other  
14 concerns which they have not been able to get admitted into  
15 the proceeding, and that is really where their interest and  
16 issues lie, not with this contention as admitted. And I  
17 don't think there is anything about this contention that  
18 would warrant that kind of treatment by the Board at this  
19 juncture.

20 JUDGE BOLLWERK: All right. Mr. Turk, anything  
21 you want to say in that regard?

22 MR. TURK: Yes, Your Honor. The standard that the  
23 Commission has established for the Board to adopt an issue  
24 as its own, which I assume would be the standard under  
25 2.760(a), although though that relates to operating license

1 proceedings. Essentially, for the Board to pick up an issue  
2 sua sponte, you would have to find extraordinary  
3 circumstances, and this is an issue that the Commission has  
4 laid out in its Statement of Policy on the conduct of  
5 adjudicatory proceedings, it has been followed in numerous  
6 cases, the last decade at least.

7 We don't think that there is any significant issue  
8 here. In essence, the contention that the state has filed  
9 in Security C, at least the issue that was admitted in  
10 Security C, had to do with whether or not there would be a  
11 timely response in the event of an incident at the site.  
12 That would be a response by off-site authorities.

13 NUREG-1619 provides that if there is no timely  
14 response, other measures may be taken such as the  
15 establishment of an armed force on the site. The staff has  
16 looked at the existing situation and is satisfied that the  
17 security plan is adequate in this regard. So we don't see  
18 that there is a significant issue at all, and we don't think  
19 that there is an extraordinary circumstance present that  
20 would the adoption of an issue sua sponte by the Board.

21 JUDGE BOLLWERK: All right. And when you say that  
22 the staff has taken -- that is in the SER, I take it?

23 MR. TURK: Actually, on December 15th, we filed  
24 our Statement of Position on the contention.

25 JUDGE BOLLWERK: All right.

1 MR. TURK: And that is where we indicated that we  
2 felt that the Applicant's security plan was adequate with  
3 respect to this contention.

4 JUDGE BOLLWERK: All right.

5 MR. TURK: The SER does not lay out very much  
6 detail, but -- and I would have to look at it to see if we  
7 address it there as well, but the position that I was  
8 referring to was December 15th.

9 JUDGE BOLLWERK: All right. Actually, the SER has  
10 about I think one sentence that kind of summarizes it. So  
11 what you are saying is the December 15th pleading is the  
12 operative pleading then?

13 MR. TURK: At least in terms of setting out the  
14 staff's position.

15 JUDGE BOLLWERK: All right.

16 MR. TURK: And, again, that pleading was filed  
17 before the -- in the public domain, and it does not lay out  
18 the details of the considerations, but the staff has  
19 reviewed the issue and is satisfied that it is adequately  
20 addressed.

21 JUDGE BOLLWERK: All right. At this point, Ms.  
22 Chancellor, do you have anything that you want to say in  
23 this regard?

24 MS. CHANCELLOR: I would be inclined to agree with  
25 Mr. Blake that the underlying issue that is of primary

1 concern to the State is not being heard, and in particular,  
2 the State is very concerned that there is not a three party  
3 agreement that specifically names PFS with respect to law  
4 enforcement on the reservation. And so we filed this  
5 pleading withdrawing Security C because the issue before the  
6 Board was so narrow, and we did it this way in order to  
7 preserve any rights that we might have to appeal the issue  
8 to the Commission. So that is the State's position.

9 JUDGE BOLLWERK: But let me just clarify one  
10 thing, you said, you used the word "withdrawing," and  
11 actually that is not what, at least technically, what you  
12 called it. So --

13 MS. CHANCELLOR: Oh, you are right, I misspoke.  
14 We are not going forward with Security C. I didn't mean to  
15 use the "w" word.

16 JUDGE BOLLWERK: All right.

17 MR. BLAKE: Oh, darn, Denise! I thought we would  
18 here.

19 MS. CHANCELLOR: Oh, Ernie.

20 JUDGE BOLLWERK: All right. Just so the record is  
21 clear.

22 MS. CHANCELLOR: Thank you.

23 JUDGE BOLLWERK: Well, I take it then I am not  
24 hearing any objection to the -- from you, Ms. Chancellor, in  
25 terms of what the State or the staff would propose, which is

1 basically that we use our authority under 2.707 to  
2 essentially dismiss the contention, subject to whatever  
3 appeal rights you may have.

4 MS. CHANCELLOR: Your Honor, the State feels that  
5 you should do whatever you need to do.

6 JUDGE BOLLWERK: All right. All right. All  
7 right. At this point, we will basically take this as a  
8 submitted issue and we will issue an order in this regard.  
9 I don't see any reason at this point, frankly, that the  
10 staff and the Applicant, or the State need to keep their  
11 witnesses on hold to the degree they have people waiting to  
12 hear whether there is going to be a hearing on the 14th.

13 I am also, frankly, going to go forward with this  
14 before the State is technically in default. I take it, Ms.  
15 Chancellor, you don't have an objection to that? I don't  
16 want to issue something and then you come back and say,  
17 well, the date hasn't passed. So --

18 MS. CHANCELLOR: No. No, we won't object to that,  
19 Your Honor.

20 JUDGE BOLLWERK: All right. I would like to  
21 resolve this matter. I don't think it is in anybody's  
22 interest to have it standing about.

23 One thing I will mention, and I don't, frankly,  
24 know where this goes, but it is something you all need to  
25 consider, I guess, if this case -- if this issue had gone to

1 hearing, we would have issued an initial decision which in  
2 that case probably would have basically wrapped up this  
3 segment of the case, and there is case authority that  
4 indicates that appeal rights then do come from that initial  
5 decision.

6 I am -- given the way this is now proceeding, I  
7 have no idea where that leaves us in terms of appeal rights,  
8 but I will leave that up to you all to decide, you know,  
9 where or when, or what appeals you wish to file after we  
10 issue whatever order we issue relating to the pleading that  
11 has been filed indicating the State is not going forward on  
12 Security C. All right. So to do that, to put everyone  
13 notice, more than to indicate one way or the other what the  
14 Board's feeling is about how that would proceed. So just  
15 proceed as you see appropriate.

16 At this point, let me just ask Ms. Chancellor one  
17 other question on a separate matter. I take it that given  
18 that you filed a response last week to the staff's motion to  
19 compel relating to the Contention E provision -- the  
20 Contention E discovery, that you would plan on doing the  
21 same thing with respect to the Contention H motion to compel  
22 that is pending?

23 MS. CHANCELLOR: For the protective order, you  
24 mean?

25 JUDGE BOLLWERK: The order, yes.

1 MS. CHANCELLOR: Yes, yes, we will be filing,  
2 something on Wednesday on that.

3 JUDGE BOLLWERK: Okay. All right. I just wanted  
4 to make sure I wasn't waiting -- there wasn't a pleading  
5 that I had missed, or was not -- was waiting for that wasn't  
6 going to come in.

7 MS. CHANCELLOR: I believe it is due Wednesday.

8 JUDGE BOLLWERK: All right. All right. I would  
9 mention I guess we are working on the Contention E matter.  
10 Making no promises, I am hoping to get something to you all  
11 early in March. We will see how that works out, but that is  
12 what I am aiming for at this point, just so you will know.

13 Anything else anyone wants to bring to the  
14 attention of the Board at this point?

15 MS. CHANCELLOR: I just have one quick issue, Your  
16 Honor.

17 JUDGE BOLLWERK: All right.

18 MS. CHANCELLOR: We are having a little problem  
19 with e-mail. A couple of pleadings from the staff, we just  
20 haven't been -- they haven't been able to be transmitted to  
21 us. We will be sending in a notice in the next few days  
22 with a backup e-mail address outside the State system so  
23 that we aren't caught short on any pleadings that are filed  
24 electronically that we don't get.

25 JUDGE BOLLWERK: All right. Is it a problem with

1 our e-mail system or yours, or do you know?

2 MS. CHANCELLOR: Well, our State system blames NRC  
3 and NRC blames the State I think. But there have -- for  
4 some reason, there have been two pleadings, and Mr. Turk  
5 tried to transmit the pleading a number of times, and Diane  
6 Curran tried to transmit it to me, and it just would not  
7 come through. And there have been occasional Board orders  
8 that we haven't received. And we have been in touch with  
9 our technology people and they have traced it back to I  
10 think there is like gatekeepers that the e-mail has to come  
11 through, they have traced it back as far as they can and  
12 they haven't been able to find it. And the e-mails have  
13 never been returned to Mr. Turk or Diane Curran, so we don't  
14 know what is happening.

15 But I think if we have another address outside the  
16 State system, then we will be able to determine whether it  
17 is our system or NRC's.

18 JUDGE BOLLWERK: All right. Is there any need for  
19 the Applicant to add this to their e-mail list as well? The  
20 Board obviously will and I guess the staff will. Should the  
21 Applicant do the same thing?

22 MS. CHANCELLOR: Probably, although that is the  
23 one area where the State and PFS seem to be compatible. We  
24 haven't had any problems with their e-mails, but I think it  
25 would be useful if they added to their system, too, if it is



1 not too much trouble.

2 MR. TURK: Your Honor, just for the record, let me  
3 note we will be happy to add the additional e-mail address.  
4 Apparently when we have been sending things, a lot of them  
5 do go through to the State in Utah. A few have not.  
6 Apparently they all have gone through to Diane Curran in  
7 Washington. But we would be very happy to add whatever  
8 additional e-mail address in Utah the State can give us so  
9 that we can assure timely receipt.

10 JUDGE BOLLWERK: All right. All right. Anything  
11 you want to say about that, Mr. Blake?

12 MR. BLAKE: No. If they want another address  
13 added, we will stick one on as well, although I am unaware  
14 of any problems that we have had.

15 JUDGE BOLLWERK: Okay. All right. That sounds  
16 like -- all right. Anything else that you all need to bring  
17 to the attention of the Board?

18 MR. TURK: One unrelated matter, Your Honor.

19 JUDGE BOLLWERK: All right.

20 MR. TURK: We had had a telephone conference call  
21 previously in which the subject of the sending of  
22 proprietary information by e-mail or fax was addressed.

23 JUDGE BOLLWERK: Yes, sir.

24 MR. TURK: I have spoken with two people in the I  
25 believe it is the Division of Security, Lynn Silvious and

1 Wayne Burnside. And I have been informed that as long as  
2 PFS agrees to the staff's or Board's use of e-mail or fax to  
3 transmit their proprietary information, that we would be  
4 permitted to do so under NRC practice.

5 JUDGE BOLLWERK: All right. Mr. Blake, then, do  
6 you have any -- have you talked with Mr. Blake about this,  
7 or is this the first time he is hearing about it?

8 MR. TURK: I think I had a conversation with Mr.  
9 Silbert about it.

10 JUDGE BOLLWERK: All right.

11 MR. TURK: But I may not have wrapped it up as  
12 neatly as I am right at this moment, assuming this is a neat  
13 wrap-up.

14 JUDGE BOLLWERK: All right.

15 MR. TURK: But I am satisfied with the information  
16 I have that we can go forward. Also, I have written e-mail  
17 confirmation from PFS indicating that it is all right with  
18 them if we use e-mail or fax.

19 JUDGE BOLLWERK: Oh, all right.

20 MR. TURK: For proprietary information.

21 JUDGE BOLLWERK: All right. I take it, Mr. Blake  
22 or Mr. Gaulkler, you don't have anything further you want to  
23 add on that? It sounds like that has been gone around in a  
24 circle to the extent it needs to be.

25 MR. BLAKE: I think that is right. Paul, have you

1 got anything different?

2 MR. GAULKLER: I don't have anything different.

3 JUDGE BOLLWERK: All right. So the loop is  
4 closed, that is what I was trying to say, in any event.

5 All right. Anything else we need to bring -- I  
6 will go ahead then, Mr. Turk, and issue an additional  
7 proviso I think indicating that, you know, the staff, as  
8 well, and the Board, obviously, can go ahead and send  
9 propriety information by e-mail as well.

10 MR. TURK: All right. Thank you, Your Honor.

11 JUDGE BOLLWERK: All right. Anything else that we  
12 need to bring to the attention of the Board?

13 MR. TURK: By the way, it is understood, of  
14 course, that it is only to people who are authorized to  
15 receive.

16 JUDGE BOLLWERK: Yes.

17 MR. TURK: And that is what I intended by my  
18 comments as well.

19 JUDGE BOLLWERK: All right. And I think I  
20 mentioned that in the last order that we did on this, but I  
21 will reiterate that again. Obviously, it is for the folks  
22 that are covered by any, you know, protective order or have  
23 authorization to see it.

24 All right. Anything else anyone has?

25 [No response.]

1 JUDGE BOLLWERK: All right. At this point I, thank  
2 you and I guess the next -- hmm, I guess next we are looking  
3 toward the hearing. We have some items we have to take care  
4 of, but we are looking toward the hearing in June and we  
5 probably will at some point set a pre-hearing conference to  
6 talk about -- to do the type of scheduling check that we  
7 were going to do with respect to the security contentions.  
8 So, the parties should anticipate that.

9 If nothing else, thank you very much and have a  
10 good day.

11 [Whereupon, at 12:00 p.m., the pre-hearing  
12 conference adjourned.]  
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REPORTER'S CERTIFICATE


This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

NAME OF PROCEEDING: PRIVATE FUEL STORAGE, LLC  
CONFERENCE CALL

DOCKET NO.: 72-22-ISFSI  
ASLBP NO.: 97-732-02-ISFSI

PLACE OF PROCEEDING: Rockville, MD

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



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Ann Riley

Official Reporter

Ann Riley & Associates, Ltd.