

21390

DOCKETED
USNRC

March 17, 2000

'00 MAR 20 P 3:41

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

OFFICE OF THE
GENERAL COUNSEL
ADJUDICATIVE STAFF

In the Matter of)
)
PRIVATE FUEL STORAGE L.L.C.)
)
(Private Fuel Storage Facility))

Docket No. 72-22-15F51

JOINT REPORT ON MATTERS REQUESTED IN LBP-00-06

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") files this joint report pursuant to the Atomic Safety and Licensing Board's Memorandum and Order (Granting in Part, Denying in Part, and Referring Ruling on Summary Disposition Motion Regarding Contention Utah E/Confederated Tribes F), LBP-00-06, ___ NRC ___, dated March 10, 2000. In Section II.D of LBP-00-06, the Board directs the State, PFS, and the Staff to file a joint report on or before March 17, 2000 advising the Board on (1) the portion of the June 2000 hearing time that will need to be devoted to litigating the remaining issues in Utah E, (2) the portion of the remaining Utah E litigation that will need to be closed because it will involve proprietary information, and (3) the status of the cask application relating to Utah GG, Failure to Demonstrate Cask-Pad Stability During Seismic Event for TranStor Casks. Further, the ordering portion of the Board's Memorandum and Order directs the State, PFS, and the Staff to advise it in a joint filing whether they have any objection to the public release of any part of LBP-00-06 because it

DS03

would involve the disclosure of proprietary information subject to nondisclosure under 10 C.F.R. § 2.790. Additionally, this joint report addresses the Board request in its March 13 Memorandum and Order directing the State and the Staff to provide additional information concerning the State's pending discovery motions on Utah Contention H based on the March 10 deposition of the Staff's witness.

Counsel for the Applicant has conferred with counsel for the State and counsel for the Staff with respect to the above matters. Concerning the length of hearing time necessary to devote to litigating the remaining issues in Utah E, the parties estimate that approximately 2-3 days would be required, depending on the number of witnesses called by the parties and the number of cost issues pursued by the State. As to the need to close all or a portion of the Utah E litigation because it will involve proprietary information, the Applicant and the Staff believe that it is likely that a substantial portion, if not all, of the hearing on Utah E would need to be closed (on which the State takes no position) because it will involve construction and operating cost estimates that PFS claims should be held as proprietary, confidential information under 10 C.F.R. § 2.790. The parties will be in a better position to ascertain the precise extent to which proprietary information will likely be involved in hearing the remaining Utah E issues after the filing of direct testimony on May 15, 2000.

With respect to the status of the cask application relating to Utah GG, Failure to Demonstrate Cask-Pad Stability During Seismic Event for TranStor Casks, in a letter dated January 21, 2000 PFS advised the Board and the parties of a January 10, 2000 letter

from BNFL Fuel Solutions (“BFS”), the vendor for the TranStor storage cask, to the Office of Nuclear Material Safety and Safeguards in which BFS requested the NRC to cease review of the TranStor storage system license application and to return the application. In PFS’s February 9, 2000 response to the Board’s Memorandum and Order of February 2, 2000 requesting clarification on whether Utah Contention GG “continues to present a matter in controversy in this proceeding,” PFS advised the Board that it was still in the process of consulting with BFS, in particular seeking clarification of BFS’s plans – and schedule – for resubmitting the TranStor license application at a future date.

PFS is in consultation with BFS and has received some information concerning its future plans concerning the TranStor cask system. PFS is currently evaluating the impact of this information on its license application for the Private Fuel Storage Facility and will advise the Board and the parties promptly upon the conclusion of its evaluation. In the meantime, PFS (and the State and the NRC Staff) recommend and request the Board to hold in abeyance the litigation of Utah GG, including any decision on the pending motion for summary disposition of Utah GG. As such, the parties believe that it is unlikely that Utah GG would be ready for hearing in time for the June 2000 hearing.

Concerning whether any part of LBP-00-06 should be withheld from public release because it would involve the disclosure of PFS proprietary information, the Applicant is able to inform the Board that it does not object to the public release of any part of LBP-00-06, and it may be so released.

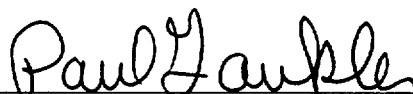
In Section II.D of LBP-00-06, the Board also requested the parties to provide suggested times for a conference call with the Board during the week of March 20, 2000 if they believed that such a call would be useful to discuss the topics of this joint report. The parties do not believe that such a conference call is necessary and therefore have provided no such times.

Finally, on a separate matter, the parties wish to inform the Board that the depositions on Utah H were conducted last week as allowed by the Board's Order (General Schedule Revision and Other Matters) of February 2, 2000. However, the depositions of the State's two witnesses, Dr. Resnikoff and Matthew Lamb, were not able to be completed because of additional evaluations that they were in the process of performing, and the parties have agreed to the continuation of their depositions the last week in March. The parties further agree that completion of the depositions of the two State witnesses on this schedule will not delay or otherwise impact the schedule for hearing Utah H issues in June. Unless otherwise directed by the Board, the parties will proceed with their intent to continue and complete the depositions of Dr. Resnikoff and Matthew Lamb the last week in March.

With respect to the State of Utah's discovery requests directed to the NRC Staff, concerning Contention Utah H, the State and Staff state as follows: The State has concluded its deposition of Staff witness Jack Guttman, and is withdrawing its "Motion to Compel NRC Staff to Respond to State of Utah's Fifth Set of Discovery Requests Regarding Utah Contention H, dated February 22, 2000. The Staff has agreed to revise

its written discovery responses to identify the individual who was principally responsible for Staff consultant SAIC's review of the HI-STORM thermal analysis. The only remaining discovery dispute between the parties involving Contention Utah H concerns the production of a single document which the Staff has withheld under the pre-decisional deliberative process privilege. The parties expect to conclude their discussions concerning this document on Monday, March 20; depending on the outcome of those discussions, the State may file a motion to compel that document's production early next week.

Respectfully submitted,



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

Dated: March 17, 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'00 MAR 20 P 3:41

Before the Atomic Safety and Licensing Board

OFFICE OF THE
BOARD
ADJUTANT GENERAL

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the Joint Report on Matters Requested in LBP-00-06 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 17th day of March 2000.

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 and 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

* Susan F. Shankman
Deputy Director, Licensing & Inspection
Directorate, Spent Fuel Project Office
Office of Nuclear Material Safety &
Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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)

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.
Confederated Tribes of the Goshute
Reservation and David Pete
1385 Yale Avenue
Salt Lake City, Utah 84105
e-mail: john@kennedys.org

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

* By U.S. mail only

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

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: dchancel@state.UT.US

Joro Walker, Esq.
Land and Water Fund of the Rockies
2056 East 3300 South, Suite 1
Salt Lake City, UT 84109
e-mail: joro61@inconnect.com

Danny Quintana, Esq.
Skull Valley Band of Goshute Indians
Danny Quintana & Associates, P.C.
68 South Main Street, Suite 600
Salt Lake City, Utah 84101
e-mail: quintana@xmission.com


Paul A. Gaukler