

[FR Doc. 02-9088 Filed 4-12-02; 8:45 am]

BILLING CODE 4510-30-C

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting; Sunshine Act

TIME AND DATE: 10 a.m., Thursday, April 18, 2002.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Quarterly Insurance Fund Report.
2. Request from a Federal Credit Union to Expand its Community Charter.

3. Final Rule: Interpretative Ruling and Policy Statement (IRPS) 02-1, Chartering and Field of Membership Policy.

4. Request from a Corporate Credit Union for Federal Share Insurance.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, April 18, 2002.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action Under Section 206 of the Federal Credit Union Act. Closed pursuant to Exemptions (8), (9)(A)(ii), and (9)(B).

2. Two (2) Administrative Actions under Part 704 of NCUA's Rules and Regulations. Closed pursuant to Exemption (8).

FOR FURTHER INFORMATION CONTACT:

Becky Baker, Secretary of the Board, Telephone 703-518-6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 02-9214 Filed 4-11-02; 2:17 pm]

BILLING CODE 7535-01-M

NATIONAL SCIENCE FOUNDATION

Conservation Act of 1978 Notice of Permit Modification

AGENCY: National Science Foundation.

SUMMARY: The Foundation modified a permit to conduct activities regulated under the Antarctic Conservation Act of 1978 (Public Law 95-541; Code of Federal Regulations Title 45, part 670).

FOR FURTHER INFORMATION CONTACT:

Nadene G. Kennedy, Permit Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Description of Permit and

Modification: On March 12, 2001, the National Science Foundation issued a permit (ACA #2001-025) to Dr. Daniel P. Costa after posting a notice in the January 31, 2001 *Federal Register*.

Public comments were not received. A request to modify the permit was posted in the *Federal Register* on March 5, 2002. No public comments were received. The modification, issued by the Foundation on April 8, 2002, allows the permit holder to enter several Antarctic Specially Protected Areas in the Antarctic Peninsula in order to capture and attached satellite relay data loggers (SRDL) on up to 25 crabbeater seals. Access to the sites will only take place to locate seals hauled up on the shore, in situations where there are no seals available on the surrounding pack ice.

Location: Dion Islands (ASPA #107), Lagotellerie Island (ASPA #116), Avian Island (ASPA #117), and Rothera Point, Adelaide Island (ASPA #129).

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 02-8995 Filed 4-10-02; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72-22-ISFSI]

In the Matter of Private Fuel Storage L.L.C. (Independent Spent Fuel Storage Installation)

CLI-02-11

Memorandum and Order

This order concerns two documents filed by the State of Utah on February 11, 2002, relating to the pending license application submitted by Private Fuel Storage, L.L.C. (PFS). Utah's "Suggestion of Lack of Jurisdiction" argues that the Nuclear Waste Policy Act of 1982, as amended (NWPA),¹ deprives the Commission of "jurisdiction" over PFS's application for a license to construct and operate an independent spent fuel storage installation (ISFSI) on the reservation of the Skull Valley Band of Goshute Indians. In its "Petition to Institute Rulemaking and to Stay Licensing Proceeding," Utah asks the Commission to amend its regulations in accordance with this theory, and to suspend related proceedings while the rulemaking is pending.

For the reasons set forth below, we deny the request for stay, set a schedule

for interested parties to submit briefs on the substantive issue whether the NRC has authority under Federal law to issue a license for the proposed privately-owned, away-from-reactor spent fuel storage facility, and defer a decision on the rulemaking petition until we have had the opportunity to decide this threshold legal question.

I. Background

In 1980, the NRC promulgated its regulations allowing for licensing of ISFSIs, 10 CFR part 72, under its general authority under the Atomic Energy Act (AEA) to regulate the use and possession of special nuclear material.² This was two years before Congress enacted the NWPA.

In both its Petition for Rulemaking and "Suggestion of Lack of Jurisdiction," Utah argues that the NWPA contemplates a comprehensive and exclusive solution to the problem of spent nuclear fuel and does not authorize private, away-from-reactor storage facilities such as the proposed PFS facility. Utah rests its argument on the following provision:

Notwithstanding any other provision of law, nothing in this act shall be construed to encourage, authorize, or require the private or Federal use, purchase, lease, or other acquisition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government on the date of the enactment of this Act.³

Thus, says Utah, the NWPA cannot be said to "authorize" a private, away-from-reactor ISFSI like the proposed the PFS facility. Utah claims that because the NWPA established a comprehensive system for dealing with spent nuclear fuel, it is the only possible source for NRC's jurisdiction over spent fuel storage and overrides the Commission's general authority under the AEA to regulate the handling of spent fuel.

PFS opposes Utah's petitions, and argues that nothing in the NWPA expressly repeals the NRC's general, AEA-based licensing authority over spent fuel. PFS emphasizes that the NWPA provision on which Utah relies does not explicitly prohibit a private, away-from-reactor facility. The NRC Staff opposes Utah's petitions on procedural grounds.

II. Discussion

A. Request for Stay of Proceedings Pending Review

We find that Utah's request does not meet the four-part test for a stay of Board proceedings. In determining

² See 45 FR 74,693 (Nov. 12, 1980).

³ NWPA § 135(h).

¹ 42 U.S.C. § 10101 et. seq.

whether to grant a stay of a licensing proceeding, the Commission looks at four factors: (1) Whether the petitioner has made a strong showing that it is likely to prevail upon the merits; (2) whether the petitioner faces irreparable injury if a stay is not granted; (3) whether the issuance of a stay would harm other interested parties; and (4) where the public interest lies.⁴ The proponent of the stay has the burden of demonstrating that these factors are met.⁵

First, Utah does not make a strong showing of probable success on the merits. The NWPA on its face does not prohibit private, away-from-reactor spent fuel storage. The NWPA section on which Utah relies, if intended to prohibit such storage, certainly does not do so directly. It says only that "nothing in this act * * * encourage[s], authorize[s], or require[s]" the use of such facilities. It does not, in terms, prohibit storage of spent nuclear fuel at any privately-owned, away-from-reactor facility—which is Utah's position. We are willing to consider Utah's complex legislative history and statutory structure arguments, but we are not prepared to say that Utah's arguments are likely to prevail.

Second, we find no evidence that Utah faces "irreparable injury" if an immediate stay is not granted. Utah claims that it will suffer a loss of "costs, expenses, and attorneys' fees" resulting from its participation in the PFS licensing proceeding.⁶ It is well-established in Commission case law, however, that we do not consider the incurrence of litigation expenses to constitute irreparable injury in the context of a stay decision.⁷ Therefore, the State has failed to demonstrate that it would be irreparably harmed if a stay is not granted.

We also find that the third and fourth factors of the stay test are not met. Utah argues that PFS is not harmed, and will

in fact benefit by saving litigation costs, if the Commission stays proceedings that will ultimately prove futile once we determine that we have no authority to issue this license. Although this reasoning is imaginative, PFS does not agree and opposes the stay. The proceedings, which have gone on for over four years, are at last nearing completion and further hearings are imminent. If the other parties are forced to reschedule expert and attorney time for some future date, it will cause them great inconvenience. The imminence of the hearings is also a factor in our determination that the public interest will be served if the parties are allowed to wrap up the matters they have been litigating for so long.

For the foregoing reasons, we deny Utah's request for a stay of these proceedings.

B. Commission Consideration of NWPA Issue on the Merits

Both the NRC staff and PFS argue that the Commission should not consider the NWPA issue at this time because the Suggestion of Lack of Jurisdiction is untimely. They maintain that the "suggestion" constitutes an untimely interlocutory appeal of a 1998 Atomic Safety and Licensing Board decision ruling on Contention Utah A.⁸

Utah first made its NWPA argument in 1997 in its Contention Utah A in the proceedings before the Licensing Board.⁹ On April 22, 1998, the Board rejected the contention as an impermissible challenge to the Commission's regulations.¹⁰ Utah's newly-filed "suggestion" could be viewed as merely a misnamed interlocutory appeal of the 1998 Board ruling, particularly because NRC's rules of practice have no provision for a pleading or motion called a "Suggestion of Lack of Jurisdiction." A petition for interlocutory Commission review, if desired, should have come 15 days after the Board entered the ruling.¹¹ Otherwise, interlocutory rulings must

wait for resolution until a final decision is entered.

Despite the reasonableness of the staff and applicant's timeliness argument, we find countervailing concerns that make immediate merits consideration appropriate. The issue presented here raises a fundamental issue going to the very heart of this proceeding. If in fact NRC has no authority to issue PFS a license, completion of the licensing process would be a waste of resources for all parties as well as the Commission. In addition, Utah has filed a petition for rulemaking, arguing that NRC's regulations must be amended in accordance with the state's legal theory. The underlying legal question, whether the law requires a rule change, must be resolved before NRC can accept or deny that petition.

We have decided that the legal issue is better resolved in an adjudicatory format—i.e., through legal briefs—than in a rulemaking format. We therefore take review in the exercise of our inherent supervisory authority over adjudications and rulemakings.¹²

The parties to this adjudication are intimately concerned and eminently well-informed about the legal question raised in Utah's petition. These litigation parties, as opposed to the general public, are likely to be the source of the most pertinent arguments and information. Public comment is likely to be less useful here, in a situation calling for pure legal analysis, than in the usual situation where the rulemaking proceeding raises scientific, policy or safety issues. We do consider, however, that persons outside this litigation should have an opportunity to weigh in on the NWPA issue and therefore invite any interested persons to submit amicus curiae briefs.

We conclude that the rulemaking process should be put on hold until the Commission rules on the threshold issue of whether the NWPA deprives it of authority to license a private, away-from-reactor spent fuel storage facility. If the legal issue is ultimately resolved in Utah's favor, then a formal revision clarifying Part 72 could be issued at that time.

III. Briefs

We already have before us extensive arguments by Utah (in its Suggestion and Rulemaking Petition) and PFS (in its Response to Utah's Suggestion of

⁴ See Sequoyah Fuels Corp., (Gore, Oklahoma Site), CLI-94-9, 40 NRC 1, 6 (1994); Allied-General Nuclear Services (Barnwell Nuclear Fuel Plant Separations Facility), ALAB-296, 2 NRC 671, 677-78 (1975); CF. Private Fuel Storage, L.L.C., (Independent Spent Fuel Storage Installation), CLI-02-08, 55 NRC ___, slip op. at 3 n. 7 (2002). This is the same test set forth in our regulations for determining whether to grant a stay of the effectiveness of a presiding officer's decision. 10 CFR § 2.788(e).

⁵ See Hydro Resources Inc., CLI-98-08, 47 NRC 314, 323 (1998); Alabama Power Co. (Joseph M. Farley Nuclear Power Plant, Units 1 and 2), CLI-81-27, 14 NRC 795, 797 (1981).

⁶ Rulemaking Petition at 37-38.

⁷ See Sequoyah Fuels Corporation and General Atomics, CLI-94-9, 40 NRC at 6. See also Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-84-17, 20 NRC 801, 804 (1984).

⁸ See "NRC Staff's Response to the State of Utah's (1) Request to Stay Proceeding, and (2) Suggestion of Lack of Jurisdiction," (Feb. 26, 2002), at 7-8; "Applicant's Response to Utah's Suggestion of Lack of Jurisdiction" (Feb. 21, 2002), at 4-7.

⁹ See "State of Utah's Contentions on the Construction and Operating License Application by Private Fuel Storage L.L.C. for an Independent Spent Fuel Storage Facility," (Nov. 23, 1997). ("Congress has not authorized the NRC to issue a license to a private entity for a 4,000 cask, away-from-reactor, centralized, spent nuclear fuel storage facility.")

¹⁰ Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 183 (1998).

¹¹ See 10 C.F.R. § 2.786(b).

¹² See, e.g., North Atlantic Energy Service Corporation (Seabrook Station, Unit 1), CLI-98-18, 48 NRC 129 (1998); Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-15, 48 NRC 45, 52-53 (1998); Cf. Kansas Gas and Elec. Co., (Wolf Creek Generating Station, Unit 1), CLI-99-05, 49 NRC 199 (1999).

Lack of Jurisdiction and attachments). We will consider the legal arguments set forth in those documents.

If these parties wish to supplement the arguments made therein, they may submit further briefs to the Commission by May 15. In addition, interested persons are invited to submit amicus curiae briefs by May 15. Briefs should be no longer than 30 pages and should be submitted electronically (or by other means to ensure that receipt by the Secretary of Commission by the due date), with paper copies to follow. Briefs in excess of 10 pages must contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, regulations, and other authorities cited, with references to the pages of the brief where they are cited. Page limitations are exclusive of pages containing a table of contents, table of cases, and any addendum containing statutes, rules, regulations, and like material.

IV. Conclusion

For the foregoing reasons, the request for a stay of proceedings is denied, the petition for rulemaking is deferred, Commission review of the NWPA issue is granted, and the adjudicatory parties and any interested amicus curiae are authorized to file briefs as set out above.

It is so ordered.

Dated at Rockville, MD this 3rd day of April, 2002.

For the Commission.¹³

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02-9081 Filed 4-12-02; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Year 2001 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105-270) ("FAIR Act")

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of public availability of agency Inventory of Activities That Are Not Inherently Governmental.

SUMMARY: The Department of Defense inventory of activities that are not Inherently Governmental is now available to the public, in accordance with the "Federal Activities Inventory Reform Act of 1998" (Public Law 105-

270) ("FAIR Act"). This is the fourth and final release of the 2001 FAIR Act inventories. The Office of Federal Procurement Policy has also made available a summary FAIR Act User's Guide through its Internet site: <http://www.whitehouse.gov/OMB/procurement/index.html>. This User's Guide will help interested parties review 2001 FAIR Act inventories, and will also include the web-site addresses to access agency inventories.

The FAIR Act requires that OMB publish an announcement of public availability of agency Inventories of Activities that are not Inherently Governmental upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. OMB has now completed this process for the year 2001.

Those interested in reviewing the Department of Defense year 2001 FAIR Act inventory may contact the Department's FAIR Act hotline at (703) 824-2692 or may access the inventory through the website address at: <http://web.lmi.org/fairnet/>.

The Department of Defense mail service, post September 11, 2001, has experienced significant delays due to new security requirements. Therefore, interested parties are encouraged to use the FAX to submit challenges and appeals regarding the content of the inventory, as provided for by the FAIR Act. The FAX number for each Departmental component (Army, Navy, Air Force, Marines, etc) is provided on the above website.

Mitchell E. Daniels, Jr.,

Director.

[FR Doc. 02-8992 Filed 4-12-02; 8:45 am]

BILLING CODE 3110-01-P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to

be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Included in this notice are required interest rates for determining the variable-rate premium for premium payment years beginning in January through April 2002. Interest rates are also published on the PBGC's Web site (<http://www.pbgc.gov>).

DATES: The required interest rates for determining the variable-rate premium under part 4006 apply to premium payment years beginning in January through April 2002. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in May 2002. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the second quarter (April through June) of 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is described as the "applicable percentage" of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year").

The Treasury Department has suspended issuance of 30-year Treasury securities and, effective February 18, 2002, ceased supplying the Federal Reserve Board with an estimate of the annual yield on 30-year Treasury securities, which until then had been published in Federal Reserve Statistical Release H.15. However, the Internal Revenue Service in Notice 2002-26

¹³ Commissioner Diaz was not present for the affirmation of this Order. If he had been present, he would have approved it.