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February 4, 2000

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

PRIVATE FUEL STORAGE, L.L.C.

(Independent Spent  
Fuel Storage Installation)

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Docket No. 72-22-ISFSI

NRC STAFF'S RESPONSE TO  
"STATE OF UTAH'S REQUEST FOR ADMISSION OF  
LATE-FILED BASES FOR UTAH CONTENTION E"

INTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c), and the Atomic Safety and Licensing Board's "Order (General Schedule Revision and Other Matters)," dated February 2, 2000 (at 3), the staff of the Nuclear Regulatory Commission ("Staff") hereby files its response to the "State of Utah's Request for Admission of Late-Filed Bases For Utah Contention E" ("Late-Filed Bases"), filed January 26, 2000. For the reasons set forth below, the Staff submits that Late-Filed Bases 11 and 12 should be rejected, but that Late-Filed Basis 13 may be accepted as raising a permissible issue of fact.

BACKGROUND

The State of Utah's original Contention E ("Financial Assurance"), as admitted by the Board and consolidated with other Intervenor's contentions, asserted that, "[c]ontrary to the requirements of 10 C.F.R. §§ 72.22(e) and 72.40(a)(6), the Applicant has failed to demonstrate that it is financially qualified to engage in the Part 72 activities for which it seeks a license," for the specific reasons set forth in ten subparts of the contention. *Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation)*, LBP-98-7, 47 NRC 142, 187, 251-52 (1998).

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On December 3, 1999, Private Fuel Storage, L.L.C. ("PFS" or "Applicant") filed the "Applicant's Motion For Partial Summary Disposition of Utah Contention E and Confederated Tribes Contention F" ("Motion"). The Applicant's Motion asserted that a genuine dispute of material fact no longer existed with respect to nine of the ten subparts of Utah Contention E (Subparts 1-5 and 7-10), based on certain commitments set forth in the Declaration of PFS Chairman John D. Parkyn.<sup>1</sup> Motion at 3.

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<sup>1</sup> The Applicant made the following commitments:

1. PFS will not commence ISFSI construction unless and until it has committed funds sufficient to provide fully for the construction of an ISFSI (including PFS's administrative and operational costs during construction of the project) with an initial capacity of at least [number redacted] MTUs, whether these funds are obtained through equity contributions, through Service Agreements, or through other committed forms of financing . . .
2. PFS will not commence operations of the PFSF, and will not accept spent nuclear fuel for storage at the PFSF, unless PFS has in place long term Service Agreements for spent fuel storage services with its members and customers sufficient to cover the costs of operating and maintaining the facility with respect to the spent fuel to be accepted and stored under the contracts. The costs for the storage of additional spent fuel at the PFSF (beyond that contracted for under the initial Service Agreements at the commencement of operations) will similarly be covered by long term Service Agreements for spent fuel storage services with PFS's members and customers. The costs of any additional construction necessary to enable the storage of additional spent nuclear fuel at the PFSF will be funded through equity contributions, the Service Agreements, or other committed forms of financing.

Parkyn Declaration at 2, 3; Motion at 7-8.

On December 15, 1999, the Staff filed its statement of position concerning Group I contentions, in which the Staff concluded that, with the adoption of certain license conditions, PFS had satisfied the Commission's financial assurance requirements.<sup>2</sup> Also on December 15, 1999 (as corrected and reissued on January 4, 2000), the Staff issued its Safety Evaluation Report ("SER") for the PFS facility, with respect to systems not directly associated with the dry storage casks proposed for use at the PFS facility. Chapter 17 of the SER proposed two license conditions regarding financial assurance. *See* SER at 17-4. As stated in the corrected SER, the Staff's proposed license conditions would require as follows:

1. Construction of the Facility shall not commence before funding (equity, revenue, and debt) is fully committed that is adequate to construct a facility with the initial capacity as specified by PFS to the NRC. Construction of any additional capacity beyond this initial capacity amount shall commence only after funding is fully committed that is adequate to construct such additional capacity.
2. PFS shall not proceed with the Facility's operation unless it has in place long-term Service Agreements with prices sufficient to cover the operating, maintenance, and decommissioning costs of the Facility, for the entire term of the Service Agreements.

On December 27, 1999, the State filed its response in opposition to the Applicant's Motion;<sup>3</sup> and on January 10, 2000, the State filed its reply to the Staff's Response to the Motion.<sup>4</sup>

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<sup>2</sup> *See* "NRC Staff's Statement of Its Position Concerning Group I-II Contentions" (Position Statement), dated December 15, 1999, at 2-6.

<sup>3</sup> *See* "State of Utah's Response to the Applicant's Motion For Partial Summary Disposition of Utah Contention E/ Confederated Tribes Contention F," dated December 27, 1999.

<sup>4</sup> *See* "State of Utah's Reply to the Staff's Response to the Applicant's Motion For Partial Summary Disposition of Utah Contention E/Confederated Tribes Contention F," dated January 10, 2000 (State's Reply).

On January 26, 2000, the State filed the instant request to amend the bases for Utah Contention E, in which it sought to add three new bases to the contention. These new bases generally assert that the Staff's recommended license conditions (a) contravene the requirements of 10 C.F.R. Part 72 and would deprive the State of its right to hearing on material financial assurance issues (Basis 11), (b) improperly grant an exemption to PFS from the Commission's financial assurance requirements (Basis 12), and (c) fail to provide specific criteria and procedures by which the adequacy of the Applicant's performance may be assessed, thereby depriving the State and other parties of a hearing on the Applicant's financial qualifications (Basis 13).

The Staff's views with respect to the admissibility of the State's three additional bases for Utah Contention E are set forth in the discussion below.

#### DISCUSSION

##### I. The Timeliness of the State's Additional Late-Filed Contention Bases.

##### A. The Legal Standards Governing Late-Filed Contentions.

The criteria to be considered when determining the admissibility of a late-filed contention are set forth in 10 C.F.R. § 2.714(a)(1)(i)-(v). *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-12, 37 NRC 355, 363 (1993). The five factors are:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

10 C.F.R. § 2.714(a)(1). The burden of proof is on the petitioner, and the petitioner is obliged to affirmatively address the five lateness factors in its petition, and to demonstrate that a balancing of the five factors warrants overlooking the petition's lateness. *Boston Edison Co.* (Pilgrim Nuclear Power Station), ALAB-816, 22 NRC 461, 466 n.22 (1985).

Although the regulations call for a balancing of these factors, it has long been held that where a petitioner fails to show good cause for filing its contention late, the other four factors must weigh heavily in its favor in order for its petition to be granted. *See, e.g., State of New Jersey* (Department of Law and Public Safety's Requests Dated October 8, 1993), CLI-93-25, 38 NRC 289, 295 (1993). In evaluating the five lateness factors, two factors -- the availability of other means to protect the petitioner's interest and the ability of other parties to represent the petitioner's interest -- are less important than the other factors, and are therefore entitled to less weight. *Texas Utilities Electric Co.* (Comanche Peak Steam Elec. Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 74 (1992). With respect to the third factor (the potential contribution to the development of a sound record), the petitioner is obliged to "set out with as much particularity as possible the precise issues it plans to cover, identify its potential witnesses, and summarize their proposed testimony." *Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 246 (1986), *quoting Mississippi Power and Light Co.* (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982). In addition to the showing that a balancing of the five factors favors intervention, a petitioner must also meet the requirements for setting forth a valid contention. 10 C.F.R. § 2.714(d)(2).

B. The Staff Does Not Oppose the Timeliness  
of the State's Additional Late-Filed Bases.

The State contends that it has good cause for the late filing of its bases because it received the Staff's SER on December 27, 1999 and submitted its late-filed bases within 30 days thereafter -- which the State asserts is consistent with the Licensing Board's requirement that new contentions based on the SER are to be filed within 30 days after the SER is made available to the public. *See Late-Filed Bases at 8-9, citing "Memorandum and Order (General Schedule for Proceeding and Associated Guidance)," dated June 29, 1998, at 5.*

In the Staff's view, the State's argument incorrectly focuses upon the date it received the SER rather than the date upon which the SER was made available to the public or the date upon which the State could have obtained a copy thereof. Moreover, the State was on notice since December 15, 1999, that the Staff would recommend the imposition of financial license conditions having this effect, since the Staff's statement of position concerning Contention E, filed on December 15, clearly indicated that the Staff would recommend such license conditions.<sup>5</sup> In

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<sup>5</sup> In its Statement of Position, the Staff stated:

Before construction can commence, PFS must demonstrate that an adequate combination of revenue plus equity and/or debt financing can be attained to provide reasonable assurance of funding for construction and operating costs, pursuant to 10 C.F.R. § 72.22(e). Therefore, . . . the Staff is recommending as conditions for any order granting a license that, before construction and operations can commence, PFS shall demonstrate sufficient levels of committed debt and equity, combined with sufficient executed Service Agreements, to produce adequate funding for both the construction of the facility and the initiation of operations. This is similar to the commitment that PFS made in its application and also is very similar to the financial conditions imposed by the Commission on

(continued...)

addition, the Staff's response to the Applicant's motion for summary disposition, dated December 22, 1999, set forth the full text of the Staff's proposed license conditions. Thus, the State was on notice of the Staff's proposed imposition of these license conditions approximately two weeks before the State received the Staff's SER, or some 42 days before the State filed its additional bases for this contention.<sup>6</sup>

Notwithstanding the Staff's view that the State could have reasonably filed its additional bases by mid-January -- *i.e.*, approximately 10 days prior its filing on January 26, 2000 -- the Staff recognizes that some confusion may have been created by the Staff's issuance of an incorrect version of SER Chapter 17 on December 15, 1999. Further, while a corrected SER was issued on January 4, 2000, if that date is used as the event-triggering date, less than 30 days elapsed from that date until the State filed its additional bases for Utah Contention E. Accordingly, under

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<sup>5</sup>(...continued)

Louisiana Energy Services, L.P. . . . With these conditions in place, the Staff considers that the Commission's financial assurance requirements are satisfied.

Position Statement, at 4.

<sup>6</sup> This Board has recently stated that in making a judgment about timeliness, "the emphasis is on the substance and sufficiency of the information available to the contention's sponsor." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-99-43, 50 NRC 306, 313 (1999). Where, as here, a new issue is asserted to be based upon information contained a document that has recently been made available to the public, "an important consideration is the extent to which the new contention could have been put forward with any degree of specificity in advance of the document's release." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-29, 48 NRC 286, 292 (1998). The fact that the document at issue is the Staff's SER does not alter these basic precepts. See *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1044, 1045 (1983) (the "institutional unavailability" of a licensing-related document, such as an SER, does not establish good cause for filing a contention late, if information was available early enough to provide the basis for the timely filing of that contention).

these circumstances, the State's filing of its additional bases on January 26, 2000, does not appear to constitute an unreasonable delay. The Staff therefore does not assert that the State lacked good cause for its late filing of these additional bases for Utah Contention E.

With respect to the four other factors specified in 10 C.F.R. § 2.714(a)(1), the Staff submits that those factors appear to support the admission of these late-filed bases for Utah Contention E. Regarding factors two and four, other means do not appear to be available to protect the State's interest with respect to the issues raised in the Late-Filed Bases; and the State's interest would not be represented by existing parties with respect to these issues.<sup>7</sup>

With respect to factor three, whether the State's participation may be expected to assist in developing a sound record, the Staff believes that this factor may support the admission of the additional bases, in that (a) the State would thereby be able to address the legal issues raised by these bases, and (b) to the extent that the additional bases raise a factual issue, the State's witness, Dr. Michael F. Sheehan, would be able to testify as to "why the proposed license conditions do not provide reasonable assurance that the Applicant will be capable of providing necessary funds." Late-Filed Bases at 9.

Finally, with respect to the fifth factor, the Staff believes that the admission of these bases will broaden the issues and cause some delay in the proceeding. Discovery between the State and PFS on Utah Contention E has closed, and the State's window of discovery against the Staff on this contention will close on February 15, 2000; thus the admission of these additional bases could

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<sup>7</sup> Factors two and four carry less weight than the three other factors specified in the regulation. See *Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 245 (1986); *Private Fuel Storage*, LBP-98-7, 47 NRC at 208.



result in a claim that additional discovery is required and/or the filing of an additional summary disposition motion. Nonetheless, inasmuch as the Staff's proposed license conditions (and the Applicant's stated commitment to adhere to the provisions stated therein) are central elements in the Applicant's demonstration of financial assurance under the Commission's regulations, the Staff believes that any broadening of the issues or reasonable delay that may result from the admission of these bases is outweighed by the significance of this late-filed issue in the context of Contention Utah E.<sup>8</sup>

In sum, the State's filing of these additional late-filed bases for Utah Contention E does not appear to contravene the Commission's requirements governing the admission of late-filed contentions.

## II. The Admissibility of Late-Filed Bases 11-13.

In the following discussion, the Staff addresses the admissibility of Late-Filed Bases 11-13. For the reasons set forth below, the Staff submits that late-filed bases 11 and 12 should be rejected, but that basis 13 may be admitted as raising a permissible factual challenge to the adequacy of the Staff's proposed license conditions.

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<sup>8</sup> The State asserts that the additional bases "will focus the proceedings on the Staff's action." Late-Filed Bases at 10. In this regard, the Staff notes that this assertion does not support the admission of these Bases, as it is well recognized that "a contention will not be admitted if the allegation is that the NRC Staff has not performed an adequate analysis." See "Rules of Practice for Domestic Licensing Proceedings -- Procedural Changes in the Hearing Process," 54 Fed. Reg. 33168, 33171 (1989). On the other hand, the adequacy of an applicant's financial assurance, with proposed license conditions in place, is a matter that can properly be contested in a Commission proceeding. Accordingly, the adequacy of the Applicant's financial assurance, with the proposed license conditions in place, is the only proper subject for litigation under the proposed additional bases for Contention E. See discussion *infra* at 15.

A. Late-Filed Basis 11.

Late-Filed Basis 11 for Utah Contention E asserts as follows:

Basis 11. The Staff's proposed license conditions LC17-1 and LC17-2 (SER at 17-7) contravene the financial qualification requirements of 10 CFR §§ 72.22(e) and 72.40(a)(6), which require a substantive determination of financial qualification before a license is issued. The proposed license conditions do not assure that the Applicant will be financially qualified at the time the license is issued because the Applicant neither possesses the necessary funds, nor has reasonable assurance of obtaining the necessary funds to cover estimated construction costs, estimated operating costs over the planned life of the ISFSI, and estimated decommissioning costs. Postponing the financial qualification analyses and determination to post-hearing resolution also violates Intervenor State of Utah's and other parties' rights to a prior hearing on all financial issues material to the licensing decision, and is contrary to Section 189(a)(1) of the Atomic Energy Act.

**Staff's Response**

The Staff opposes the admission of this basis statement -- which essentially raises a legal issue -- on the grounds that it lacks legal foundation. While the State asserts that "the Staff's proposed license conditions contravene the requirements of 10 C.F.R. §§ 72.22(e) and 72.40(a)(6)," and that these regulations "require a substantive determination of financial qualification before a license is issued" (Late-Filed Bases at 4), the regulations do not indicate that a finding of financial assurance cannot rest, in part, upon appropriate license conditions. To the contrary, 10 C.F.R. § 72.22(e) only requires the submission of information that shows "that the applicant either possesses the necessary funds, or that the applicant has reasonable assurance of obtaining the necessary funds or that by a combination of the two, the applicant will have the necessary funds available" to cover estimated construction, operating, and decommissioning costs. 10 C.F.R. § 72.22(e); emphasis added. Where the information demonstrates that an applicant

"has reasonable assurance of obtaining the necessary funds," even if that demonstration is based upon a license condition, the regulation is satisfied.<sup>9</sup>

In essence, the State is reading into the Commission's regulations a requirement that does not appear on the face of those regulations -- *i.e.*, that financial assurance must be shown to exist prior to licensing without permitting any reliance on an applicant's commitments or legally binding license conditions. The State, however, has not provided any legal support for this restrictive interpretation of the regulation: It cites neither regulatory history nor any existing construction of the regulation that could support its view. Moreover, the State ignores the provisions of 10 C.F.R. § 72.44(a), which contemplates the issuance of an ISFSI license with appropriate license conditions in place.<sup>10</sup>

Further, where, as here, an applicant is required by license condition to have the necessary funds prior to construction and operation of the facility, the requirement of reasonable assurance that the requisite funding will be available has been satisfied. The Applicant has

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<sup>9</sup> 10 C.F.R. § 72.40(a)(6), which sets forth the finding to be made by the Commission upon issuance of a license, is more general. It requires only that an ISFSI applicant (other than the Department of Energy), must be found to be "financially qualified to engage in the proposed activities in accordance with the regulations in [Part 72]."

<sup>10</sup> 10 C.F.R. § 72.44(a) provides as follows:

**72.44 License Conditions.**

(a) Each license issued under this part shall include license conditions. The license conditions may be derived from the analyses and evaluations included in the Safety Analysis Report and amendments thereto submitted pursuant to § 72.24. License conditions pertain to design, construction and operation. The Commission may also include additional license conditions as it finds appropriate.

identified its estimated construction, operating and decommissioning costs, and there is thus no basis for the State's claim that "the financial qualification analyses and determination" have been postponed to post-hearing resolution, or that the issuance of a license containing these conditions violates the State's "rights to a prior hearing on all financial issues material to the licensing decision, and is contrary to Section 189(a)(1) of the Atomic Energy Act." Late-Filed Bases at 4. Contrary to this assertion, the financial assurance analyses have not been postponed for post-hearing resolution. Rather, the State is able, at this time, to contest the reasonableness of the Applicant's cost estimates -- and indeed, the State has done so, in existing Basis 6 for this contention. Thus, prior to the conclusion of this proceeding, the State may litigate all pertinent financial issues; the only matter to be left for post-licensing resolution will be a Staff determination that the Applicant has provided the funding necessary to meet its (litigated) cost estimates.

Finally, the State's interpretation of the financial assurance regulations in 10 C.F.R. Part 72 ignores the Commission's own interpretation of the regulations -- set forth in guidance in this proceeding -- which would allow reliance on appropriate license conditions to resolve financial assurance issues. Thus, the Commission has encouraged the Staff and Licensing Board, at an early stage in this proceeding, to utilize license conditions as a means of resolving financial assurance issues in this proceeding. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 35, 36-37 (1998). In that decision, the Commission commented on the financial qualifications contentions that had been admitted by the Licensing Board. The Commission noted that in its *LES* decision, it had imposed license conditions that had the effect of assuring financial qualifications and "obviating further litigation" on these issues.

*Id.* at 36, citing *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294, 302 (1997). The Commission then suggested that the parties and the Licensing Board in this (PFS) proceeding consider "the feasibility of license conditions in this proceeding, and the possibility that appropriate conditions might avoid difficult litigation over financial issues." *Id.* at 36. The Commission then directed that "[t]o the maximum extent practicable, both the NRC Staff in its safety and environmental reviews, and the Board, in its adjudicatory role, should avoid second-guessing private business judgments." *Id.* at 36-37. The Staff's proposed use of license conditions to resolve financial assurance issues in this proceeding thus follows the guidance of the Commission. For these reasons, the Staff submits that Basis 11 should be rejected.

**B. Late-Filed Basis 12.**

Late-Filed Basis 12 for Utah Contention E asserts as follows:

Basis 12. The Staff's proposed license conditions LC 17-1 and LC17-2 (SER at 17-7) improperly grant to PFS an exemption to 10 CFR §§ 72.22(e) and 72.40(a)(6), without a request by the Applicant and without meeting the standards for exemption under 10 CFR § 72.7 or the standards for rule waiver under 10 CFR 2.758.

**Staff's Response**

The Staff opposes the admission of this basis statement -- which, like Basis 11, essentially raises a legal issue -- on the grounds that it lacks any apparent factual or legal foundation. The Staff has not granted an exemption to PFS; to the contrary, the Staff has recommended the imposition of license conditions to assure that these regulations are satisfied. Thus, the State's assertion lacks any basis in fact. The State has not shown that the Staff has granted PFS an

exemption from 10 C.F.R. §§ 72.22(e) and 72.40(a)(6). Accordingly, this basis fails to satisfy the requirements of 10 C.F.R. § 2.714(b)(2).

In addition, the Staff opposes this basis to the extent that it asserts that the Staff is precluded from issuing an exemption absent a request from an applicant. The regulations specifically provided that "the Commission may, upon application by any interested person or upon its own initiative, grant [ ] exemptions." 10 C.F.R. § 72.7; emphasis added. Consequently, even if the State was correct in its assertion that the Staff's approach constitutes an exemption from the regulations, this, by itself (*i.e.*, divorced from the State's assertion that the standards for an exemption had not been satisfied), would not entitle the State to relief. See 10 C.F.R. § 2.714(d)(2).

Further, as set forth above, the State is reading into the Commission's regulations a requirement that does not appear on the face of those regulations -- *i.e.*, that financial assurance must be shown exist prior to licensing, without permitting any reliance on an applicant's commitments or legally binding license conditions. The State has not provided any legal support for this restrictive interpretation of the regulation, either in regulatory history or case law, and the State ignores the Commission's own interpretation of the regulations as set forth in the guidance statement provided in CLI-98-12. Absent any demonstrated legal support for its view that the imposition of appropriate license conditions fails to provide the financial assurance required in 10 C.F.R. Part 72 and, instead, constitutes an exemption from those requirements, the Staff submits that Basis 12 should be rejected.

C. Late-Filed Basis 13.

Late-Filed Basis 13 for Utah Contention E asserts as follows:

Basis 13. The Staff's proposed license conditions LC17-1 and LC17-2 (SER at 17-7) do not provide adequate standards or procedures against which Applicant's performance, and therefore its ability to meet the financial qualification requirements of 10 CFR §§ 72.22(e) and 72.40(a)(6), can be judged. The licensing conditions are vague and open-ended, and do not establish procedures for making or challenging these future determinations. As a consequence, the licensing conditions completely deprive the State and other parties of a full and fair hearing on the issue of whether the Applicant is financially qualified to operate an ISFSI in Utah.

**Staff's Response**

Unlike basis statements 11 and 12, the first two sentences of this basis statement appear to challenge the adequacy of the Staff's proposed license conditions, as a factual matter, rather than a claim that the use of license conditions, *per se*, is impermissible. This is the only one of the State's three basis statements that raises an issue of fact.<sup>11</sup> To this extent, the Staff does not oppose the admission of this basis statement. It is unclear, however, whether the third (and final) sentence of this basis statement constitutes (a) a challenge to the adequacy of the two specific license conditions recommended by the Staff, as a matter of fact, or (b) a challenge to the use of any license condition to support a finding of financial assurance, as a matter of law. While the Staff would not oppose the admission of this issue as a matter of fact, the Staff opposes the

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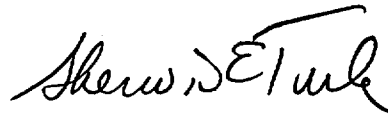
<sup>11</sup> Bases 11 and 12 do not depend upon the adequacy or language of the Staff's proposed license conditions, but, rather, present a challenge to the use of any license condition in finding that the Commission's financial assurance requirements have been met.

admission of this matter as a legal issue, for the reasons set forth above concerning late-filed additional basis statements 11 and 12.

CONCLUSION

For the reasons set forth above, the Staff submits that the State's Late-Filed Additional Bases 11 and 12 should be rejected, but that Late-Filed Additional Basis 13 may be admitted as raising an acceptable factual issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sherwin E. Turk". The signature is fluid and cursive, with the first name "Sherwin" and last name "Turk" being clearly legible.

Sherwin E. Turk  
Catherine L. Marco  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 4<sup>th</sup> day of February 2000



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD 100 FEB -7 P 2 :34

In the Matter of )

PRIVATE FUEL STORAGE LLC )

(Independent Spent )  
Fuel Storage Installation) )

Docket No. 72-22-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO 'STATE OF UTAH'S REQUEST FOR ADMISSION OF LATE-FILED BASES FOR UTAH CONTENTION E'" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the Nuclear Regulatory Commission's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the United States mail, first class, as indicated by double asterisk, with copies by electronic mail as indicated, this 4<sup>th</sup> day of February, 2000.

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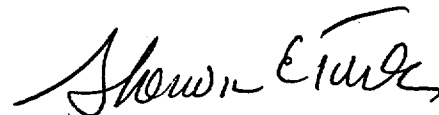
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