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DOCKETED February 16, 2000
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '00 FEB 17 P3:09

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF THE SECRETARY
RULEMAKING AND
ADJUDICATION STAFF

In the Matter of)

PRIVATE FUEL STORAGE, LLC)

Docket No. 72-22-ISFSI

(Independent Spent
Fuel Storage Installation))

NRC STAFF'S RESPONSE TO APPLICANT'S RESPONSE
TO MEMORANDUM AND ORDER REQUESTING CLARIFICATION

INTRODUCTION

Pursuant to the Atomic Safety and Licensing Board's "Memorandum and Order (Requesting Clarification)" (Board Order), dated February 2, 2000, the staff of the Nuclear Regulatory Commission (Staff) hereby files its response to "Applicant's Response to Memorandum and Order Requesting Clarification," dated February 9, 2000. For the reasons set forth below, the Staff believes that the Board should hold in abeyance Private Fuel Storage, L.L.C.'s (PFS or Applicant) motion for summary disposition regarding Utah Contention GG, pending the receipt of further status reports from the Applicant.

BACKGROUND

On December 30, 1999, PFS filed "Applicant's Motion for Summary Disposition of Utah Contention GG -- Failure to Demonstrate Cask-Pad Stability During Seismic Event For TranStor Casks." On January 21, 2000, the Staff filed "NRC Staff's Response to Applicant's Motion For Summary Disposition of Utah Contention GG -- Failure to Demonstrate Cask-Pad Stability During Seismic Event For TranStor Casks" and the State filed "State of Utah's Response to the Applicant's

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Motion For Summary Disposition of Utah Contention GG -- Failure to Demonstrate Cask-Pad Stability During Seismic Event For TranStor Casks."

Also on January 21, 2000, the Applicant notified the Board and parties that BNFL Fuel Solutions Corporation (BFS) had requested that the Staff cease its review of its TranStor storage system license application and return the application. See Letter from Jay Silberg, Esq. to the Licensing Board, dated January 21, 2000. In light of these developments, the Board requested clarification as to whether Utah Contention GG continues to present a matter in controversy in this proceeding. Board Order at 2. On February 9, 2000, the Applicant responded to the Board's Order, stating that it is still in the process of consulting with BFS with respect to BFS' plans and schedule for resubmitting its application. "Applicant's Response to Memorandum and Order Requesting Clarification," dated February 9, 2000 at 2. The Applicant suggested that the Board nevertheless make a decision with respect to the Applicant's pending motion for summary disposition on Utah Contention GG. *Id.* The Applicant stated that in the alternative, the Board should hold the motion in abeyance until further information becomes available. *Id.*

DISCUSSION

The Staff has received BFS' request and has ceased its review of the application. In light of these developments, the Staff does not believe Board review of the Applicant's motion for summary disposition of Utah Contention GG would be a useful expenditure of resources at this time. However, in light of the fact that the Applicant is still in the process of consulting with BFS, concerning that company's plans and schedule for resubmission of its cask certification application, the Staff submits that the Licensing Board should hold the Applicant's motion for summary disposition of Utah Contention GG in abeyance. The Applicant has indicated that it expects to have

more information within the next several weeks. Accordingly, the Staff suggests that PFS should submit a status report when more information is available.¹

The Staff also considers that this matter should not be permitted to continue in suspension unnecessarily. Accordingly, the Staff suggests that a decision dismissing Utah Contention GG on grounds of mootness be rendered within a reasonable amount of time, as the Board may determine in its discretion.

CONCLUSION

For the reasons set forth above, the Board should hold resolution of the Applicant's motion for summary disposition pending the receipt of further information from the Applicant, and in the absence of further information, the contention should be dismissed as moot.

Respectfully submitted,



Catherine L. Marco
Counsel for NRC Staff

Dated at Rockville, Maryland
this 16th day of February 2000

¹ Additional information regarding the TranStor vendor's plans for resubmitting the application would be beneficial in determining whether Utah Contention GG has become moot. A case becomes moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. *Murphy v. Hunt*, 455 U.S. 478, 481 (1982). Further, a case is moot when there is no reasonable expectation that the matter will recur and that interim relief or intervening events have eradicated the effects of the challenged action. *Advanced Medical Systems, Inc.*, CLI-93-8, 37 at 185, citing *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979). The receipt of further information from PFS will provide insight as to whether a "reasonable expectation" that the matter will recur can be said to exist. At such time, a decision may be rendered as to whether this issue is moot.

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RULEMAKING AND
ADJUDICATIONS STAFF

Docket No: 72-22-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO APPLICANT'S RESPONSE TO MEMORANDUM AND ORDER REQUESTING CLARIFICATION" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, with copies by electronic mail, or by deposit in the United States mail, first class, as indicated by an asterisk, with copies by electronic mail, this 16th day of February, 2000.

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