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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, LLC (Independent Spent Fuel Storage Installation)	)	ASLBP No. 97-732-02-ISFSI
	)	February 11, 2000

STATE OF UTAH'S REPLY TO APPLICANT'S AND NRC STAFF'S RESPONSES TO UTAH'S REQUEST FOR ADMISSION OF LATE-FILED BASES FOR UTAH CONTENTION E

On January 26, 2000, the State filed the State of Utah's Request for Admission of Late-filed Bases for Utah Contention E ("State Request, Contention E"). The Applicant's Response to State of Utah's Request for Admission of Late-filed Bases for Utah Contention E ("Applicant's Response to E") and the NRC Staff's Response to State of Utah's Request for Admission of Late-filed Bases for Utah Contention E ("Staff's Response to E") were both filed on February 4, 2000.

Pursuant to the Licensing Board's February 2, 2000 Order, the State hereby files its Reply to the Applicant's and Staff's Responses to E. This Reply is supported by the Declaration of Dr. Michael F. Sheehan, attached hereto as Exhibit 1.

DISCUSSION

The State filed three late filed bases to Contention E. In general, Basis 11 challenges the specific license conditions enumerated in the Staff's Safety Evaluation Report ("SER") as the mechanism to implement 10 CFR § 72.22(e). Basis 12 alleges that

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reliance on the license conditions proposed in the SER is tantamount to granting the Applicant an exemption from 10 CFR §§ 72.22(e) and 72.40(a)(6). Thus, Bases 11 and 12 are paired in the sense that they challenge the validity of the Staff's decision to defer or eliminate findings of regulatory compliance by making compliance a post-hearing license condition. Finally, Basis 13 challenges the standards and procedures against which the Applicant's performance can be judged. Overlaying the request to amend the bases to Contention E is the fact that if the Staff proceeds with the license conditions in the SER, it will defer any substantive decision on whether the Applicant meets the "reasonable assurance" requirement of Part 72 until after the hearing; thus, the State will be deprived of litigating the substance of whether the Applicant is financially qualified.

In their Responses to E, the Applicant and the Staff rely on the LES decision[1] and the Commission's order in this proceeding[2] as establishing a standard for implementing Part 72. The Applicant, and to a lesser extent the Staff, give LES and CLI-98-13 a much broader reading than it is meant to carry. The Applicant and the Staff also oppose the State's Request by characterizing it as opposing license conditions under any circumstances, which is not true. Rather, the State is challenging the assertion that the 10 CFR § 72.22(e) requirements can be met through the use of the specific license

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[1] Louisiana Energy Services, L.P. (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294 (1997) (hereinafter "LES").

[2] Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26 (1998) (hereinafter "CLI-98-13").

conditions proposed in the SER. The State is not mounting a generic challenge to the use of any possible license conditions that may pertain to financial assurance.

I. The Board Is Not Mandated by the LES Decision, the Commission's Order, or the Part 72 Financial Assurance Requirements to Accept the Staff's Proposed License Conditions.

A. Neither the LES Decision Nor the Commission's Order Amounts to an Interpretation of the Standards to Implement the Financial Assurance Requirements Under Part 72.

Scattered throughout the Applicant's Response is the assertion that the State's new bases are an impermissible attack on the Commission's regulations. *See* Applicant's Response to E at 3, 4, 7, 9, 10, 14, 15, and 18. The Applicant reads too much into the LES decision and CLI-98-13, and as a result, distorts the holding in LES and the directive in the Order into the allegation that the State is impermissibly challenging the NRC regulations.

1. The LES Decision

In order to get to its desired result, the Applicant has significantly distorted LES. The Applicant's first distortion of LES is the following statement: "The State's Basis 11 seeks to impose requirements different than those which the Commission has found acceptable under **its regulations** and therefore impermissibly challenges the NRC Regulations," Applicant's Response to E at 4 (emphasis added). This is an incorrect statement of the law. The LES decision revolved around the application of certain Part 70 regulations. The State's new bases are challenging the adequacy of the Staff's conditions under Part 72. The State is not challenging the regulations per se, but is

insisting on their correct application. Moreover, whether or not the Commission's finding that certain license conditions met the requirements of Part 70 does not transmute similar license conditions into meeting requirements in a totally different regulatory part of Title 10. The Applicant's generic reference to "its regulations" is an attempt to gloss over this point.

The second distortion is the Applicant's assumption that "PFS and LES are analogously situated." Applicant's Response to E at 5. PFS would have the Board overlook the fact that the financial assurance regulations are framed by the requirement that the Applicant is financially qualified to carry out "the activities for which the license is sought." 10 CFR § 72.22(e); *see also* § 70.23(a)(5). The license sought in LES was for an enrichment production facility whereas PFS is seeking a license for long term storage of spent nuclear fuel. Thus, the long term financial implications of the two licensed activities are significantly different. *See* State of Utah's December 27, 1999 Response to the Applicant's Motion for Partial Summary Disposition of Utah Contention E/Confederated Tribes F ("State's Resp. to Summary Disposition") at 7-8.

The third distortion is that PFS assumes that a commitment of firm five year supply contracts in LES is the same as the PFS commitment based on unknown terms of Service Agreements (*i.e.*, future storage contracts with PFS customers). As discussed below, the appropriateness of five year service contracts in LES cannot be used as the benchmark for judging commitments in the PFS case. The State has elaborated on this aspect in its January 10, 2000 Reply to the Staff's Response to the Applicant's Motion for

Partial Summary Disposition at 9.

The Applicant argues that the State's discussion of health and safety concerns are unavailing to provide a basis for an admissible contention because the State has not shown what makes the commitment in LES unsuitable for PFS to apply under Part 72. Applicant's Response to E at 6. The State maintains that it has made a prima facia case for the admission of Basis 11 to Contention E. The State has demonstrated the differences between the LES processing facility and the PFS facility. The service to be provided by PFS is the long term storage of spent nuclear fuel. Therefore, there is a need in the PFS case for funds to safely operate the storage of spent nuclear fuel over a long period of time.[3] Moreover, the PFS facility would precipitate the unprecedented movement of spent nuclear fuel across the country for storage in Utah. By contrast, the service to be provided by LES was the enrichment of uranium. The manufacturing process in LES was closely tied to the term of the supply contracts, and thus, there would be no shortfall between the commitment and the end product, enriched uranium.

In amending its Rule of Practice, the Commission noted, "Where the intervenor

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[3] The State has tried unsuccessfully to obtain details about the terms and conditions of PFS Service Agreement through discovery. Applicant's Objections and Proprietary Responses to State's Second Requests for Discovery (Groups I and II), dated June 28, 1999, at 7, Document Request No. 8 ; and Applicant's Objections and Responses to State of Utah's Fourth Set of Discovery Requests ..., dated December 6, 1999, at 12, Document Request No. 5. The Staff has not insisted that PFS produced the PFS Service Agreement to the Staff before license issuance. NRC Staff Objections and Responses to the State of Utah's Fourth Set of Discovery Requests Directed to the NRC Staff (January 28, 2000) at 9, Response to Admission Request No. 12.

believes that the application and supporting material do not address a relevant mater, it will be sufficient for the intervenor to explain why the application is deficient." 54 Fed. Reg. 33,170 (1989). The State has described the reasons why the LES case does not support the Applicant's wholesale importation of the LES license conditions to meet a different regulatory requirements under Part 72. Accordingly, the State has met the Commission's standard to allow the Board to admit Basis 11.

2. The Commission's Order, CLI-98-13

The Applicant asserts that the Commission's Order confirms that "the commitment approach would apply to PFS." Applicant's Response to E at 5 (*emphasis in original*). The Applicant relies on the following from the Commission's Order:

> In [LES] the Commission imposed license conditions that bound the applicant to financial commitments that it had made during the licensing proceeding.... The conditions had the effect of assuring financial qualifications and obviating further litigation of these issues. The parties and the Board may wish to consider the feasibility of license conditions in this proceeding, and the possibility that appropriate conditions might avoid difficult litigation over financial issues.

Applicant's Response at 5-6, CLI-98-13, 48 NRC 26, 36 (1998). Although the Commission was inviting the possibility of appropriate license conditions, it clearly was not prejudging the issue. For the reasons outlined below, there are four major respects in which CLI-98-13 fails to provide the support claimed by the Applicant.

The above language refers to "financial commitments made during the licensing proceeding." In the LES case the financial assurance determinations and the LES financing plan were subject to a full scale adjudicatory hearing. In LES, the Commission

relied, in part, on the fact that "LES has developed a reasonably sophisticated financial plan" LES, 46 NRC at 307. The Commission found:

> Prior to full production, contingencies will be covered by insurance, indemnification agreements, reserves, or additional capital draws on the equity investors. The permanent debt estimate to complete the plant includes coverage for a debt service reserve fund and working capital from lenders.

46 NRC at 306. Moreover, witnesses were called and cross-examined, the LES financial plan was subject to scrutiny, and several exhibits were introduced into evidence. *See* LES 44 NRC 331 (1996). None of the foregoing will take place in the instant case if 10 CFR § 72.22(3) is implemented through the license conditions proposed in the SER. Moreover, by refusing to answer the State's discovery on the admitted bases for Contention E because, according to the Applicant, all the State is entitled to in discovery is limited to the license conditions and Basis 6 (construction and operating costs), the Applicant is improperly trying to limit the scope of the hearing on Contention E. This is contrary to the scope of the issues heard in the LES case.

Second, the Commission does not mandate that the financial requirements be met by license conditions. The Commission says, "the parties and the Board may wish to consider the **feasibility** of license conditions..." Id. at 36 (emphasis added). The State's response is that the license conditions proposed in the SER are not feasible for the reasons described in the State's Resp. to Summary Disposition and also as stated in Basis 11, 12 and 13.

Third, the Commission refers to the "possibility" that license conditions may

avoid litigation. As is evident by the State's amended bases and its Resp. to Summary Disposition, the conditions in the SER have not avoided litigation because they are woefully inadequate to satisfy the NRC's regulations – on both legal and factual grounds.

Finally, the Commission mentions "appropriate license conditions." Significantly, the Commission refers to the LES proceeding in its Order but offers no hint that the same conditions as those proposed in LES would be appropriate in the PFS case. The Staff says that Basis 11 should be rejected because the "proposed use of license conditions to resolve financial assurance issues in this proceeding thus follows the guidance of the Commission." Staff Response to E at 13. Implicit in the Staff's argument is that the Staff must believe that the conditions it proposed in the SER are "appropriate." The State refutes this proposition. The crux of the State's argument is that the license conditions proposed for uranium enrichment facility under Part 70 are not the appropriate license conditions under Part 72 for the construction and operation of a facility at which over half the nation's commercial spent nuclear fuel may be stored over a 20 to 40 year period. Thus, the Commissions's Order can be seen as support for the admission of the State's new bases to Contention E because the license conditions proposed in the SER are unfeasible and inappropriate as applied to the PFS license application.

B. Even if the LES Decision Provides Guidance to the Interpretation of Part 72, LES Does Not Require the Board to Accept the Proposed License Conditions.

As described above, the Applicant has repeatedly asserted that the State's new bases are an impermissible attack on the Commission's regulations. To make this

argument, the Applicant must assume that the language of the regulation requires the Board and the Commission to accept the licensing approach memorialized in LES in every instance. In doing so, the Applicant ignores language in LES that clearly indicates the Commission's intention to retain discretion to use different and more rigorous standards as circumstances warrant. The LES decision emphasized that the "Part 70 financial qualification regulations contemplate a case-by-case inquiry to determine whether an applicant 'appears to be financially qualified'." LES at 298. The Commission explicitly found that it retained significant discretion:

> The general language of Part 70 leaves the Commission free to review the reasonableness of an applicant's financial plan in light of all relevant circumstances. In some cases this review might lead the Commission to apply any or all of the criteria imposed by Part 50.

LES, 46 NRC at 302. For these reasons, even if the Board concludes that it may look to LES for guidance in interpreting Part 72, it should not accept the Applicant's argument that LES binds the Board to the proposed license conditions.

II. The Applicant's and NRC Staff's Responses Demonstrate a Genuine and Material Dispute with the State Regarding the Appropriateness and Adequacy of the Proposed License Conditions.

Below the State addresses the specific arguments relating to the three new proposed bases to Contention E, with the exception of the Applicant's argument relating to LES and the Commission's Order, which is addressed in the above section.

A. Basis 11 Does Not Assert There May Never Be Reliance on License Conditions as Claimed by the Applicant and the Staff.

The Staff argues that the State's Basis 11 lacks a legal foundation and should not

be admitted. Staff Response to E at 10. The Staff interprets Basis 11 as saying: "financial assurance must be shown to exist prior to licensing without permitting any reliance on the applicant's commitments or legally binding license conditions." Id. at 11 (*emphasis in original*). This is a curious statement because Basis 11 is a specific challenge to "the Staff's proposed license conditions LC 17-1 and LC 17-2." State's Request, Contention E at 4. Basis 11 does not allege that there can be no reliance whatsoever on appropriate license conditions to meet the financial assurance requirements. The Staff misapprehends the scope of Basis 11.

The basic concern of the State is the Staff's chief reliance on the proposed license conditions to implement 10 CFR § 72.22(e) at the neglect of conducting a financial analysis prior to license issuance of whether PFS is financially qualified to obtain a Part 72 license. As the Commission found in Gulf States Utilities Co. (River Bend Station, Unit 1), CLI-94-10, 40 NRC 45, 52 (1994), "[a] Staff conclusion alone is not enough to defeat [intervenor's] ... right to litigate a contentions." Such is the case here too. Furthermore, the Staff's conclusion rests, in part, on 10 CFR § 72.44(a) which the Staff notes "contemplates the issuance of an ISFSI license with appropriate license conditions in place." Staff Response to E at 11. The State is not questioning "appropriate" license conditions; the State is questioning license conditions LC 17-1 and LC 17-2 in the SER as inappropriate.

The Staff views Contention E as limited to litigating the Applicant's cost estimates, and thus concludes that the State "may litigate all pertinent financial issues."

Staff Response to E at 12. Litigating the Applicant's construction and operating costs will only arrive at what dollar amount is needed to construct and operate the facility, not whether PFS has the ability to obtain such funds. Moreover, those litigated costs will not be paired with the funds the Applicant must have available at the time those costs will be incurred. Thus, without litigating the proprietary of imposing license conditions LC 17-1 and LC 17-2, the State will be deprived of its right to a hearing on whether the Applicant is financially qualified.

In addition to the arguments based on LES and the Commission's Order, the Applicant argues that an up-front determination is merely "the State's view of what NRC regulations and policy ought to be." Applicant's Response to E at 9. The State did not argue the up-front determination requirement in a vacuum. It appears obvious from the caption of § 72.22, "Contents of application: General and financial information," that the information that must be contained in the PFS application is information showing how PFS has reasonable assurance of obtaining the necessary funds to cover construction costs and operating costs over the planned life of the ISFSI. *See* 10 CFR § 72.22(e). The application is earlier in time than license issuance. Thus, PFS, in its application must show something more than a promise that it will be able to obtain funds at some later date to demonstrate its financial qualifications.

The Applicant also argues the scope of the hearing is limited to the license application. Applicant's Response to E at 11-12. This is a circular argument. The State's complaint is that the Applicant does not have sufficient detail in its application.

Therefore, the scope of the hearing should not be determined by the egregious lack of detail in the application about the Applicant's financial qualifications. Furthermore, the Applicant cites various procedural matters that are determined post-license. The State does not argue that minor administrative details cannot be left to post-license determination. However, to defer a substantive decision that must be measured against subjective standards, as the proposed license conditions would require, to various future post-license dates does deprive the State of legitimate means of protecting its interest by litigating whether the Applicant is financially qualified to operate a storage facility in this state.

B. It Is Unclear from the Record Whether the Staff Is Inappropriately Applying the Financial Assurance Rule or Granting the Applicant an Exemption from the Rule.

The State proposed Basis 12 because, based on the record, it was difficult to ascertain whether the Staff was inappropriately applying the financial assurance rule or granting the Applicant an exemption from the rule. Based on the Board's review of the issues before it relating to Contention E, it may still be appropriate to assume that the Staff granted the Applicant an exemption from the rule without demonstrating the need for such an exemption.

C. The Responses Do Not Refute the Substance of Basis 13.

The Staff does not oppose the admission of Basis 13 to the extent that it is a factual challenge to the adequacy of the Staff's proposed license conditions and not a impermissible claim on the use of license conditions, per se. Staff's Response to E at 15.

As discussed above, the State is not challenging the use of license conditions in general but is challenging the use LC 17-1 and LC 17-2 to implement the rule.

The Applicant claims that the license conditions proposed by the Staff are not vague and open ended, and in fact provide adequate standards against which performance can be judged. Applicant's Response to E at 15. PFS has a simplistic approach to demonstrating it is financially qualified. It implies that all that is required is simply arithmetic, *i.e.*, adding equity, revenue, and debt and comparing it to total cost. This does not address the numerous questions the State has raised in its Resp. to Summary Disposition at 14-15, or State's Reply to NRC Staff's Response to Applicant's Motion for Partial Summary Disposition of Utah Contention E at 7-10.

The Applicant asserts that it does not ask "the Commission to do more than it did in LES." Applicant's Response to E at 14. LES is not applicable to Part 72. Even if the Board looks to LES for guidance, however, it should be aware of the requirement in LES for a case-by-case evaluation of financial qualifications. LES did not authorize the wholesale application of LES-based license conditions to all NRC financial assurance determinations.

The Applicant cannot claim that the second license condition relating to Service Agreements is clear. The terms and conditions of those agreements are a total mystery both to the State and the Staff. It is important that the terms and conditions of any service agreement proposed by PFS be subject to an adjudicatory hearing because that is one of the major sources of revenue to fund the Applicant's operation. Basis 13 seeks to litigate

such issues.

The Applicant also claims that it will amortize any debt used to finance construction of the facility. It is unclear from the record that this requirement is part of the license conditions. This is one of the matters within the scope of Basis 13.

III. The State's Amended Bases Meet the Late-Filed Factors.

A. The State's Request for Admission of Late-filed Bases for Utah Contention E Is Timely.

The Staff acknowledges the timeliness of the State's late-filed bases. Staff Response to E at 8. The Applicant, however, asserts the State's late-filed bases are "unjustifiably late." Applicant Response to E at 18. The Applicant argues the State should have filed its Request for Admission of these bases after the State received notice from the Applicant – through discovery responses, an RAI response, and a partial motion for summary disposition – that the Applicant intended to rely on two funding commitments to fulfill licensing requirements.

The Applicant's timeliness arguments are analogous to arguments that have previously been rejected by this Board and are just as incorrect in this instance. When the State previously attempted to amend Contention L based on the Applicant's request for a regulation exemption, the Licensing Board ruled that the State's request premised on the Applicant's action was premature and stated that "the question of admitting or amending contentions relative to the PFS exemption request must await favorable staff action on the request." LBP-99-21 at 12 (May 26, 1999).

The Applicant has taken a bold and daring approach in proposing commitments that would defer any determination by the Staff of whether the Applicant meets 10 CFR § 72.22(e) until after license issuance. Moreover, the Applicant's plans for phased construction and operation of the facility would require the Staff to make multiple determinations about the Applicant's financial qualifications to proceed with future expansion. It was reasonable for the State to assume, as it considered when to file its Request for Admission of Late-filed Bases, that PFS's proposed commitments in the license application were analogous to the Applicant's unconventional proposal for Contention L. Similar to the amendment to Contention L, therefore, it was reasonable for the State to assume that its time for requesting an amendment to Contention E bases would not begin until the State received a copy of the actual license conditions proposed by the Staff.

The Applicant also argues that the State should have submitted new contentions when PFS first refused to respond to discovery that was directly related to an admitted basis for Contention E. If the Applicant chooses to take the brazen approach of not responding to relevant discovery because the Applicant deems that its commitments negate admitted bases, the Board should not countenance such behavior by accepting the Applicant's argument about "notice" to the State.[4]

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[4] Such intransigence to answering relevant discovery occurred prior to PFS filing a Motion for Partial Summary Disposition and has caused the State to file numerous motions to compel responses to discovery.

The State's approach to timeliness is reasonable. License conditions relative to financial qualification must be issued by the NRC Staff, and must be worded to the Staff's satisfaction. In order to avoid wasting the Board's resources hearing disputes over possible contentions that may become mooted or that will have to be changed if the Staff rejects or modifies a proposed licensing approach, timeliness must be measured from the date the Staff acts favorably on the Applicant's unconventional request. The Applicant's complaints about timeliness must therefore be rejected; the State's request was timely filed within 8 days of its receipt of the reissued SER, which contained the first complete notice the State had of the Staff's proposed license conditions.[5]

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[5] The Applicant does not argue that the time for the State to file its request could have started on December 15, 1999, when the Staff filed its "Statement of Its Position Concerning Group I-II Contentions, ("Staff Position"), but the Staff, while accepting the timeliness of the State's petition, suggests the State could have done so. The Staff in its Position recommends license conditions that prior to construction and operation, require PFS to "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." Staff Position at 4. However, the Staff Position does not identify specific license conditions; it does not even indicate whether it would rely solely, or just partially, on the license conditions proposed by the Applicant. Moreover, the implied license conditions in the Staff's Position are not consistent with the final license conditions as proposed in the revised SER in that the former would prohibit construction until funding for both construction and operation was assured (id.), while the latter would prohibit construction only until funding for construction was assured (SER at 17-7). Again, in order to avoid wasting Licensing Board resources with arguments about hypothetical license conditions, the State should not be required to amend a contention until it receives notice of the actual license conditions proposed by NRC Staff.

B. The State Meets the Other Four Late-Filed Factors in 10 CFR § 2.714(a)(1).

The Staff agrees that the other four late-filed factors favor accepting the State's Request for Admission. Staff's Response to E at 8-9. The Applicant, however, has complained that the State has not demonstrated that acceptance of the late-filed bases would contribute to the sound development of the record. Applicant's Response to E at 20. Specifically, the Applicant complains that the State's expert affidavit is a "skeletal proffer" in that it does not summarize his testimony, but instead incorporates it by reference. Id. The Applicant's complaint must be evaluated in the context of this proceeding. Hundreds of pages of motions, responses, and replies are currently before the Board on the matter that is the subject of this Request for Admission of Late-filed Bases. The State has filed detailed arguments about its position, supported by affidavits from its expert Michael Sheehan. Given this very complete record, incorporation of some matters by reference is reasonable.

Even without the references to other documents, however, the affidavits filed with the State Request, Contention E provide sufficient information about the proffered testimony. To demonstrate the development of a sound record, the State offers that "Dr. Sheehan's testimony would include the specifics of why the proposed license conditions do not provide reasonable assurance that the Applicant will be capable of providing necessary funds to construction, operation and decommissioning the PFS facility." State Request, Contention E at 9; adopted by expert Dr. Sheehan through his Declaration at

paragraphs 6-7. State Request E, Exhibit 1 at ¶¶ 6-7. Dr. Sheehan's declaration, paragraphs eight through ten, also describe Dr. Sheehan's testimony. Id. at ¶¶ 8-10.

The Applicant has also complained that the admission of the late-filed bases would broaden and delay the proceedings. Applicant Response E at 20. The State does not believe admission would broaden or delay the proceedings significantly, but even if the Applicant is correct, its conclusion that the bases should be rejected for that reason is extremely unfair. It is the Applicant who has chosen to use the challenged mechanisms to demonstrate its financial qualifications. The State is simply following the Applicant down the road the Applicant has taken. It is extremely cynical of the Applicant now to complain about the length or difficulty of the route selected.

CONCLUSION

For the reasons stated above, the Board should admit Bases 11, 12, and 13 to Contention Utah E.

DATED this 11th day of February 2000.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S REPLY TO APPLICANT AND NRC STAFF'S RESPONSE TO STATE OF UTAH'S REQUEST FOR ADMISSION OF LATE-FILED BASES FOR UTAH CONTENTION E was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 11th day of February, 2000:

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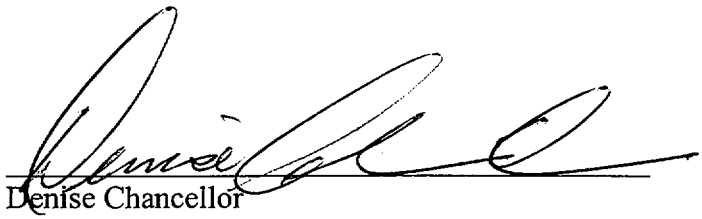

Denise Chancellor
Assistant Attorney General
State of Utah

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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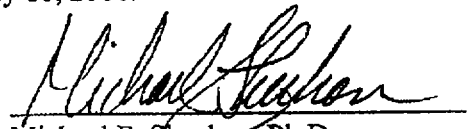
PRIVATE FUEL STORAGE, LLC (Independent Spent Fuel Storage Installation)	)	ASLBP No. 97-732-02-ISFSI
	)	February 11, 2000

DECLARATION OF MICHAEL F. SHEEHAN, Ph.D. IN SUPPORT OF STATE OF UTAH'S REPLY TO APPLICANT'S AND NRC STAFF'S RESPONSES TO UTAH'S REQUEST FOR ADMISSION OF LATE-FILED BASES FOR UTAH CONTENTION E

I, MICHAEL F. SHEEHAN, Ph.D., hereby declare under penalty of perjury and pursuant to 28 U.S.C. § 1746, that I assisted the State of Utah in preparing the State's February 11, 2000 Reply to Applicant's and NRC Staff's Responses to Utah's Request for Admission of Late-filed Bases for Utah Contention E, and that the statements contained in the State's Reply are true and correct to the best of my knowledge, information and belief. In addition, I assisted the State in preparing the State's January 26, 2000 Request For Admission of Late-filed Bases for Utah Contention E.

Executed this February 11, 2000.



Michael F. Sheehan, Ph.D.