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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

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) Docket No. 72-22-ISFSI

)

PRIVATE FUEL STORAGE, LLC
(Independent Spent Fuel
Storage Installation)

)

) ASLBP No. 97-732-02-ISFSI

)

) March 7, 2000

**STATE OF UTAH'S RESPONSE TO
NRC STAFF'S FEBRUARY 29, 2000
MOTION FOR PROTECTIVE ORDER
REGARDING UTAH CONTENTION H**

INTRODUCTION

The State of Utah hereby responds to the NRC Staff's Motion for Protective Order, and Response to "State of Utah's Motion to Compel NRC Staff to Respond to State of Utah's Fifth Set of Discovery Requests Regarding Utah Contention H" (February 29, 2000) ("Motion for Protective Order"). The Staff seeks a protective order in response to State of Utah's Motion to Compel NRC Staff to Respond to State of Utah's Fifth Set of Discovery Requests Regarding Utah Contention H (February 22, 2000).¹ ("Motion to Compel"). The Motion for Protective Order should be denied.

FACTUAL AND PROCEDURAL BACKGROUND

The State's Fifth Set of Discovery Requests Directed to the NRC Staff contain

¹ The contested discovery requests consist of Request for Admission Nos. 1-6, Interrogatories Nos. 9 and 10, and Document Requests Nos. 1, 5, 6, and 7.

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various requests for admissions, document requests, and interrogatories which seek information relating to the NRC Staff's evaluation of thermal analyses performed by Holtec, International. These thermal analyses relate to the design of the HI-STORM 100 storage casks to be used at Private Fuel Storage, L.L.C.'s ("PFS's") proposed spent fuel storage facility, as well as the generic designs of the HI-STORM 100 and HI-STAR 100 storage cask systems. The State seeks information about the Staff's evaluation for both the HI-STORM 100 and HI-STAR 100 cask systems, because the Preliminary Safety Evaluation Report ("SER") for the generic HI-STORM 100 cask design references a computer analysis performed by the NRC Staff for the HI-STAR 100 storage cask system, giving the clear implication that the Staff relied in part on the HI-STAR 100 evaluation for its approval of the HI-STORM 100 thermal design.² The relevant language in the Preliminary SER reads as follows:

4.5.4 Confirmatory Analysis

The staff reviewed all inputs, assumptions, *methodology*, and *results* of the applicant's temperature and pressure analyses which were submitted in support of the SAR. All the assumptions were found to be in compliance with NUREG-1536 Section 4.V.5.(c). Input parameters are consistent with design values for the HI-STORM overpack. The applicant selected suitably bounding and appropriate boundary conditions for normal, off-normal, and accident conditions. *Previous staff evaluation of the applicant's HI-STAR 100 SAR's FLUENT computer code*

² The Staff has done no independent computer analysis to confirm the results of the thermal analysis performed by Holtec for the HI-STORM 100 thermal design. The Staff appears to have done only one independent computer analysis that is relevant to the HI-STORM storage cask system that PFS intends to use at its facility, and that is the computer analysis that was done for the HI-STAR 100 cask system, *i.e.*, the computer analysis referred to in Section 4.5.4 of the SER for the HI-STORM 100 cask system.

results, using the ANSYS finite element computer code, confirmed the temperature calculation results of this method. The staff performed independent calculations for the form loss and friction loss coefficients used by the applicant to simulate the hydraulic characteristics of the internal air passage. The applicant's form loss coefficients were found to be suitably bounding and applicable to the specific geometry of the HI-STORM 100 air passages. The staff evaluated and accepted the applicant's selected heat transfer coefficients. *The temperature and pressure results were found to be correctly calculated using the identified inputs, assumptions, and methodology.*

Holtec International Hi-STORM 100 Cask System, Preliminary Safety Evaluation Report at 4-8 (July 30, 1999) (emphasis added). The Staff objects to the discovery requests.

ARGUMENT

Requests for Admissions and Document Production Requests

The standard for discovery with respect to requests for admission and requests to the Staff for production of documents is one of relevance. *See* 10 C.F.R. §§ 2.742(a), 2.744(a). The standard of relevance in discovery is very broad, and includes information that could reasonably lead to the discovery of admissible evidence. *Safety Light Corporation* (Bloomsburg Site Decontamination), LBP-92-3A, 35 NRC 110, 111-12 (1992). Contrary to the Staff's argument, the State's discovery requests meet that standard.³

There is no dispute that PFS intends to use the HI-STORM 100 cask system at

³ The Staff observes in footnote 4 that with the exception of Interrogatories 9 and 10, the State has not moved to compel responses to the disputed discovery on grounds other than relevance. Based on a conversation with NRC Staff counsel, it is the State's understanding that the Staff will reconsider its other objections to the State's discovery if the discovery is found to be relevant. *See* Motion to Compel, footnote 1.

the PFS facility. Nor is there any dispute that in support of its safety evaluation of the thermal analysis for the PFS facility, the Staff relies in part on the generic Staff safety evaluation of the HI-STORM 100 cask system. This generic safety evaluation is reported in the July 30, 1999 Preliminary SER for the HI-STORM 100 cask system. The question posed by this discovery dispute is whether the State is entitled to use the discovery process to investigate representations in the HI-STORM 100 SER indicating the Staff's previous reliance on some portion of the HI-STAR 100 SER for its safety evaluation of the thermal analysis for the HI-STORM 100 cask system, or whether discovery may be denied based on the Staff's current denial of that reliance.

According to the Staff, there is "no basis" for the State's assertion that the Staff relied for its evaluation of the HI-STORM 100 thermal analysis on the previous Staff evaluation of the HI-STAR 100 thermal analysis. Motion for Protective Order at 5. The Staff argues that "while the HI-STORM Preliminary SER mentions the ANSYS computer analysis that was performed in connection with the Staff's HI-STAR evaluation, the Staff did not rely on that analysis as part of its HI-STORM thermal design review." Motion for Protective Order at 5 (emphasis in original). In support of this argument, the Staff points to its discovery responses, which state that the Staff did *not* rely on the HI-STAR 100 safety evaluation in support of the HI-STORM 100 safety evaluation. In a footnote, the Staff further explains that the HI-STORM SER is a "preliminary, draft document," and that revisions to the final version are contemplated. *Id.*, footnote 6 (emphasis in

original).⁴

The Staff's argument that it did not previously rely on the HI-STAR 100 safety evaluation for the HI-STORM 100 SER is belied by the plain language of Section 4.5.4 of the HI-STORM 100 SER, which is quoted above at pages 2-3. It is quite clear from that language that the Staff considered that the ANSYS computer analysis performed by the Staff for the HI-STAR 100 SER confirmed the results of the HI-STORM 100 thermal analysis. Moreover, the fact that the SER is "preliminary" in nature and may be changed later on does not alter this past reliance. Even if the Staff now disavows the relevance of the HI-STAR 100 safety evaluation to the HI-STORM 100 review, the Staff's past reliance raises a legitimate area of inquiry.

For instance, the State seeks the production of documents relied on by the Staff in preparing the HI-STAR 100 review in order to evaluate what the HI-STAR 100 review consisted of and whether it had results that are applicable and significant in relation to the evaluation of the HI-STORM 100 design. The State also seeks to inquire into the circumstances that may have affected the Staff's reversal of its reliance on the HI-STAR safety evaluation for the HI-STORM 100 Preliminary SER. The request includes documents related to the significance for the HI-STORM safety review of the departure

⁴ As further grounds for its relevance objection, the Staff argues that the HI-STAR 100 storage cask system will not be used at the PFS facility. Motion for Protective Order at 6. The relevance of the HI-STAR 100 thermal safety evaluation is not based on any intended use of the HI-STAR casks at the PFS facility, but on the relationship of the Staff's HI-STAR 100 safety evaluation to the Staff's HI-STORM 100 safety evaluation.

from NRC of Steven Hogsett, the agency reviewer who performed the ANSYS analysis, and the apparent loss of the documentation of his analysis. These documents may show the reasons for the Staff's reversal of its former reliance on the HI-STAR 100 SER, and cast light on a number of legitimate questions raised by the Staff's change of position, such as whether the Staff dropped its reliance on the HI-STAR 100 ANSYS analysis because the analysis showed problems that could reflect negatively on the thermal analysis for the PFS facility; or whether the Staff considered the ANSYS analysis of HI-STAR to be necessary for its evaluation of the HI-STORM thermal design, but nevertheless dropped its reliance because records of the ANSYS analysis no longer exist and the Staff does not want to go to the expense of repeating it. This information could yield admissible evidence going to the weight of the Staff's testimony regarding its approval of the HI-STORM 100 thermal analysis.

Moreover, a comparison between the HI-STORM SER and the Staff's discovery responses shows significant discrepancies in their representations regarding whether any independent analysis at all was performed by the NRC Staff for the HI-STORM 100 safety evaluation. *See* Motion to Compel at 4. Exploring the reasons for these discrepancies may lead to the discovery of admissible evidence regarding whether the HI-STAR 100 review yielded results that reflected poorly on the HI-STORM 100 design; or whether some elements of the Staff's review of the HI-STAR 100 cask system that may have been considered necessary in the past were abandoned simply because the analyst was no longer available and the agency did not keep his records. Such evidence would go

to the weight of the Staff's testimony regarding its evaluation of the thermal analysis for the PFS facility.

Interrogatories

Pursuant to 10 C.F.R. § 2.720(h), the standard for interrogatories to the NRC Staff is whether the answers are (a) reasonably available from some other source and (b) they are necessary to a proper decision in the proceeding. The information sought by the Interrogatories clearly is not available from any other source, because the only NRC Staff documents in the NRC's Public Document Room relating to the HI-STAR and HI-STORM thermal analyses are the preliminary SERs.

The answers to Interrogatories 9 and 10 are necessary to a proper decision in this case. The NRC Staff inexplicably dropped its reliance on the HI-STAR 100 SER for the HI-STORM 100 safety evaluation. Both of these interrogatories seek information intended to shed light on the reasons for the Staff's reversal in position. Interrogatory 9 seeks information regarding the identity of the individuals who performed the safety reviews for the HI-STAR and HI-STORM cask systems, when they left their positions or the agency (if applicable), and whether they left complete records of their work. The State makes this inquiry to follow up on the very unusual information provided in the Staff's previous discovery responses. These responses appear to indicate that the individual who performed the HI-STAR 100 computer analysis did not do so in his capacity as a member of the NRC Staff; that he left the agency; and that the agency does not have any records of his analysis. *See* NRC Staff's Objections and Responses to the

State of Utah's Third Set of Discovery Requests Directed to the NRC Staff (Utah Contention H), Response to Request for Admissions Nos. 16, 17, and 18 at 11-12 (January 10, 2000). This information raises a significant question about whether Mr. Hogsett's departure from the agency and the lack of any surviving documentation indicates any disagreement within the agency regarding the adequacy of Holtec's thermal analyses for its cask systems. It also follows that the State reasonably wishes to determine whether any other Staff members participated in the HI-STAR 100 safety evaluation, and whether the results of their analyses still exist, and whether they shed light on the adequacy of the HI-STORM 100 thermal design. Finally, since Mr. Hogsett is no longer employed at the NRC, it is not possible to depose him under the ordinary process of discovery. Therefore, the State's requests for admissions and document production requests are all the more essential to the State's understanding of the relationship between the HI-STORM and HI-STAR safety evaluations.⁵

Interrogatory 10 seeks an explanation for the discrepancy between statements made in the Staff's discovery responses and the SERs for the HI-STORM and HI-STAR cask systems. An explanation of this discrepancy is necessary in order to determine what exactly the Staff relies on for its safety evaluation of the HI-STORM 100 cask system, and whether the Staff's change in position is based on justifiable safety-related reasons.

⁵ The Staff also objects to the burdensomeness of the Interrogatory 9, but provides no information whatsoever to indicate that more than a handful of individuals performed in the analyses. Therefore, because it is unsupported, this objection should be rejected.

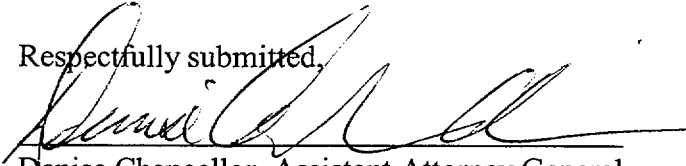
Contrary to the Staff's argument, this discrepancy is clearly stated and is obvious from a comparison of the discovery responses and the SER. The question should be answered.

CONCLUSION

For the foregoing reasons, the Staff's Motion for Protective Order should be denied, and the State's Motion to Compel should be granted.

DATED this 7th day of March, 2000.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Denise Chancellor", is written over a horizontal line.

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CERTIFICATE OF SERVICE

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I hereby certify that a copy of STATE OF UTAH'S RESPONSE TO
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REGARDING UTAH CONTENTION H was served on the persons listed below by
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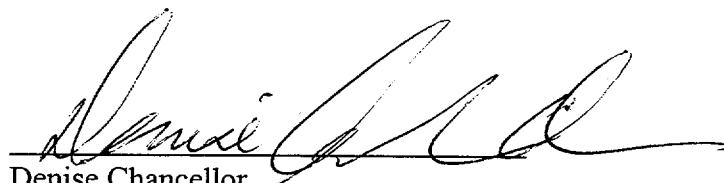
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