

**RAS 1802**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

**DOCKETED 06/12/00**

**SERVED 06/12/00**

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman  
Dr. Jerry R. Kline  
Dr. Peter S. Lam

In the Matter of

PRIVATE FUEL STORAGE, L.L.C.

(Independent Spent Fuel Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

June 12, 2000

MEMORANDUM AND ORDER  
(Ruling on Discovery Requests  
Relating to Contention Utah L)

Relative to contention Utah L, Geotechnical, intervenor State of Utah (State) has pending a February 22, 2000 motion asking the Board to compel NRC staff responses to portions of the State's fifth and sixth sets of discovery requests directed to the staff. The staff has responded with a February 29, 2000 motion for protective order and response to the State's motion to compel, to which the State filed a March 7, 2000 reply.

As is detailed below, we deny in part and grant in part the State's February 22, 2000 motion to compel.

A. State Document Request No. 4 in State Fifth Set of Discovery Requests

DISCUSSION: [State] Motion to Compel NRC Staff to Respond to State's Fifth and Sixth Set[s] of Discovery Requests (Contention L) (Feb. 22, 2000) at 4-5 [hereinafter State Motion]; NRC Staff's Motion for Protective Order, and Response to "[State] Motion to Compel NRC Staff to Respond to State's Fifth and Sixth Set[s] of Discovery Requests (Contention L)"

(Feb. 29, 2000) at 3-5 [hereinafter Staff Response]; [State] Response to NRC Staff's Motion for Protective Order (Utah Contention L) (Mar. 7, 2000) at 3 [hereinafter State Response].

RULING: At issue relative to this portion of the State's motion is Document Request No. 4, which asks for specific cask stability analyses relied upon by the staff to justify the use of a 2000-year return interval for the probabilistic seismic analysis submitted by applicant Private Fuel Storage, L.L.C., (PFS) as part of its pending request for an exemption from the existing deterministic requirements of 10 C.F.R. Part 72. Although the staff has interposed a number of objections to this request, in its response it indicates that neither the PFS exemption nor the staff's review of that exemption are based upon "cask stability analyses." The State correctly points out that this answer effectively resolves its request. Consequently, as to this point, the State's February 22, 2000 motion to compel is denied as moot.

B. Admission Request Nos. 10, 11, and 12 in State's Sixth Set of Discovery Requests

DISCUSSION: State Motion at 5-7; Staff Response at 6-8; State Response at 3-5.

RULING: This portion of the State's motion seeks to compel staff answers to three admission requests (Nos. 10, 11, and 12) relating to the question of the adequacy of the basis for 2000-year return period interval endorsed by the staff in its December 1999 Safety Evaluation Report (SER) for use by PFS relative to its probabilistic seismic hazard analysis. As we have noted in our ruling today regarding a State request to permit the late-filed amendment of contention Utah L to contest the use of this return interval, such a request is not ripe until the staff has completed its review of the exemption request. See LBP-00-15, 51 NRC \_\_, \_\_ (slip op. at 7-8) (June 1, 2000). These discovery requests must wait as well. The State's motion to compel as to these items thus is denied.

C. Admission Request Nos. 13, 14, 15, and 16, and Interrogatory Nos. 3 and 4 in State's Sixth Set of Discovery Requests

DISCUSSION: State Motion at 7-8; Staff Response at 8-10; State Response at 5-8.

RULING: According to the State, the first three admission requests (Nos. 13, 14, and 15) are intended to determine whether or not the staff agrees with the State's position that the PFS design basis ground motions derived from what the State refers to as the PFS "hybrid" deterministic/probabilistic seismic analysis put forth in its original application and from the 1000-year and 2000-year return period analyses put forth in support of the PFS exemption request are less than the maximum vibratory ground motions so that there is some probability those design basis ground motions will be exceeded. Admission Request No. 16, on the other hand, is intended to discern whether the staff considers the concept of cask tipover a factor in determining what design basis ground motion is acceptable at the PFS site. Interrogatory Nos. 3 and 4, in turn, are follow-on inquiries to these admission requests. The State also declares that, in the event of an affirmative answer relative to any one of the first three admission requests, Interrogatory No. 3 is intended to have the staff explain the means it finds acceptable for determining whether or not the design basis ground motions had been exceeded in the aftermath of a seismic event. Interrogatory No. 4 is intended to serve a similar purpose in connection with Admission No. 16 by probing what ways are acceptable to the staff to mitigate the hazard of a cask tipover.

In response to the staff assertion that the admission requests are impermissibly vague and ambiguous, the State maintains they should be readily understandable, especially to those with a technical background. Indeed, given the discussion in the staff's response, see Staff Response at 9 n. 9, we are inclined to agree. Accordingly, the State's motion to compel is granted relative to Admission Nos. 15 and 16, and any corresponding responses to Interrogatory Nos. 3 and 4, as they involve a deterministic analysis, but is denied as to Admission Nos. 13, 14, and 16 as they seek an answer based on a probabilistic analysis.

Absent some other agreement between the parties, these admissions and the corresponding interrogatories should be answered on or before Monday, July 3, 2000.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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G. Paul Bollwerk, III  
ADMINISTRATIVE JUDGE

Rockville, Maryland

June 12, 2000

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\*Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant PFS; (2) intervenors Skull Valley Band of Goshute Indians, Ohngo Gaudadeh Devia, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State; (3) petitioner William D. Peterson; and (4) the staff.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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|---------------------------------|---|------------------------|
| In the Matter of                | ) |                        |
|                                 | ) |                        |
| PRIVATE FUEL STORAGE, L.L.C.    | ) | Docket No. 72-22-ISFSI |
|                                 | ) |                        |
| (Independent Spent Fuel Storage | ) |                        |
| Installation)                   | ) |                        |

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING ON DISCOVERY REQUESTS RELATING TO CONTENTION UTAH L) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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(RULING ON DISCOVERY REQUESTS  
RELATING TO CONTENTION UTAH L)

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[Original signed by Adria T. Byrdsong]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 12<sup>th</sup> day of June 2000