

June 7, 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S RESPONSE TO "APPLICANT'S BRIEF
ON THE SCOPE OF UTAH CONTENTION S, BASIS ONE"

Pursuant to the Atomic Safety and Licensing Board's "Memorandum and Order (Granting Joint Motion to Approve Stipulation on Contention Utah S and Outlining Administrative Matters)" (Memorandum and Order), dated May 1, 2000, the staff of the Nuclear Regulatory Commission (Staff) hereby responds to "Applicant's Brief on the Scope of Utah Contention S, Basis One," dated May 31, 2000. The Staff agrees with the Applicant that the issue set forth in amended Basis One is outside of the scope of Contention S and, therefore, it should be excluded from litigation in this proceeding.

DISCUSSION

On April 7, 2000, the State of Utah and Private Fuel Storage, L.L.C. (Applicant) filed "Joint Motion By the State of Utah and the Applicant to Approve Stipulation For the Hearing of Utah Contention S." In the Joint Motion, the Applicant and the State proposed stipulated language for the bases of Utah Contention S, while the Applicant reserved its right to argue that Amended Basis One was outside the scope of Contention S.¹ Amended Basis 1 asserts that the Applicant's letter of credit does not include funds for the decommissioning of the storage casks. Specifically, Amended Basis 1 states as follows:

¹ The Board granted the Joint Motion and set a briefing schedule for Amended Basis One. See Memorandum and Order at 3.

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Basis 1: The Applicant has failed to provide reasonable assurance, as required by 10 CFR § 72.30(b), that funds will be available to decommission the ISFSI in that the letter of credit PFS intends to obtain "in the amount of \$1,631,000 to cover the estimated facility and site decommissioning costs, exclusive of the storage casks," LA, App. B, p. 5-2, does not include funds for the decommissioning of the storage casks.

The Applicant asserts that the original bases did not allege that the letter of credit must cover storage cask decommissioning or that PFS could not prepay cask decommissioning costs prior to the use of each cask at the facility. See Brief at 4. The Applicant additionally asserts that the Board has previously rejected as untimely the State's challenge regarding the timing of the funding submission and therefore the State should not be permitted to raise the issue at this time. See Brief at 4-5.

It is clear from the language of the original bases that the scope of the letter of credit issue was limited to the Applicant's ability to obtain a letter of credit. Contentions at 123.

Specifically, original Basis 1 states:

The Applicant has failed to provide reasonable assurance, as required by 10 CFR § 72.30(b), that funds will be available to decommission the ISFSI. The Applicant intends to obtain a letter of credit 'in the amount of \$1,631,000 to cover the estimated facility and site decommissioning costs, exclusive of the storage casks.' LA at 5-2. As a newly formed entity and without any documentation included in the application as to PFS's capital structure or assets, the Applicant offers no reasonable assurance that it will be qualified to obtain such a letter of credit. . . .

State's Contentions at 123 (emphasis added). Therefore, the Staff agrees with the Applicant that Amended Basis 1 is outside of the scope of Contention S.

It is well-established that an intervenor is "bound by the literal terms of its own contention" and that "the reach of a contention necessarily hinges upon its terms coupled with its stated bases." See *Public Serv. Co. of New Hampshire* (Seabrook Station, Units

1 and 2), ALAB-899, 28 NRC 93,97 & n.11 (1998). Accordingly, testimony concerning this issue should be excluded.

Respectfully submitted,

Catherine L. Marco

Catherine L. Marco
Counsel for NRC Staff

Dated at Rockville, Maryland
this 7th day of June 2000

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CERTIFICATE OF SERVICE

I hereby certify that copies of (1) "NRC STAFF'S RESPONSE TO 'APPLICANT'S BRIEF ON THE SCOPE OF UTAH CONTENTION S, BASIS ONE,'" (2) "NRC STAFF'S RESPONSE TO 'APPLICANT'S MOTION TO STRIKE PORTIONS OF TESTIMONY OF MICHAEL SHEEHAN REGARDING UTAH CONTENTION S,'" and (3) "NRC STAFF'S RESPONSE TO "STATE OF UTAH'S MOTION IN LIMINE TO EXCLUDE PART OF THE TESTIMONY FILED BY JOHN D. PARKYN, CONTENTION E'" in the above captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 7th day of June, 2000:

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