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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF ATTORNEY  
GENERAL  
RULEMAKING AND  
ADJUDICATIONS STAFF

In the Matter of:

) Docket No. 72-22-ISFSI

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

) ASLBP No. 97-732-02-ISFSI

) June 7, 2000

**STATE OF UTAH'S RESPONSE TO APPLICANT'S BRIEF  
ON THE SCOPE OF UTAH CONTENTION S, BASIS ONE**

The State of Utah responds to the Applicant's Brief on the Scope of Utah Contention S, Basis One, filed on May 31, 2000. As described below, the Board need not rule on whether the State has exceeded the scope of Basis One, because the State has not raised the issue in its pre-filed testimony. Therefore, the State suggests that the Board defer ruling on this issue. Instead, the Board could rule on the issue if or when the State raises it during the hearing.

In the Joint Motion by the State of Utah and the Applicant to Approve Stipulation for the Hearing of Utah Contention S (April 7, 2000) ("Stipulation"), the Applicant reserved its right to object that the original Basis One did not include funding decommissioning of the storage casks with a letter of credit.

The Stipulation has not changed the State's fundamental concern under Basis One: "The Applicant has failed to provide reasonable assurance, as required by 10 CFR § 72.22(b), that funds will be available to decommission the ISFSI." State of Utah's Contentions on the

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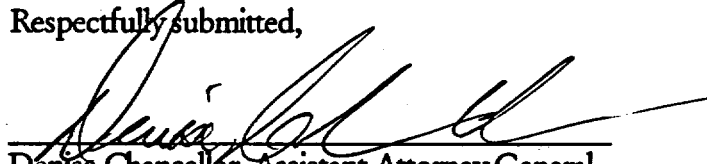
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Construction and Operating License Application by Private Fuel Storage, LLC for an Independent Spent Fuel Storage Facility (November 23, 1997) ("State's Contentions") at 123; *see also*, Stipulation, Attachment A. The original Basis 1 then merely quoted from the PFS license application, which stated that the PFS would 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." State's Contentions at 123 (*quoting* LA at 5-2). The State further added that as a newly formed entity PFS offers no reasonable assurance that it will qualify to obtain the letter of credit, incorporating Contention E by reference. Thus, the State does not believe that Basis One is limited to decommissioning costs, exclusive of storage casks but that Basis One encompasses whether funds will be available to decommission the entire ISFSI, including the casks.

Pre-filed testimony by the State's only witness for Contention S, Dr. Michael Sheehan, refers to the letter of credit in only the last paragraph of his response to question 22. Dr. Sheehan's response refers to whether the bank committed to issuing the letter of credit will increase the amount of the letter of credit if and when decommissioning cost estimates increase. Dr. Sheehan's testimony does not refer to the cost estimates for decommissioning the storage casks. Accordingly, the State believes the Applicant's motion is not ripe at this time and the Board can rule on the issue if or when the State raises it during the hearing.

DATED this 7<sup>th</sup> day of June, 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  
APPLICANT'S BRIEF ON THE SCOPE OF UTAH CONTENTIONS, BASIS ONE  
was served on the persons listed below by electronic mail (unless otherwise noted) with  
conforming copies by United States mail first class, this 7<sup>th</sup> day of June, 2000:

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

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