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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

ADJUDICATED

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 STAFF'S AND APPLICANT'S
MOTIONS TO STRIKE OR EXCLUDE PORTIONS OF TESTIMONY
OF MICHAEL F. SHEEHAN, Ph.D ON UTAH CONTENTION S**

On May 31, 2000, the Staff and the Applicant filed similar motions to strike or exclude the same portions of Dr. Sheehan's prefiled testimony on Utah Contention S. The State now responds and requests the Board to deny those motions.

The State's original Contention S, and its bases one, two, four, five, and ten, were admitted by the Licensing Board in Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 196-197, 255, *aff'd on other grounds*, CLI-98-13, 48 NRC 26 (1998). As admitted, Contention S states:

The decommissioning plan does not contain sufficient information to provide reasonable assurance that the decontamination or decommissioning of the ISFSI at the end of its useful life will provide adequate protection to the health and safety of the public as required by 10 C.F.R. § 72.30(a), nor does the decommissioning funding plan contain sufficient information to provide reasonable assurance that the necessary funds will be available to decommission the facility, as required by 10 C.F.R. § 72.22(e).

47 NRC at 255. In a Joint Motion by the State of Utah and the Applicant to Approve

Template = SECY-041

SECY-02

Stipulation for the Hearing of Utah Contention S (April 7, 2000) ("Stipulation"), the State agreed to narrow the focus of Contention S.

Both the Staff and the Applicant request that Dr. Sheehan's response to question 20 relating to the vintage of the underlying data of the costs estimates be excluded from his testimony as beyond the scope of Contention S as stipulated by the Applicant and the State and approved by the Board on May 1, 2000.¹ While the State agreed to narrow the focus of Contention S, it still retained in Basis 4:

The Applicant has failed to justify the basis for its decommissioning costs estimates of \$17,000 to decommission a storage cask and \$1,631,000 to decommission the remainder of the ISFSI in that (i) the decommissioning costs estimates do not state the year's dollars used (e.g., 1997 dollars)....

(emphasis added). See Stipulation, Attachment A.

By entering into the Stipulation, the State agreed that it would not challenge the absolute dollar amount of the estimates (e.g., \$17,000 to decommission a storage cask). The State, however, did not relinquish its ability to probe what year's dollars the Applicant used to determine its costs. To the extent that the Applicant must increase funding for decommissioning because of increased costs, it is necessary to know the baseline of those costs (i.e. the "vintage" of the costs). For example, did PFS base labor costs on the price of labor in 1997 or did PFS base labor costs on some earlier time and merely escalate the value into 1997 dollars. Such information is a prerequisite to PFS justifying its cost estimates and providing reasonable assurance that the necessary funds will be available to decommission

¹ See Memorandum and Order (Granting Joint Motion to Approve Stipulation on Contention Utah S and Outlining Administrative Matters) (May 1, 2000).

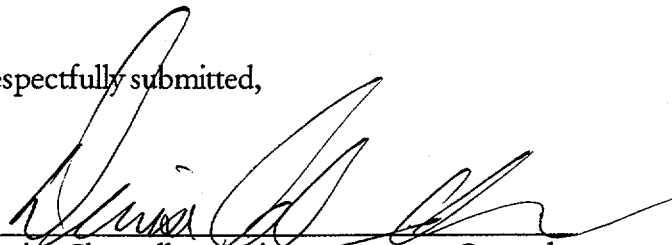
the facility. Furthermore, the Applicant only intends to increase decommissioning funding based on the consumer price index. Thus, if, for example, there is a significant rise in labor costs, it would be necessary to know upon what year's labor costs PFS based its original estimate, if costs rose more than the consumer price index. Moreover, for the NRC Staff to evaluate whether PFS needs to increase its decommissioning funds, the Staff must know the date of the underlying data from which PFS derives its costs. This information is also necessary for the State, and the public, to evaluate whether PFS's continued future decommissioning funding is adequate to decommission the facility at the end of its useful life. See 10 CFR §§ 72.22(e) and 72.30(a).

Finally, the State is particularly concerned about the Applicant's financial ability to meet increases in funding because the Applicant is a limited liability company without any independent assets. Therefore, it is necessary to pin down cost estimates with a high degree of certainty. Such a necessity parallels the Commission's rationale in Claiborne with respect to future funding commitments. Louisiana Energy Services, L.P. (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294, 307 (1997) ("LES understands its funding commitment and has seriously considered the factors that will contribute to the expense of the project it is undertaking."). Accordingly, Dr. Sheehan's testimony about the baseline year upon which the data are based (*i.e.* the vintage of the data) is admissible evidence of whether the PFS decommissioning funding plan contains sufficient information to provide reasonable assurance that the necessary funds will be available to decommission the facility, as required by 10 CFR 72.22(e).

For the foregoing reasons, the State requests the Board to deny the Staff's and the Applicant's motions to strike Dr. Sheehan's testimony.

DATED this 7th day of June, 2000.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S RESPONSE TO STAFF'S
AND APPLICANT'S MOTIONS TO STRIKE OR EXCLUDE PORTIONS OF
TESTIMONY OF MICHAEL F. SHEEHAN, Ph.D ON UTAH CONTENTIONS was
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