

November 19, 1997

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 |
| |) | |
| (Private Fuel Storage Facility) |) | ASLBP No. 97-732-02-ISFSI |

APPLICANT'S RESPONSE TO STATE OF UTAH'S
MOTION FOR A PROTECTIVE ORDER TO
REVIEW AND FILE CONTENTIONS ON
THE APPLICANT'S PHYSICAL SECURITY PLAN

The State of Utah's November 14, 1997 motion requests that the Atomic Safety and Licensing Board issue a protective order pursuant to 10 C.F.R. § 2.744(e) granting access for certain named and unnamed State employees to the Applicant's Physical Security Plan.

Although required neither by NRC rules or practice, Applicant made available a copy of its Physical Security Plan to the designated representative of the Governor of Utah pursuant to 10 C.F.R. § 73.21(c). The State now wishes to provide access to the Plan to other State employees. Applicant does not object to the grant of such a protective order to the counsel named in the State's Motion. The protective order should not, however, extend to those individuals listed in the State's Motion who are not counsel. Section 2.744(e) only authorizes disclosure to "qualified witnesses and counsel." The State has made no showing that the individuals who are not "counsel" are "qualified

witnesses." The protective order should therefore not apply to them. See Duke Power Company (Catawba Nuclear Station, Units 1 and 2), LBP-82-51, 16 NRC 167 (1982).¹

Applicant would also request that any protective order which the Board issues also applies to the following individuals, all of whom are attorneys or staff at Shaw Pittman Potts & Trowbridge, Applicant's counsel in this proceeding, and who are likely to be involved in responding to issues in which Safeguards Information might be at issue:

Ernest Blake
Paul A. Gaukler
William Hollaway
Virginia Seymour
Kimberly Steele

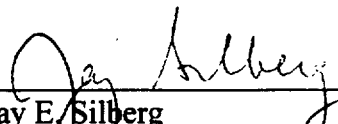
(The undersigned counsel has been qualified for access to the Safeguards Information pursuant to 10 CFR § 73.21(c)(1)(i) and therefore need not be included in any protective order.)

With respect to the two questions asked in the Board's November 17, 1997 Order, (1) Applicant understands that the NRC Staff is preparing a draft protective order, and (2) background checks are only necessary if required by the protective order. Criminal history checks for Safeguards Information appears only to be required for information from a "nuclear power reactor applicant or licensee." 10 CFR § 73.21(c)(1)(i). Since no

¹ Applicant also believes that the protective order should apply to named individuals. To the extent that the State wishes additional individuals (identified by the State as "secretarial or other support") to be covered by the protective order, those individuals should be specifically identified.

nuclear power reactor license is at issue in this proceeding, the criminal history check requirement would not apply.

Respectfully submitted,


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Dated: November 19, 1997

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Applicant's Response to State of Utah's Motion for a Protective Order to Review and File Contentions on the Applicant's Physical Security Plan" dated November 19, 1997 were served on the persons listed below (unless otherwise noted) by facsimile with conforming copies by US mail, first class, postage prepaid, this 19th day of November 1997.

G. Paul Bollwerk III, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
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* Adjudicatory File
Atomic Safety and Licensing Board Panel
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Washington, D.C. 20555-0001

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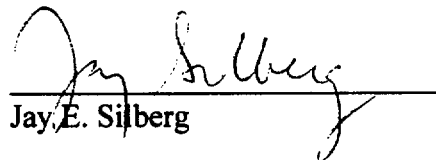
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Office of the Secretary
Attention: Rulemakings and Adjudications
Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

(Original and two copies)

* By U.S. mail only


Jay E. Silberg