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May 27, 1998

Administrative Judge G. Paul Bollwerk, Chairman  
Administrative Judge Jerry R. Kline  
Administrative Judge Peter S. Lam  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

**In the Matter of Private Fuel Storage L.L.C.(Private Fuel Storage Facility),  
Docket No. 72-22, ASLBP No. 97-732-02-ISFSI, Proposed Discovery and  
Other Schedules**

Dear Chairman Bollwerk and Judges Kline and Lam:

At the prehearing conference held May 19, 1998, the parties requested an opportunity to propose a discovery cut-off date for both formal and informal discovery. This letter provides the parties' proposed schedule for discovery and -- with respect to a significant number of the contentions -- a proposed deadline for summary disposition motions and a schedule for prefiled direct testimony and hearing. On certain scheduling matters, the parties have different positions as described below.

The parties propose to divide the contentions into two groupings for purposes of hearing. The first group would consist of most of the safety contentions while the second group would include the environmental contentions and one, and possibly more, of the safety contentions. The Staff notes that the proposed cut-off of discovery against the Staff set forth below reflects its current projection as to when its review of those matters will be completed. This projected schedule is subject to change based upon the quality and timeliness of the Applicant's responses to Staff questions.

As described more fully below, for the first group of contentions the parties propose a discovery cut-off date of March 1, 1999, a deadline for the filing of summary disposition motions of March 31, 1999 (with all responses due within 30 days as required by the NRC Rules of Practice), the filing of prefiled direct testimony no later than June 30, 1999, and commencement of hearing about 30 days later. With respect to the second group, the parties propose a discovery cut-off date of March 1, 1999 except for discovery against the NRC Staff. For discovery against the Staff, the Applicant proposes a discovery cut-off date of 60 days after the Staff's issuance of

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the Draft Environmental Impact Statement ("DEIS") for the project whereas the Staff proposes a discovery cut-off as follows: (1) on any outstanding safety issues, June 30, 1999; (2) on environmental issues, 60 days after the Staff's issuance of the Final Environmental Impact Statement ("FEIS") for the project. The State supports the Staff's position except that it objects to the Staff's proposed cut-off date of June 30, 1999 for outstanding safety issues to the extent that it would occur at the same time that the parties are either preparing or are at hearing for the contentions in group one. The State does not object to a discovery cut-off for any safety issues in group two earlier than that for environmental issues so long as it does not occur at the same time as the parties are preparing for and during hearing of contentions in group one.

The first group of contentions would include (subject to the caveat that the Staff is able to take a position on the contention sufficiently in advance of the proposed March 1, 1999 cut-off date so that the parties can complete meaningful discovery by that date) Utah Contention B, Utah Contention C, Utah Contention E (and related contentions), Utah Contention F, Utah Contention G, Utah Contention H, Utah Contention K (and related contentions), Utah Contention M, Utah Contention N, Utah Contention R, Utah Contention S (and related contentions) and Utah Contention GG.<sup>1</sup> As a general matter, the parties agree that the Staff needs to take a position with respect to the contentions included in the first group at least 60 days prior to the proposed cut-off date in order to allow completion of discovery against the Staff by the end of the proposed discovery period.

With respect to eight of the twelve contentions in the first group, the Staff expects to be able to conclude its review in time to support a proposed discovery cut-off of March 1, 1999. With respect to Utah Contentions E (financial qualifications) and S (decommissioning), the Applicant is scheduled to file responses to related RAIs on September 15, 1998. In light of this schedule, the Staff may not be able to reach a conclusion on Utah Contentions E and S in time for discovery against the Staff to be completed by the proposed cut-off date of March 1, 1999. Also, the Staff's ability to take a position with respect to Utah Contentions H (adequacy of thermal design) and GG (stability of TranStor casks during a seismic event) may be dependent

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<sup>1</sup> These are all of the safety related contentions except Utah Contention L. The parties did not include Utah Contention L because the Applicant is scheduled to file responses to Requests for Additional Information ("RAI") from the Staff on December 15, 1998 which will include additional technical studies and evaluations of the seismology of the proposed site. This schedule would not allow the Staff sufficient time to complete its review and arrive at a final position on this contention so as to allow the completion of discovery against the Staff by the proposed cut-off date of March 1, 1999. The first group also does not include Utah Contention O (and related contentions) which raise both safety and environmental issues.

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on the completion of its generic review of the cask vendor designs which may not support a March 1, 1999 discovery cut-off with respect to discovery against the Staff. Thus, four of the twelve contentions in the first group could slip to the second group to permit conclusion of the Staff's review.

As set forth above, the parties propose that the schedule for the first category of contentions include a deadline for the filing of summary disposition motions of March 31, 1999. Responses would be due in accordance with the NRC Rules of Practice, 10 C.F.R. § 2.749, which would result in all responses being filed by April 30, 1999. Assuming that summary disposition motions were filed as late as the March 31, 1999 deadline, the parties propose that prefiled direct testimony be filed by June 30, 1999, based on the assumption that the Board would have issued its rulings on summary disposition motions by about the end of May. The parties propose that the hearing be scheduled to begin about a month after the filing of the prefiled direct testimony unless a different period -- longer or shorter -- is suggested by the number and complexity of the issues.

In the event that no party waits until the March 31, 1999 deadline to file its summary disposition motions (e.g., all such motions are filed during the discovery period), the filing deadline for prefiled direct testimony, and the subsequent hearing, could be advanced. The parties would expect, however, some minimum period of time (e.g., 30 days) for the filing of prefiled direct testimony after the discovery cut-off, again depending on the number and complexity of the issues involved. The parties have agreed as a general matter to provide each other advance notice of at least two weeks prior to the filing of a summary disposition motion. It is also expected that any party who does not intend to file summary disposition motions subsequent to the close of discovery would inform the other parties and the Board of this intent so that the Board and the parties could plan accordingly.

The second group of contentions would include Utah Contention L, the NEPA environmental contentions,<sup>2</sup> and any contentions from first group for which the Staff's review could not be completed in time to support a discovery completion date against the Staff of March 1, 1999. For this second group the completion date for discovery against the Applicant and parties other than the Staff would still be March 1, 1999, except for newly developed information

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<sup>2</sup> Utah Contention O (and related contentions), Utah Contention T (and related contentions), Utah Contention U, Utah Contention V, Utah Contention W, Utah Contention Z, Utah Contention AA (and related contentions), Utah Contention DD (and related contentions), Castle Rock Contention 17, Castle Rock 20, Castle Rock 21, and OGD Contention O.

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for which additional time would be required. With respect to discovery against the Staff, the Applicant proposes a cut-off date for the completion of discovery against the Staff of 60 days after the issuance of the DEIS; new information developed by the Staff in preparing and issuing the FEIS may require additional discovery. The Staff proposes a discovery cut-off as follows: (1) on any outstanding safety issues, June 30, 1999; (2) on environmental issues, 60 days after the Staff's issuance of the FEIS for the project. As stated above, the State supports the Staff's position except that it objects to the Staff's proposed cut-off date of June 30, 1999 for any outstanding safety issues to the extent that it would occur at the same time that the parties are either preparing or are at hearing for the contentions in group one.<sup>3</sup> The parties do not propose at this time dates for the remainder of the activities with respect to this second group of contentions, but will do so as the Staff's review progresses.

Respectfully,



Jay E. Silberg  
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Paul A. Gaukler  
Counsel for Applicant

cc: Service List

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<sup>3</sup> The Staff believes that it is necessary to complete the FEIS before it takes a position on environmental issues consistent with 10 C.F.R. § 51.104(a)(1). The Applicant's position is that this regulation pertains solely to the hearing and does not apply to discovery against the Staff.

**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

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the Proposed Discovery and Other Schedules dated May 27, 1998, were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 27th day of May, 1998.

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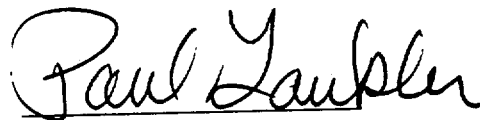
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