

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of:

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

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Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

August 6, 1999

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**STATE OF UTAH'S RESPONSE TO APPLICANT'S MOTION TO STRIKE  
PART OF THE STATE OF UTAH'S RESPONSE TO THE APPLICANT'S  
MOTION FOR SUMMARY DISPOSITION OF CONTENTION UTAH K**

The State of Utah hereby responds to the Applicant's July 30, 1999 Motion to Strike Part of the State of Utah's Response to the Applicant's Motion for Summary Disposition of Contention Utah K ("Motion"). The State of Utah voluntarily withdraws its arguments relating to Tekoi Rocket Motor Facility. *See* State's Opposition to Applicant's Motion for Partial Summary Disposition of Utah Contention K and Confederate Tribes Contention B (dated July 22, 1999), at 11 and accompanying "Statement of Material Facts in Dispute Regarding Utah Contention K and Confederate Tribes Contention B," at ¶ 1.

Notwithstanding its voluntary withdrawal, the State reserves its right to oppose similar motions or arguments in the future. The State believes there are circumstances under which it is appropriate for a party to develop information or add witnesses after the close of discovery. The State also recognizes that it has an obligation, as do other parties,

to supplement its discovery responses as necessary to identify new witnesses and provide information about the scope of their expected testimony.

The Applicant itself has relied upon additional materials and witnesses that were not available to the State during discovery. In fact, relative to risk posed by the Tekoi Rocket Motor Facility, the very issue involved in its Motion to Strike, PFS has used three witnesses that have still never been identified in PFS's discovery responses. PFS supported its Motion for Summary Disposition of Utah Contention K and Confederated Tribes Contention B ("PFS Motion for Summary Disposition") with declarations from C. Floyd Davis (PFS Motion for Summary Disposition, Attachment 2), Jeffrey Johns (PFS Motion for Summary Disposition, Attachment 3), and Wesley Jacobs (PFS Motion for Summary Disposition, Attachment 4). PFS has not identified any of these individuals as witnesses in its discovery responses, nor has it provided information about the scope of their testimony.<sup>1</sup>

Finally, the State notes that PFS's dispute with the State in this matter is essentially a discovery dispute. The Board has required the parties to confer and attempt to resolve discovery disputes prior to filing motions to compel or motions for protective

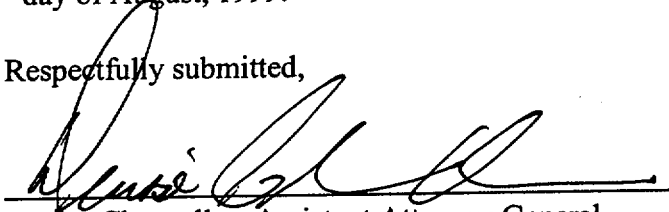
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<sup>1</sup> See Applicant's Objections and Non-Proprietary Responses to State's First Requests for Discovery (April 21, 1999) at 11-14; Applicant's Objections and Non-Proprietary (*sic*) Responses to State's Second Requests for Discovery (Group I)(June 4, 1999) at 5; Applicant's Objections and Non-Proprietary Responses to State's Second Requests for Discovery (Group II and III)(June 28, 1999) at 5-6; Applicant's Objections and Non-Proprietary Responses to State's Third Requests for Discovery (June 28, 1999) at 6.

orders. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LPB-98-7, 47 NRC at 142, 245 (1998). PFS made no such attempt before filing its Motion to Strike. The State requests that if similar situations arise in the future, PFS comply with the spirit of the Board's requirement and bring its concern to the State's attention before filing a motion.

DATED this 6<sup>th</sup> day of August, 1999.

Respectfully submitted,



Denise Chancellor, Assistant Attorney General  
Fred G Nelson, Assistant Attorney General  
Diane Curran, Special Assistant Attorney General  
Connie Nakahara, Special Assistant Attorney General  
Attorneys for State of Utah  
Utah Attorney General's Office  
160 East 300 South, 5th Floor, P.O. Box 140873  
Salt Lake City, UT 84114-0873  
Telephone: (801) 366-0286, Fax: (801) 366-0292

CERTIFICATE OF SERVICE

I hereby certify that a copy of "State of Utah's Response to Applicant's Motion to Strike Part of the State of Utah's Response to the Applicant's Motion for Summary Disposition of Contention Utah K" was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 6th day of August, 1999:

Rulemaking & Adjudications Staff  
Secretary of the Commission  
U. S. Nuclear Regulatory Commission  
Washington D.C. 20555  
E-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)  
(original and two copies)

G. Paul Bollwerk, III, Chairman  
Administrative Judge  
Atomic Safety and Licensing Board  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555  
E-Mail: [gpb@nrc.gov](mailto:gpb@nrc.gov)

Dr. Jerry R. Kline  
Administrative Judge  
Atomic Safety and Licensing Board  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555  
E-Mail: [jrk2@nrc.gov](mailto:jrk2@nrc.gov)  
E-Mail: [kjerry@erols.com](mailto:kjerry@erols.com)

Dr. Peter S. Lam  
Administrative Judge  
Atomic Safety and Licensing Board  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555  
E-Mail: [psl@nrc.gov](mailto:psl@nrc.gov)

Sherwin E. Turk, Esq.  
Catherine L. Marco, Esq.  
Office of the General Counsel  
Mail Stop - 0-15 B18  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
E-Mail: [set@nrc.gov](mailto:set@nrc.gov)  
E-Mail: [clm@nrc.gov](mailto:clm@nrc.gov)  
E-Mail: [pfscase@nrc.gov](mailto:pfscase@nrc.gov)

Jay E. Silberg, Esq.  
Ernest L. Blake, Jr.  
Shaw, Pittman, Potts & Trowbridge  
2300 N Street, N. W.  
Washington, DC 20037-8007  
E-Mail: [Jay\\_Silberg@shawpittman.com](mailto:Jay_Silberg@shawpittman.com)  
E-Mail: [ernest\\_blake@shawpittman.com](mailto:ernest_blake@shawpittman.com)  
E-Mail: [paul\\_gaukler@shawpittman.com](mailto:paul_gaukler@shawpittman.com)

John Paul Kennedy, Sr., Esq.  
1385 Yale Avenue  
Salt Lake City, Utah 84105  
E-Mail: [john@kennedys.org](mailto:john@kennedys.org)

Richard E. Condit, Esq.  
Land and Water Fund of the Rockies  
2260 Baseline Road, Suite 200  
Boulder, Colorado 80302  
E-Mail: rcondit@lawfund.org

Joro Walker, Esq.  
Land and Water Fund of the Rockies  
2056 East 3300 South Street, Suite 1  
Salt Lake City, Utah 84109  
E-Mail: joro61@inconnect.com

Danny Quintana, Esq.  
Danny Quintana & Associates, P.C.  
68 South Main Street, Suite 600  
Salt Lake City, Utah 84101  
E-Mail: quintana@xmission.com

James M. Cutchin  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
E-Mail: jmc3@nrc.gov  
(*electronic copy only*)

Office of the Commission Appellate  
Adjudication  
Mail Stop: 16-G-15 OWFN  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555  
(*United States mail only*)



Denise Chancellor  
Assistant Attorney General  
State of Utah