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December 28, 1999

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

Re: *Resolution of Discovery Dispute on Utah Contention H,
PFS Licensing Proceeding (Docket No. 72-22-ISFSI)*

Dear Administrative Judges:

As discussed in the enclosed letter from Diane Curran, counsel for the State, to William R. Hollaway, counsel for PFS, dated December 28, 1999, the State has resolved its discovery dispute with PFS regarding the production of the FLUENT computer code which was used to perform the thermal analysis for the PFS facility. Accordingly, the State is withdrawing its April 30, 1999, Motion to Compel regarding Utah Contention H discovery requests, and considers the Utah Contention H discovery matters addressed in the Board's Memorandum and Order, LBP-99-42, to be closed. I also understand, based on the State of Utah's actions herein, that PFS will withdraw its December 20, 1999, Motion for Protective Order Regarding Utah Contention H.

Sincerely,

Denise Chancellor
Assistant Attorney General

Enclosure: as stated

cc: Service list, without enclosure

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MAY CONTAIN PROPRIETARY INFORMATION

December 28, 1999

William R. Hollaway, Esq.
Shaw Pittman
2300 N Street N.W.
Washington, D.C. 20037-80007

SUBJECT: Discovery on Utah Contention H in PFS Licensing Case

Dear Bill,

I am writing to confirm that, in light of certain specific information provided by PFS in support of its December 20, 1999, motion for a protective order, the State of Utah no longer intends to seek discovery of the "decision boxes" described in my letter to you of December 16, 1999.

As you know, for the past several weeks the State and PFS were engaged in attempts to compromise on the State's discovery request for the FLUENT Code. The State had requested the FLUENT code in the belief that it was necessary to use it in order to evaluate the thermal analysis performed by Holtec regarding the thermal design of the Private Fuel Storage ISFSI. At the end of November PFS provided us with the input and output for the model and parts of the User's Manual, and the State attempted to determine whether this information was sufficient to permit us to evaluate the Holtec thermal analysis.

In making this determination, we have been frustrated by the difficulty of ascertaining, based on the information PFS has supplied, whether it is sufficient to allow us to evaluate the adequacy of the Holtec thermal analysis. The difficulty has been exacerbated by the impossibility of reading the input and output files on the computer disk that was provided, because the disk can only be read using the FLUENT Code. You and I had several rounds of correspondence in which I tried to determine whether the information provided on the printout was identical to the information on the disk and whether it constituted all of the assumptions used by Holtec, such that the thermal analysis could be reproduced without requiring any other input or assumptions.

By the middle of last week we were about to settle our discovery dispute regarding Utah's request for production of the FLUENT Code. I had written you a letter on December 9, confirming my understanding of the terms of the settlement. The letter included the statement of my understanding that: "all of the assumptions used by Holtec in its thermal analysis for PFS are accurately and completely represented in the ASCII printouts" of the input and output files. You wrote back the following day, asking me to change the phrase "all of the assumptions" to "the input (geometric data and thermophysical properties) for the model."

HARMON, CURRAN, SPIELBERG & EISENBERG, LLP

William R. Hollaway, December 28, 1999

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This proposed change caused us concern that the input and output files that had previously been provided to us by PFS contained some, but not all, of the assumptions used by Holtec in its thermal analysis, and that there were additional conceptual assumptions that had not yet been disclosed. Therefore, I wrote to you on December 14, 1999, asking that PFS and/or Holtec identify the "yes-no" and/or numerical choices made in various "decision boxes" that appear in the User's Manual for the FLUENT Code, for each of 18 zones that are identified in the input files that were used for the Holtec thermal analysis. These boxes appeared to us to reflect the conceptual assumptions made by Holtec in performing the thermal analysis.

PFS was unwilling to produce the requested information, and we couldn't reach a settlement. Therefore PFS went ahead and filed a motion for a protective order covering the requested information.

We have now reviewed the motion and the attached Declaration of Indresh Rampall, who performed the thermal analysis for Holtec and PFS, and ran the FLUENT code. Dr. Rampall's Declaration provides new information that now leads us to conclude that reviewing the decision boxes would not yield any information that Holtec actually relied on for its analysis. According to Dr. Rampall, Holtec did not use the decision boxes requested by the State in order to create its input files. Rampall Declaration, par. 11. If this is the case, obtaining the decision boxes would not assist us in evaluating the Holtec thermal analysis.

Moreover, Dr. Rampall's Declaration clarifies that the data and input files PFS has provided to us do indeed contain all of the assumptions that are necessary to understand the Holtec thermal analysis. According to Dr. Rampall, "FLUENT does not use any data or operate in any way on the basis of information in the decision boxes that is not reflected in the case files." *Id.*, par. 12. We had received a different impression from your fax message of December 10, but Dr. Rampall's representation now sets our concern to rest.

Accordingly, the State of Utah considers the matter settled. The State of Utah therefore withdraws its April 30, 1999, Motion to Compel regarding Utah Contention H discovery requests, and considers the Utah H discovery matters addressed in the Board's Memorandum and Order, LBP-99-42, to be closed. I understand, based on the State of Utah's actions herein, that PFS will withdraw its December 20, 1999, Motion for Protective Order Regarding Utah Contention H.

Sincerely,



Diane Curran

cc: Denise Chancellor
Administrative Judge Chairman Bollwerk
Administrative Judges Kline and Lam