

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

Docket No. 72-22-ISFSI

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

ASLBP No. 97-732-02-ISFSI

September 18, 2000

STATE OF UTAH'S MOTION
TO STRIKE PART OF THE STAFF'S RESPONSE
TO STATE OF UTAH'S MOTION TO AMEND
LATE-FILED CONTENTION UTAH LL

On September 14, 2000, the NRC Staff filed a pleading entitled "NRC Staff's Response to State of Utah's Motion to Amend Contention Utah LL" (hereinafter "Staff's Response"). Not only did this pleading address the State's Motion to Amend Contention Utah LL (September 7, 2000), but it went on to make arguments regarding the admissibility of Contentions Utah MM and OO, in surreply to the State of Utah's Reply to Applicant's and Staff's Responses to Late-Filed Contentions Utah LL Through OO (September 7, 2000). Pursuant to the Board's Order of September 11, 2000, the Staff was authorized *only* to respond to the State's Motion to Amend Contention Utah LL. If the Staff wished to reply to the State concerning Contentions Utah MM and OO, it was required to seek leave from the Board. Accordingly, the discussion of Contentions Utah MM and OO at pages 8-10 should be stricken.¹

¹ The State notes that it does not concede any of the arguments made by the Staff in the remainder of its pleading, which relate to the timeliness and admissibility of the addition of a new document to the basis for Contention Utah LL. The Staff's response only serves to

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If the Board decides to consider the Staff's arguments, then fairness dictates that it should also consider the following reply by the State:

1. Contention Utah MM, Subpart 1. The Staff argues that "the State appears to abandon its quarrel with the Staff's application of the INTERLINE code in the DEIS, NUREG-1714 (late-Filed Request at 14), and recasts its argument in terms of the 'internal consistency' of the Staff's analysis (State Reply at 11)." Staff's Response at 8 (emphasis in original). The Staff is incorrect. The State has not "recast" its argument. A reading of Contention Utah MM shows that the State has not challenged the Staff's use of INTERLINE per se. Rather, the State challenges the assumptions used by the Staff in employing INTERLINE, and the Staff's decision to analyze a single route using national average accident data. This is the "internal consistency."

2. Contention Utah MM, Subpart 2. The Staff argues that the assertion in the State's Reply that the Modal Study included consideration of accidents excluded from the Saricks Study "is completely absent from the Late-Filed Request." Staff's Response at 8. This is incorrect. The fourth paragraph of Contention MM, Subpart 2, specifically raises this point. See State's Request at 16-17.

3. Contention Utah MM, Subpart 3. The Staff contends that:

the State appears to abandon its previous arguments in which it compared the release fraction for CRUD with that for eleven other radionuclides (listed in Table D-4 of the DEIS) inside the fuel. Late-Filed Request at 18-19. Rather, the State is now 'assuming that the particulate release fraction used for Cobalt-60 by the Staff and the Applicant was used for the Cobalt-60 contained in the fuel assemblies and not in the CRUD[.]' *Id.* at 20.

highlight the existence of a genuine and material factual dispute between the parties.

Staff's Response at 8-9 (emphasis in original). According to the Staff, this argument is "totally missing" from Contention Utah MM. Id. at 9.

Contrary to the Staff's argument, the State has not abandoned its comparison of the release fraction for CRUD with that for eleven other radionuclides listed in Table D-4 of the DEIS. The State continues to assert that it is illogical for the DEIS to fail to make any distinction between the release fraction for Cobalt-60 and the other eleven radionuclides. If CRUD were given proper consideration in the DEIS, then the release fraction for Cobalt-60 would be significantly higher. The only conceivable explanation for this is that the DEIS uses the Cobalt-60 release fraction that is applicable solely to the Cobalt-60 contained in the fuel assemblies and not in the CRUD. Contrary to the Staff's argument, the State's explanation of its reasoning in the Reply does not add any new information that is critical to the admissibility of the contention. It simply attempts to articulate an explanation of the reason for this calculational error in the DEIS. The lack of support for the DEIS's assumed Cobalt-60 release fraction of 2×10^{-5} for Category 6 accidents is well-supported by the State in several paragraphs of detailed technical bases, none of which have been challenged by the Staff.

Contention Utah OO. The Staff argues that in this contention, the State focuses on "a severe rail accident in an average urban area,' without ever indicating whether it had in mind credible or incredible accidents." Staff's Response at 9. To the contrary, the State made it clear that the DEIS is completely devoid of *any* discussion of the economic risks or consequences of any type of accident involving spent fuel shipments. State's Request at 22. The DEIS provides information on health risks, but not economic risks. It is the State's

position that risk information should also be provided for economic impacts, for at least the range of accidents identified as foreseeable in the DEIS, and for the Category 6 accident that is erroneously characterized as being extremely unlikely. In addition, a discussion of consequences should be required.

Moreover, the State has not added any new accident that is not already identified in the DEIS. To clarify, the example of a severe rail accident in an average urban area, which is analyzed in Exhibit 3 to the State's Request, is the same as the "Category 6" accident in the DEIS except that the State argued for a different CRUD release fraction.

The Staff also faults the State for not providing a causative scenario for the accident for which it seeks an evaluation. The State does not need to provide a scenario. The State seeks an analysis of the Category 6 accident that is identified in the DEIS, for which the Staff has effectively conceded that a scenario exists. As discussed in Contention Utah MM, Subparts 1 and 2, the State believes that the DEIS underestimates the risk of such an accident, and that in fact it is a reasonably foreseeable accident that must be evaluated. Even if the DEIS is not required to evaluate the Category 6 accident, however, it is required to evaluate the economic risks and consequences of the range of accidents that it considers foreseeable. This information is currently omitted from the DEIS.

Finally, the Staff claims that by arguing that the DEIS should include an economic analysis of the risks and consequences of a severe but foreseeable transportation accident, the State recasts Contention OO to be identical to the economic issues raised in Contention Utah NN. Staff's Response at 9. This is incorrect. Contention Utah NN focuses on the lack of a consequence analysis in the DEIS. The consequences include both health and

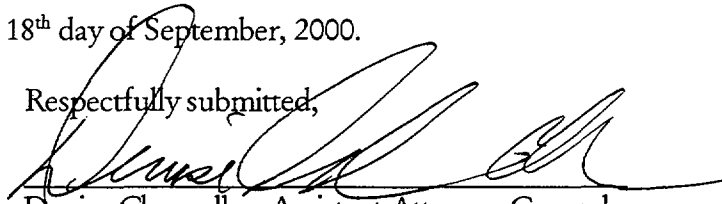
economic impacts. Contention Utah OO, in contrast, focuses on the lack of an economic risk or consequence analysis. Thus, it raises the issue of economic risk, which is not covered by Contention Utah NN. Although there is some overlap, the contentions are different.

Conclusion

For the foregoing reasons, the Licensing Board should strike the portion of the Staff's Response which raises issues not permitted by the Board's September 11, 2000, Order. In the alternative, the Board should consider the foregoing reply by the State.

DATED this 18th day of September, 2000.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Denise Chancellor", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S MOTION TO STRIKE PART OF THE STAFF'S RESPONSE TO STATE OF UTAH'S MOTION TO AMEND LATE-FILED CONTENTION UTAH LL was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 18th day of September, 2000:

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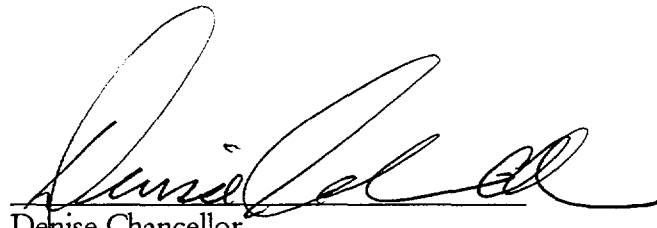
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