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responding to various requests for admission and document production. See, e.g., Staff's Response at 7 and 13.

On September 18, 2000, the State contacted counsel for the Staff to discuss the discovery responses and followed up the phone conversation with a letter of the same date, attached hereto as Exhibit 1, in which the State identified and described why two requests for admission and ten document requests required a response. Attorneys for the State and Staff could not resolve their disagreement.

ARGUMENT

I. The Standard for Discovery Against the Staff for Requests for Admissions Is on the Same Footing as For Any Other Party and Is One of Broad Relevance.

The State has authority to seek requests for admission under 10 CFR § 2.742. While the State understands that discovery against the Staff is often on a different footing than discovery against other parties, this is not the case with requests for admissions. Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), LBP-94-26, 40 NRC 93, 95-96 (1994). Neither 10 CFR § 2.742 nor any other NRC regulation provides for any different treatment of the Staff. Cf 10 CFR § 2.742 and the special provisions for discovery against the Staff in §§ 2.720(h), 2.740(f)(3), 2.740a(j), 2.741(e), 2.744 and 2.790.

Unless otherwise determined by the Presiding Officer, discovery extends to “any matter, not privileged, which is relevant to the subject matter involved in the proceeding.”

10 C.F.R. § 2.740(b)(1). The Commission gives its discovery rules the same “broad and liberal treatment” that is given to the discovery rules of the U.S. Federal Courts.

Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-196, 7 AEC 457, 461-62

(1974). Discovery is considered relevant unless it is “palpable that the evidence sought can have no possible bearing upon the issues.” *Id.* at 462, *quoting Hercules Powder Co. v. Rohn & Haas Co.*, 3 F.R.D. 302, 304 (D. Del. 1943). A motion to compel need not seek information which would be admissible *per se* in an adjudicatory proceeding, and need only request information which “reasonably could lead to obtaining [admissible] evidence.” *Safety Light Corp.* (Bloomsburg Site Decontamination), LBP-92-3A, 35 NRC 110, 111-12 (1992); *see also*, *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-102, 16 NRC 1597, 1601 (1982); *Commonwealth Edison*, *supra*, 7 AEC at 462.

II. The State’s Document Requests Comply with Applicable NRC Regulations

The Staff cites all the regulations relating to discovery, including those relating to interrogatories and depositions, to argue that the State has not complied with the Commission’s discovery regulations. Staff’s Response at 1-3. The Staff’s arguments are groundless. The State has complied with all applicable discovery regulations.

The State’s Seventh Set of Discovery is limited to requests for admissions and document requests. Thus, 10 CFR §§ 2.720(h)(2)(ii), 2.740a(j) and 2.740b(a), relating to interrogatories and depositions, are irrelevant to this set of discovery. *See* Staff Response at 2.

The Staff argues that the State runs afoul of 10 CFR § 2.744(b) because “the State has not indicated that the requested documents and information are not available in the public domain.” Staff’s Response at 3. The Staff is incorrect. The disputed Document Requests Nos. 10-11, 14-16 specifically reference representations made in the DEIS. The other four disputed documents requests (No. 4-7) refer to general representation in the

DEIS. The purpose of these document requests was to ascertain the support, basis and rationale for the representations made in the DEIS. It is axiomatic, therefore, that the requested documents are not available from other sources. If the State knew the support for the representations in the DEIS, it would not have made the document requests.

Furthermore, the State attempted to relieve the Staff's burden of actual document production by stating that "to the extent that responsive documents are publicly available, instead of producing the documents to the State, the Staff may describe such documents."

State's Seventh Set at 9. In addition, on page one of the State's discovery request, is a statement that "this discovery is necessary to a proper decision to this proceeding."

Accordingly, the State has complied with 10 CFR § 2.744(b). The State requests the Board to order production of the disputed document requests.

III. The Discovery Sought by the State Is Appropriate and Staff's Responses Should Be Compelled

As stated above, the State's discovery propounded on the Staff was prompted by issuance of the DEIS and relates to Contention Utah Z.¹ The first disputed request for admission (No. 1) relates to the document the Staff references to support at-reactor spent fuel storage costs while the second request (No. 7) relates to accumulation of fuel in at-reactor facilities. The Staff's treatment of at-reactor storage in the DEIS is clearly relevant to the "no action" alternative because on-site storage of fuel is the no action alternative. Furthermore, the Staff's complaint that the State has not identified "at-reactor storage

¹ Contention Z states: "The Environmental Report does not comply with NEPA because it does not adequately discuss the 'no action' alternative." See State's Contentions at 169-70.

facilities” is disingenuous because that terms comes straight from DEIS page referenced in the request.² Staff Response at 11-12. Accordingly, there is no reason why the Staff should not be compelled to answer these two requests.

The State’s documents requests are necessary to assist the State in developing its case for hearing, contrary to the Staff’s assertion that most of the requests do not fall within Contention Z. At the heart of Contention Z is the following statement: “NEPA requires that the no action alternative be included in the analysis to serve as a baseline and basis of comparison with the proposed action and other alternatives.” See Contention Z at 169. Furthermore, Contention Z complains that the Applicant’s ER focuses solely on the perceived disadvantages of the no build alternative. *Id.* The point of the State’s Document Requests Nos. 5 through 7, 14 and 15 is to find out what the Staff considers to be the baseline for the no action alternative, *i.e.* the cost of storing SNF at nuclear reactor sites or at an on-site ISFSI (Document Requests No. 5 & 6); the cost of licensing an on-site ISFSI (Document Request No. 7); the savings to utilities from early decommissioning (Document Request No. 13); and economic alternative to at-reactor storage (Document Request No. 15). These document requests are also necessary to ascertain the Staff’s basis for comparison of the no action alternative to other alternatives.

Somewhat the same rationale applies to Document Requests Nos. 10, 11, 14 and 16 as to it does to the requests described in the preceding paragraph and requires a response.

² The DEIS states that one of the two likely outcomes of the no action alternative is “the continued accumulation of SNF in existing at-reactor facilities.” DEIS at xli, lines 10-11.

In addition, Contention Z challenges that the Applicant has failed to "provide a balanced comparison of environmental consequences among alternatives." Contention Z at 169. Clearly, the Staff's representation in the DEIS about fossil fuel fired power plant emissions (Document Request No. 10) fits into this balance as does reactors that could decommission sooner if the PFS facility is licensed (Document Request No. 11); early land use (Document Request No. 14); and the physical limitation to prevent building or expanding an at-reactor ISFSI (Document Request No. 16).

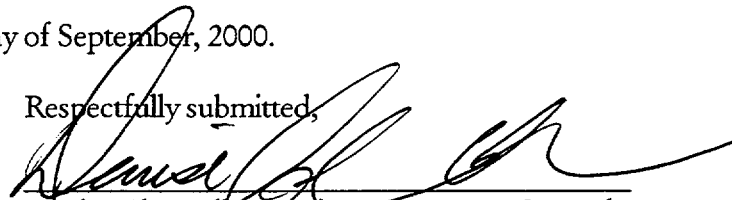
As to document request No. 4, where the Staff has agreed to produce documents related to the "no action" alternative, the State wishes to preserve its right to compel document production given the Staff's myopic view of Contention Z.

CONCLUSION

For the foregoing reasons, the Staff's objections to not responding to the State's seventh set of discovery requests for Contention Z, as described above, are without merit. Therefore, the Staff should be ordered to answer the above described Requests.

DATED this 20th day of September, 2000.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S MOTION TO COMPEL NRC STAFF TO RESPOND TO STATE'S SEVENTH SET OF DISCOVERY REQUESTS (CONTENTION Z) was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 20th day of September, 2000:

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

Denise Chancellor
Assistant Attorney General
State of Utah

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



JAN GRAHAM
ATTORNEY GENERAL

JAMES R. SOPER
Solicitor General

REED RICHARDS
Chief Deputy Attorney General

September 18, 2000

Sherwin Turk, Esq.
U.S. Nuclear Regulatory Commission
Office of General Counsel
Mail Stop-0-15 B18
Washington, DC 20555

via email (set@nrc.gov) and First Class Mail

re: Staff's Response to State of Utah's Seventh Set
of Discovery to the Staff, Contention Z
Private Fuel Storage ISFSI, Docket No. 72-22

Dear Mr. Turk:

This letter relates to the Staff's September 13, 2000 response to discovery on Contention Utah Z, follows our telephone conversation today, and describes the inadequacies in the Staff's responses to State's 7th set of discovery.

While the State is concerned with the Staff's lack of response in general, the State will only pursue a Motion to Compel on the below described requests. In general, where the State has specifically cited the DEIS wherein the Staff has made certain representations, the State considers that it is entitled to a discovery response.

Requests for Admission:

- No. 1 The State is unaware of which calculations the Staff considers support the ERI report. Thus, the State cannot determine what portion of the supporting calculations are proprietary. You stated on the telephone that the Staff may be able to respond to this admission by admitting in part and denying in part.
- No. 7 This request refers to accumulation of fuel in at-reactor facilities. You stated that the response would differ based on the reactor site. If this is the case, you should be able to admit in part and deny in part.

Document Requests

- No. 4 The State is concerned that the Staff's offer to produce documents related to the "no action" alternative will be too narrow in scope given the Staff's view of the "no action" contention. Please give me some idea of what documents you intend to produce that relate to the need for SNF storage at nuclear reactor sites.
- Nos. 5, 6, 7, 13, 15 On the phone you stated that your objection to these documents requests is that they relate to economic costs and Contention Z does not address that issue. I disagree. At the heart of Contention Z is the following statement: "NEPA requires that the no action alternative be included in the analysis to serve as a baseline and basis of comparison with the proposed action and other alternatives." See Contention Z at 169. Furthermore, Contention Z complains that the Applicant's ER focuses solely on the perceived disadvantages of the no build alternative. Id. The point of the State's Document Requests Nos. 5 through 7, 14 and 15 is to find out what the Staff considers to be the baseline for the no action alternative, *i.e.* the cost of storing SNF at nuclear reactor sites or at an on-site ISFSI (Document Requests No. 5 & 6); the cost of licensing an on-site ISFSI (Document Request No. 7); the savings to utilities from early decommissioning (Document Request No. 13); and economic alternative to at-reactor storage (Document Request No. 15). These document requests are necessary to ascertain the Staff's basis for comparison of the no action alternative to other alternatives.
- Nos. 10, 11, 14, 16 Somewhat the same rationale applies to these document requests as to those stated in the preceding paragraph and requires a response. In addition, Contention Z challenges that the Applicant has failed to "provide a balanced comparison of environmental consequences among alternatives." Contention Z at 169. Clearly, the Staff's suggestion about fossil fuel fired power plant emissions (Document Request No. 10) fits into this balance as does reactors that could decommission sooner if the PFS facility is licensed (Document Request No. 11); early land use (Document Request No. 14); and the physical limitation to prevent building or expanding an at-reactor ISFSI (Document Request No. 16).

Sherwin Turk, Esq.,
September 18, 2000
Page 3

The deadline for filing a Motion to Compel is Wednesday, September 20. To the extent we can agree on a discovery response, I will delete that discovery request from the motion. I will be in all day tomorrow and Wednesday if you want to talk about the above.

Sincerely,

A handwritten signature in black ink, appearing to read "Denise", with a long, sweeping horizontal line extending to the right.

Denise Chancellor
Assistant Attorney General