

RAS 2261

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

100 07-5 93 51

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

September 28, 2000

STATE OF UTAH'S RESPONSE TO NRC STAFF'S  
MOTION TO STRIKE PORTIONS OF THE STATE'S  
REPLY/MOTION TO AMEND

On September 25, 2000, the NRC Staff filed a pleading entitled "NRC Staff's (1) Response to 'State of Utah's Motion to Strike Part of the Staff's Response to State of Utah's Motion to Amend Contention Utah LL' and (2) Motion to Strike Portions of the State's Reply/Motion to Amend" (hereinafter "Staff's Motion to Strike"). As permitted by 10 C.F.R. § 2.730(c), the State of Utah hereby responds to the Staff's Motion to Strike.<sup>1</sup>

The Staff offers no explicit defense of its decision to use the opportunity to reply to the State's Motion to Amend Contention Utah LL for the additional purpose of making arguments about Contentions Utah MM through OO, notwithstanding that it failed to seek leave from the Board prior to filing a reply to Contentions Utah MM through OO.<sup>2</sup> Instead,

<sup>1</sup> In this regard, the State notes that it is impossible to distinguish between the arguments intended to support the Staff's defense to the State's Motion to Strike and the arguments intended to support the Staff's own Motion to Strike, and therefore the State responds to the overall pleading.

<sup>2</sup> See Board Order dated February 2, 1998. Leave must be sought to file a reply to a response to a motion, three business days before the reply will be filed, with the indication of whether other parties oppose or support the request. *Id.* at 4. A reply will be considered

the Staff takes the offensive with its own Motion to Strike, in which it asks the Board to strike those portions of the State's Reply<sup>3</sup> which, in the Staff's view, impermissibly seek to amend Contentions Utah MM through OO.

The Staff's September 25, 2000, Motion to Strike Part of the State's September 7, 2000, Reply should be denied for two reasons. First, the Staff, which is highly experienced in NRC procedures, and which generally has taken a hard line on timeliness issues with respect to the State,<sup>4</sup> had no cause for waiting two and a half weeks to file a Motion to Strike. Although there is no regulatory time frame for motions to strike, the Staff's Motion is inexcusably late in the context of this proceeding.<sup>5</sup>

Second, there is no factual foundation for Staff's Motion to Strike. As discussed in 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 at 2-5 (September 18, 2000), the State did not amend the bases to Contentions Utah MM through OO in its Reply, but rather clarified or

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timely if filed within 10 days of the response motion. Id. at n. 3.

<sup>3</sup> State of Utah's Reply to Applicant's and Staff's Responses to Late-Filed Contentions LL Through OO and Motion to Amend Contention LL (September 7, 2000)

<sup>4</sup> See, e.g. NRC Staff's Response to State of Utah's Request for Admission of Late-filed Contentions Utah LL Through OO (August 30, 2000) at 7-11; and NRC Staff's Response to State of Utah's Motion to Amend Contention Utah LL (September 14, 2000) at 4-8.

<sup>5</sup> Cf 18 days for Staff to file its Motion to Strike *with* Board Order dated February 2, 1998 (see fn. 2 for details); Board Order dated April 22, 1998 (7 days to file a motion to compel, after first providing opposing counsel with statement of deficiency of discovery responses); Board Order dated August 20, 1998 (7 days to respond to a Motion to Compel); 10 CFR § 2.730(c) (10 days to respond to a motion except the Staff may file a response within 15 days).


explained information that already was in the contentions and their bases.

### Conclusion

For the foregoing reasons, the Staff's Motion to Strike should be denied.

DATED this 28<sup>th</sup> day of September, 2000.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S RESPONSE TO NRC  
STAFF'S MOTION TO STRIKE PORTIONS OF THE STATE'S REPLY/MOTION TO  
AMEND was served on the persons listed below by electronic mail (unless otherwise noted)  
with conforming copies by United States mail first class, this 28<sup>th</sup> day of September, 2000:

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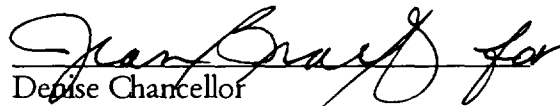
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