

RAS 2359

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
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OF
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In the Matter of:

) Docket No. 72-22-ISFSI

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

) ASLBP No. 97-732-02-ISFSI

) October 31, 2000

**STATE OF UTAH'S REQUEST FOR CLARIFICATION
OR IN THE ALTERNATIVE REQUEST FOR AN EXTENSION OF TIME
TO FILE NEW OR MODIFIED CONTENTIONS BASED ON THE
FINAL SAFETY EVALUATION REPORT**

Cognizant of the Board's October 30, 2000 decision, LBP-00-28, rejecting late-filed Contentions Utah LL through Utah OO for being filed six days beyond the Board's deadline for filing contentions based on the Staff's draft Environmental Impact Statement ("DEIS") and the Board's observations on the questions of "good cause" in LBP-00-07, 51 NRC 139, 143, n. 1 (March 10, 2000), the State files this request for clarification or in the alternative motion for extension of time to file new or modified contentions based on the Staff's Final Safety Evaluation Report ("FSER").

In LBP-00-07 the Board observed that late-filed contentions based on the Staff's SER and its DEIS and FEIS should be filed within thirty days of these documents being made available to the public. 51 NRC at 143, n. 1. The Board provided two caveats to the thirty day filing deadline: (1) the Staff must notify the intervening parties and the Board of its intent to make the documents publicly available at least fifteen days prior to public issuance; and (2) the Staff must notify the intervening parties of the actual public release of

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the documents and their availability on an expedited basis. Id.

The NRC Staff on August 29, 2000, in response to the State's Request for a Change in Schedule, mentions that it expects to publish the FSER "on or about September 30, 2000." Staff Response at 2. The State first learned that the FSER had apparently been issued by the Staff when it received an e-mailed letter from Staff's counsel in the afternoon of October 6, 2000, the Friday before a holiday weekend, Columbus Day, October 9th; the letter stated that the FSER was available on the NRC's ADAMS system.¹ At that time State's counsel had no appropriate computer support staff available with sufficient working knowledge of the complicated ADAMS system to download and print this 400 page document for distribution to the State's expert witnesses.² The State received the paper copy of the FSER from the NRC Staff on October 10, 2000.

The State believes that it was not served with the FSER until it received the paper copy of the FSER and thus, if the thirty day deadline for filing new or modified contentions based on the FSER is in effect, the filing date would be November 9, 2000. However, if the Staff counsel's e-mail constitutes service, then the contention filing date would be November 6, 2000.

¹ The e-mail contained an accession number to use when searching in the NRC's electronic ADAMS system, but the State was unable to find the FSER based on that information. Later the State learned from the librarians at the PDR that one needs to search with the accession number and the term "package number," not "accession number," in order to find the FSER on the ADAMS system.

² The State's computer experts have found that printing or downloading from ADAMS is a cumbersome task, sometimes unsuccessful no matter what directions are tried, often requiring a different technique with different file types, and sometimes finding that a past successful technique no longer works.

The Board's pronouncement in LBP 00-28 has heightened the State's concern about procedural defects resulting in a seemingly harsh outcome if it files new or modified contentions by November 9. Accordingly, the State requests clarification from the Board whether the Staff's October 6, 2000 e-mail notification meets the criteria set forth in LBP-00-07, footnote 1. Furthermore, if the Staff's e-mail constitutes service, the State requests the Board grant a three day extension of time for the State to file new or modified contentions based on the FSER. *See* LBP-00-28, slip op. at 12, 13 and n. 2, and 15.

The State has good reason for requesting a three day extension. First, the State could not distribute the FSER until it received a paper copy of the document on October 10. Second, with respect to modification of Contention Utah L, the State's experts needed to support any modification were preparing for and in depositions up to and including October 19. In addition, the State's expert (Dr. Walter J. Arabasz) was out of state at a professional conference on October 25 and 26. Third, the State has only recently obtained a copy of a technical document the Staff appears to rely upon in recommending an exemption to PFS from the seismic regulations. Finally, all counsel for the State are involved in reviewing and drafting pleadings on the effect of the Model Service Agreement ("MSA") on Contention Utah E. *See* Board's Orders of October 2, 5, and 6, 2000. This undertaking requires a significant effort because the MSA has completely restructured PFS's financial assurance demonstration and qualifications. The deadline for filing pleadings relating to the MSA is November 7, and thus, a three day extension of time to file new or modified contentions based on the FSER is a reasonable request.

Counsel for the State has contacted counsel for PFS, who does not oppose this

motion; counsel for the Staff neither supports nor opposes the motion.

DATED this 31st day of October, 2000.

Respectfully submitted,

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

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CERTIFICATE OF SERVICE

I hereby certify that copies of STATE OF UTAH'S REQUEST FOR CLARIFICATION OR IN THE ALTERNATIVE REQUEST FOR AN EXTENSION OF TIME TO FILE NEW OR MODIFIED CONTENTIONS BASED ON THE FINAL SAFETY EVALUATION REPORT and NOTICE OF APPEARANCE (for Kurt Seel) were served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 31st day of October, 2000:

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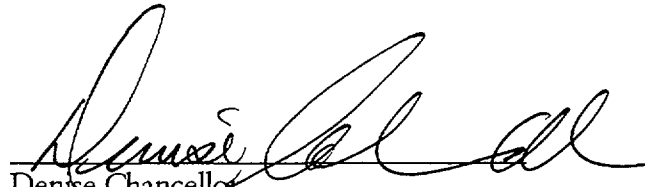
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