

RAS 2459

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSIONERS

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In the Matter of:)	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, LLC)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel)	
Storage Installation))	November 28, 2000

STATE OF UTAH'S MOTION FOR CLARIFICATION

The State of Utah respectfully requests clarification from the Commission on the scope and timing of appeals which may be filed pursuant to 10 CFR § 2.786. Because of the breadth and duration of the Private Fuel Storage, LLC ("PFS") proceeding, the State is requesting guidance from the Commission as to the most expedient way for the Commission and the parties to deal with issues that may be appealed from the Licensing Board to the Commission.

The State first filed contentions in the PFS proceeding on November 23, 1997. Some contentions were admitted for hearing, others were not. During the course of the proceeding, the State has filed additional contentions; again, some were admitted, others were not. In addition, part or all of some contentions have been dismissed under summary disposition procedures while other contentions have gone forward to hearing.

10 CFR §2.786(b)(1) states, in relevant part:

Within fifteen (15) days after service of a full or partial initial decision by a presiding officer, and within fifteen (15) days after service of any other decision or action by a presiding officer with respect to which a petition for review is authorized by this part, a party may file a petition for review with the Commission on the grounds specified in paragraph (b)(4) of this

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The State reads 10 CFR § 2.786(b)(1) to mean that all contentions that were dismissed at the filing stage and all contentions that were dismissed at the summary disposition stage must wait until after the Licensing Board issues its final initial decision¹ before those issues may be appealed to the Commission. What is unclear to the State under section 2.786(b)(1) is the scope of an appeal from a contention that was heard by the Board and on which the Board has issued a partial initial decision.

An example to illustrate the point may be useful. The State filed a contention based on PFS's Emergency Plan, Contention Utah R. At the contention filing stage, some bases were admitted, others were not. The Applicant filed for summary disposition, which was partially granted by the Board and the remaining issues went forward to hearing. With respect to contentions like Contention Utah R,² it appears to the State that the most expedient way to deal with an appeal to the Commission is to appeal all issues relating to Contention Utah R at one time (*i.e.*, bases not admitted or dismissed pre-hearing as well as the bases that went to hearing) rather than appeal only the issues that went to hearing. Under 10 CFR § 2.786(b)(1), the due date for filing an appeal would be fifteen days after the Licensing Board issues its partial initial decision on Contention Utah R.

The State seeks guidance on whether filing an appeal on all issues relating to a

¹ Under the current litigation schedule, the Licensing Board's final initial decision is due to be issued November 30, 2001.

² Other appealable issues that may affect a contention include an unsuccessful attempt to amend the contention or a narrowing of the contention through procedural rulings issued by the Board.

specific contention for which the Board issues a partial initial decision, as outlined above, is acceptable to the Commission. The State also seeks guidance on whether all other contentions must await the Board's final initial decision before being appealed to the Commission.

DATED this 28th day of November, 2000.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S MOTION FOR CLARIFICATION was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 28th day of November, 2000:

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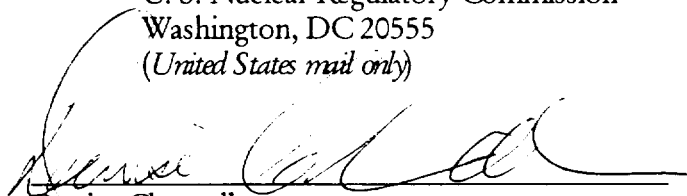
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