

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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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

January 2, 2001

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

STATE OF UTAH'S MOTION FOR EXTENSION OF TIME (SUMMARY
DISPOSITION ON UTAH CONTENTIONS L AND K)

Pursuant to 10 C.F.R. §§ 2.711, 2.730, and 2.749, the State of Utah hereby requests a ten day extension of time, until Tuesday, January 30, 2001, within which to file its responses to "Applicant's Motion for Summary Disposition on Utah Contention L" and "Applicant's Motion for Summary Disposition on Utah Contention K and Confederated Tribes Contention B," and requests to file replies to the Staff's responses to these motions ten days later on February 9, 2001.

The Applicant electronically filed both motions on Saturday, December 30, 2000, but because of the holidays over the New Year, the State did not effectively receive the electronic files until today. Moreover, other than two curricula vitae, PFS did not electronically file any exhibits with either motion. PFS intends to serve the State with hard copies of both Motions and related attachments, with the exception of two exhibits, on January 3. Given the importance and technical complexity of the issues, the State's request for an extension is eminently reasonable.

In support of this request, the State of Utah states as follows:

1. Utah Contentions K and L present some of the most significant safety issues in this proceeding. These contentions contain highly technical issues requiring the expertise of numerous technical people from various disciplines. As such, the State's attorneys must work closely with each expert in order to understand the issues and draft responses to both motions. This is a time-consuming process.

2.. Applicant's Motion for Summary Disposition on Utah Contention K, dated December 30, 2000, consists of a 29 page motion, a 12 page "Statement of Material Facts," and over 80 pages of declarations, plus over 25 exhibits attached to the declarations. Moreover, Exhibit 3 appears to be a report dated December 30, 2000, which the State has not seen before. Contention K raises many complex issues including issues related to risks posed by the Army's rocket system on Dugway Proving Ground, cruise missile hazards, the appropriate regulatory standard to be applied in evaluating aircraft crash risks, the nature of aircraft activity in the region of the proposed facility and the risk associated with that activity.

3. Applicant's Motion for Summary Disposition on Utah Contention L dated December 30, 2000, consists of a 30 page motion, a 16 page "Statement of Material Facts on Which No Genuine Dispute Exists," and over 75 pages of declarations, plus ten exhibits attached to the declarations. Moreover, counsel for PFS has advised the Board that PFS will be revising its license application on issues that present a controversy between the State and PFS as to the scope of Contention L. PFS's current plan is to submit a license amendment by March 2, 2001. In addition to the information contained in the Summary Disposition Motion, the State's experts will need to evaluate the implications of PFS's recently proposed

future license amendments.

Contention L's various and complex issues cut across many geotechnical disciplines, such as use and interpretation of seismic reflection data to evaluate the presence of buried capable faults; seismic hazard analysis to assess ground motions; soils investigation and analysis; and soil-structure interaction. The safety implications raised by these issues cannot be adequately addressed within the time allotted by the Board.

4. The Board issued an order on Wednesday, December 27, 2000 (reissued with corrections on Thursday, December 28, 2000) granting an extension of time to Applicant, allowing it to file motions for summary disposition for Contentions K and L one day later than the Friday, December 29, 2000 deadline established in the Board's September 5, 2000 General Schedule Revision Order. In the December 27, 2000 Order, the Board also ordered that party responses to those motions were to be filed on or before Saturday, January 20, 2001, and that replies to responses were to be filed on or before Wednesday, January 31, 2001.

4. Throughout this proceeding, State has sedulously met the rigorous schedule the Board has set. Most recently, for example, the State and PFS conducted an exhausting series of depositions on Contentions K and L. In order to meet the Board's schedule, the State permitted its witnesses to be deposed by PFS from 8:30 in the morning in some instances, to 9 and 11 o'clock in the evening. Moreover, both Contentions K and L contain a massive amount of technical data, which the State obtained from PFS either through discovery or as copies of PFS's submissions to the Staff. All of this information must be reviewed and relevant portions referenced in the State's pleadings.

As described above, Applicant's motions are indeed voluminous. They raise complex issues that, the State urges, are among the most important this Board has before it. It is critical that the State be allowed the small amount of additional time requested in order to prepare responses that adequately address the issues and inform the Board's decision in these matters. The State does not believe that it is possible to do justice to responding to PFS's motions if it is to meet the January 20 deadline imposed by the Board.

5. The Board's decision regarding any summary disposition motions for Utah Contentions K and L was scheduled to be completed by March 1, 2001, as listed in the Board's September 5, 2000 Order. The schedule proposed by the State at this time will not delay a decision in these matters significantly beyond that time. Given that all pleadings will be filed by February 9, 2001, the Board's decision would be delayed by approximately ten days.¹

6. The State's expert witness on soils, whose assistance will be critical in responding to summary disposition on Utah Contention L, will be out of state from January 5th through January 11th, 2001. The State has been unable, at this date, to confirm if all of its other experts will be available for the entire month of January.

7. During this period, the State will be responding to a number of other deadlines in this case, including a January 5, 2001 deadline to reply to the Staff's December 20, 2000 Response to Applicant's Motion For Summary Disposition on Issues Remanded by

¹ The PFS Proceeding General Schedule contemplates a 30 day deliberation period for the Board to issue its summary disposition decision. The thirtieth day following submission of all pleadings falls on Sunday, March 11, 2001.

CLI-00-13 on Utah Contention E and Confederated Tribes Contention F; January 16, 2001 starting date for discovery on Group III contentions; and also a January 16, 2001 date by which an appeal of the Board's decision on Utah Contention R is due.

The State maintains that the brief extension of time requested herein is necessary and will not adversely affect the schedule for litigation of Utah Contention K, Utah Contention L, or any other contention in this proceeding. Counsel for the State has contacted counsel for the Applicant and Staff, who indicated that they do not oppose this request with the provision by the Staff that it be permitted the same relevant filing deadline as the State.

WHEREFORE, the State hereby requests an extension of time, until Tuesday, January 30, 2000, for the filing of its responses to the "Applicant's Motion for Summary Disposition on Utah Contention L" and "Applicant's Motion for Summary Disposition on Utah Contention K and Confederated Tribes Contention B" and a February 9, 2001 date for replies to the Staff's responses to those motions.

DATED this 2nd day of January, 2001.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S MOTION FOR EXTENSION OF TIME (SUMMARY DISPOSITION ON UTAH CONTENTIONS L AND K) was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 2nd day of January, 2001:

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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