

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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|------------------------------|---|------------------------|
| In the Matter of |) | |
| |) | |
| PRIVATE FUEL STORAGE, L.L.C. |) | Docket No. 72-22-ISFSI |
| |) | |
| (Independent Spent Fuel |) | |
| Storage Installation) |) | |

NRC STAFF'S RESPONSE TO
 "APPLICANT'S MOTION TO STRIKE PORTIONS OF
 STATE OF UTAH'S RESPONSE TO APPLICANT'S MOTION
FOR SUMMARY DISPOSITION OF UTAH CONTENTION L"

INTRODUCTION

Pursuant to 10 C.F.R. § 2.730 and the Licensing Board's scheduling Order of February 12, 2001, the NRC Staff ("Staff") herewith responds to "Applicant's Motion to Strike Portions of State of Utah's Response to Applicant's Motion for Summary Disposition of Utah Contention L" ("Motion"), filed on February 9, 2001 by Private Fuel Storage L.L.C. ("Applicant" or "PFS"). For the reasons set forth below, the Staff supports the Applicant's Motion.

DISCUSSION

The Applicant's Motion sets forth at length a list of issues raised by the State in its response to the Applicant's motion for summary disposition of Contention Utah L,¹ which the Applicant considers to be beyond the scope of this contention. Based on its review of the matters set forth in the Applicant's Motion, the Staff agrees that the specified portions of the State of Utah's response to the Applicant's motion for summary disposition are outside the scope of Contention

¹ "State of Utah's Response to Applicant's Motion for Summary Disposition of Utah Contention L," dated January 30, 2001 ("State Response").

Utah L. Accordingly, the Staff respectfully submits that these matters should be disregarded or excluded from the State's Response.

Further, the Staff notes that in raising many of these issues (such as cask/pad stability and various design issues), the State appears to have acted without regard to whether there is any reference to the issues in this site characterization contention or its supporting basis statements -- and it improperly raises matters which were never raised in this contention;² rather, those issues appear to have been raised in other contentions that were rejected or dismissed by the Licensing Board (see Motion at 7-10). Those issues are outside the scope of Contention Utah L, and may not be raised now as part of this contention. Further, in raising the issue of the Applicant's pending seismic exemption request, the State appears to have disregarded the fact that this issue is the subject of a proposed modification of Basis 2 of the contention, which is currently pending before the Commission, and is plainly beyond the scope of the contention in its present form.³ Such matters should be disregarded or excluded from the State's Response.⁴

² Contention Utah L asserted that "[t]he Applicant has not demonstrated the suitability of the proposed ISFSI site because the License Application and SAR do not adequately address site and subsurface investigations necessary to determine geologic conditions, potential seismicity, ground motion, soil stability and foundation loading." In support of this contention, the State provided four basis statements, concerning (1) surface faulting, (2) ground motion, (3) characterization of subsurface soils, including subsurface investigations, sampling and analysis, and physical property testing for engineering analysis, and (4) soil stability and foundation loading. See "State of Utah's Contentions on the Construction and Operating License Application by Private Fuel Storage, LLC for an Independent Spent Fuel Storage Facility" ("Utah Contentions"), dated November 23, 1997, at 80-95.

³ See "Request for Admission of Late-Filed Modification to Basis 2 of Contention Utah L," filed on November 9, 2000; *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-03, 53 NRC ____ (Jan. 31, 2001).

⁴ In addition, the Staff's review of the Applicant's Motion to Strike leads it to conclude that some misunderstanding may exist concerning a footnote that appears in the Staff's response to the Applicant's motion for summary disposition. See "NRC Staff's Response to Applicant's Motion for Summary Disposition of Utah Contention L (Geotechnical)," dated January 30, 2001, at 10 n.13. There, the Staff stated as follows:

(continued...)

CONCLUSION

For the reasons set forth above, the Staff supports the Applicant's Motion and recommends that it be granted.

Respectfully submitted,

Sherwin E. Turk **/RA**
Counsel for NRC Staff

Dated at Rockville, Maryland
this 20th day of February 2001

⁴(...continued)

PFS has indicated that it intends to submit new information concerning certain geotechnical issues in March 2001. See Material Fact No. 17; letter from E. William Brach to John D. Parkyn, dated January 19, 2001; letter from John D. Parkyn to Mark Delligatti, dated December 22, 2000; and letter from John D. Parkyn to Mark Delligatti, dated December 11, 2000. In view of the fact that PFS has not yet submitted that new information, the Staff expresses no position on Material Fact No. 17. See Ofoegbu Affidavit at ¶16. However, based on PFS' description of the additional work it intends to perform, the Staff believes that PFS' additional geotechnical work does not relate to the issues raised in Contention Utah L and does not affect the Staff's conclusions concerning the Applicant's motion for summary disposition of this contention. *Id.*

Id. In its Motion to Strike, PFS cites this statement, stating that "[t]he NRC Staff agrees" that "the new data and the resulting analyses [to be submitted by PFS] "will have no impact on the matters asserted in Utah L" (Motion at 3 and n.9; emphasis added). In this regard, it must be noted that the Staff has not yet received the new information to be submitted by PFS and, for this reason, the Staff stated that its view of the relevance of the information which PFS intends to submit was "based on PFS' description of the additional work it intends to perform."

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO APPLICANT'S MOTION TO STRIKE PORTIONS OF STATE OF UTAH'S RESPONSE TO APPLICANT'S MOTION FOR SUMMARY DISPOSITION OF UTAH CONTENTION L" in the above captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 20th day of February, 2001:

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