

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD ⁰¹ FEB 21 A11 :22

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| In the Matter of: |) | Docket No. 72-22-ISFSI | OFFICE OF SECRETARY RULEMAKINGS AND ADJUDICATIONS STAFF |
| PRIVATE FUEL STORAGE, LLC |) | ASLBP No. 97-732-02-ISFSI | |
| (Independent Spent Fuel Storage Installation) |) | February 9, 2001 | |

STATE OF UTAH'S REPLY TO STAFF'S RESPONSE TO
APPLICANT'S MOTION FOR SUMMARY DISPOSITION
ON UTAH CONTENTION K/CONFEDERATED TRIBES CONTENTION B

Pursuant to the Board's Order of January 4, 2001 and 10 CFR § 2.749, the State files this Reply to the Staff's Response to the Applicant's Motion for Summary Disposition of Utah Contention K and Confederated Tribes Contention B (January 30, 2001) ("Staff's Response"). In its response, the Staff addressed limited portions of the issues remaining in Utah Contention K.

The Staff unconditionally supported PFS in its motion for summary disposition with respect to hazards from flight path IR420 on the basis that there is no genuine dispute of material fact. Staff's Response at 1-2. The Staff's underlying assumption is incorrect. The State disputes both the appropriate number of aircraft and the crash rate used by PFS. See State's Response¹, at 24-25. The number of aircraft that fly into and out of Michael Army Airfield along IR420 should be estimated at a minimum of 1,359 flights, not 414 flights as used by the Staff and PFS. See Staff's Safety Evaluation Report ("SER") (September 2000)

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

at 15-47 to -48, State's Response at 25, State's Disputed and Relevant Material Facts ("State's Facts") (January 30, 2001) ¶ 62. Additionally, PFS should use the higher F-16 crash rate to calculate the probability of an aircraft flying along IR420 impacting the proposed PFS facility because 89 percent of the aircraft flying into Michael Army Airfield are F-16s, not large military carriers or transport aircraft. See SER at 15-47, -49, State's Response at 25, State's Facts ¶ 9; see also, State Response, Resnikoff Dec., Exhibit N. Thus, on the basis that there remain genuine disputes of material facts, the State urges the Board to deny PFS's motion for summary disposition with respect to flight path IR420.

In its response, the Staff failed to take a position with respect to:

F-16 aircraft transiting Skull Valley; aircraft flying on the Moser Recovery route; jettisoned ordnance; general aviation aircraft; potential aircraft impacts due to aircraft conducting training on the Utah Test and Training Range (UTTR); cruise missile testing; and the cumulative hazard.

Staff Response at 2; see also *id.* at 6. The Staff acknowledged that it was still evaluating new information provided by Applicant with its motion for summary disposition, and indicated that at the time of its response, it could not take a position with respect to these matters. *Id.*, at 5. As referenced in Staff counsel's January 23, 2001 letter to the Board, the Staff also stated that it may issue a supplement to its Safety Evaluation Report. Staff counsel's Jan. 23, 2001 letter at 2.

The State submits that it is not appropriate to grant summary disposition until the Staff has completed its safety evaluation or taken a position with respect to these portions of

Utah Contention K.² *See Duke Power Co.* (William B. McGuire Nuclear Station, Units 1 and 2), LBP-77-20, 5 NRC 680, 681 (1977). Specifically, because the Staff has not completed its work, summary disposition is not appropriate with respect to F-16s transiting Skull Valley, the Moser Recovery route, jettisoned ordnance, general aviation aircraft, air-to-air combat over the UTTR, cruise missile testing, and the cumulative hazard.

In its decision on the Applicant's first attempt at summary disposition on Utah K,³ the Board agreed that it should defer these issues because the Staff did not feel it could take a position. *See* LBP-99-35, 50 NRC 180 (1999). Now, many months later, the Applicant again seeks summary disposition, and the Staff again does not feel it can take a position. The State urges that the issues should again be deferred, this time to an evidentiary hearing given that the Staff could not respond within the timeframe established by the Board.

²In response to the Staff's January 23, 2001 letter to the Board, the State inquired whether the Staff would in fact be capable of taking a position on the areas in which PFS submitted new information in its Motion. The Staff responded that it saw no need to request an extension of time from the Board and that it would file a response by the Board deadline of January 30, 2001. Based upon the Staff's failure to timely request an extension of time, the Board should not entertain any opportunity for the Staff to file a further response.

³ *See* Applicant's Motion For Partial Summary Disposition of Utah Contention K and Confederated Tribes Contention B (June 7, 1999).

CONCLUSION

For the reasons stated above, PFS is not entitled to summary disposition and the matter should be set for hearing.

DATED this February 9, 2001.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Denise Chancellor", is written over a horizontal line.

Denise Chancellor, Assistant Attorney General

Fred G Nelson, Assistant Attorney General

Connie Nakahara, Special Assistant Attorney General

Diane Curran, Special Assistant Attorney General

Laura Lockhart, Assistant Attorney General

Attorneys for State of Utah

Utah Attorney General's Office

160 East 300 South, 5th Floor, P.O. Box 140873

Salt Lake City, UT 84114-0873

Telephone: (801) 366-0286, Fax: (801) 366-0292

CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S REPLY TO STAFF'S RESPONSE TO APPLICANT'S MOTION FOR SUMMARY DISPOSITION ON UTAH CONTENTION K/CONFEDERATED TRIBES CONTENTION B was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this February 9, 2001:

Rulemaking & Adjudication Staff
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington D.C. 20555
E-mail: hearingdocket@nrc.gov
(original and two copies)

G. Paul Bollwerk, III, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555
E-Mail: gpb@nrc.gov

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555
E-Mail: jrk2@nrc.gov
E-Mail: kjerry@erols.com

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555
E-Mail: psl@nrc.gov

Sherwin E. Turk, Esq.
Catherine L. Marco, Esq.
Office of the General Counsel
Mail Stop - 0-15 B18
U.S. Nuclear Regulatory Commission
Washington, DC 20555
E-Mail: set@nrc.gov
E-Mail: clm@nrc.gov
E-Mail: pfscase@nrc.gov

Jay E. Silberg, Esq.
Ernest L. Blake, Jr., Esq.
Paul A. Gaukler, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N. W.
Washington, DC 20037-8007
E-Mail: Jay_Silberg@shawpittman.com
E-Mail: ernest_blake@shawpittman.com
E-Mail: paul_gaukler@shawpittman.com

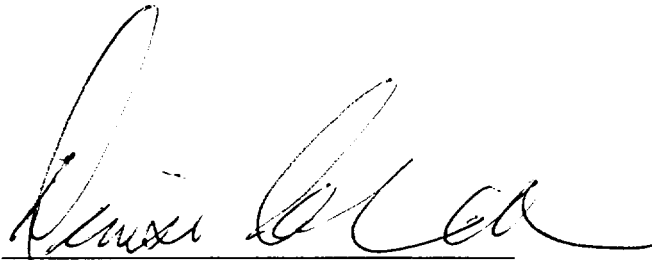
John Paul Kennedy, Sr., Esq.
1385 Yale Avenue
Salt Lake City, Utah 84105
E-Mail: john@kennedys.org

Joro Walker, Esq.
Land and Water Fund of the Rockies
2056 East 3300 South Street, Suite 1
Salt Lake City, Utah 84109
E-Mail: joro61@inconnect.com

Danny Quintana, Esq.
Danny Quintana & Associates, P.C.
68 South Main Street, Suite 600
Salt Lake City, Utah 84101
E-Mail: quintana@xmission.com

Office of the Commission Appellate
Adjudication
Mail Stop: O14-G-15
U. S. Nuclear Regulatory Commission
Washington, DC 20555

James M. Cutchin
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-Mail: jmc3@nrc.gov
(*electronic copy only*)

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

Denise Chancellor
Assistant Attorney General
State of Utah