

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 06/19/01

BEFORE THE COMMISSION

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
"STATE OF UTAH'S REQUEST FOR AN
OPPORTUNITY TO BRIEF THE LICENSING BOARD'S
CERTIFIED QUESTION TO THE COMMISSION IN LBP-01-19"

The NRC Staff ("Staff") hereby files its response to the "State of Utah's Request for an Opportunity to Brief the Licensing Board's Certified Question to the Commission in LBP-01-19" ("Request"), filed on June 7, 2001. For the reasons set forth below, the Staff submits that (a) briefing of this issue is not required, but (b) if the Commission determines that such briefing would be useful, the Staff requests that it be afforded an opportunity to file a brief in response to the State's brief challenging the Board's ruling on this issue.

BACKGROUND

In LBP-01-19, the Licensing Board issued its decision ruling upon a motion for summary disposition of Contention Utah K/Confederated Tribes B (credible offsite hazards) which had been filed by Private Fuel Storage, L.L.C. ("PFS" or "Applicant"), and referred a portion of its ruling to the Commission.¹ Specifically, the Licensing Board ruled (a) that a genuine dispute of material fact no longer existed with respect to certain issues raised in this contention, (b) that a genuine dispute of

¹ *Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-01-19, 53 NRC __ (May 31, 2001) (slip opinion) ("Memorandum and Order (Granting in Part and Denying in Part Summary Disposition Motion Regarding Contention Utah K/Confederated Tribes B; Referring Ruling on Aircraft Crash Hazard Regulatory Standard to the Commission)"*.

material fact remained with respect to other specified portions of the contention, and (3) that the threshold probability standard to be applied in determining whether aircraft crashes pose a credible hazard for an independent spent fuel storage installation ("ISFSI") is 1E-06 (*i.e.*, 10^{-6}) per year. LBP-01-19, slip op. at 18-21. Further, the Licensing Board referred its ruling on the applicable threshold probability standard to the Commission for review. *Id.* at 21, 54.

DISCUSSION

In its Request, the State requests "an opportunity to brief the Commission on the certified question the Board has placed before it" (Request at 1). According to the State, "while the record below contains some information on the risk standard," it believes that "briefs which focus specifically on the appropriate aircraft crash hazard standard will greatly enhance the Commission's review in this matter" (*Id.* at 1-2); further, the State indicates that it would not object to briefs being filed by PFS and the Staff if the State is allowed to brief this issue (*Id.* at 2).

The Staff does not believe that any briefing of this issue is required. The Applicant's motion for summary disposition addressed the standard to be applied in assessing the hazard posed to an ISFSI by aircraft crashes, citing applicable regulatory authority;² the State addressed this issue in its response to the Applicant's motion;³ and the Staff has provided its views as to the applicability and bases for utilizing the 1E-06 criterion as the threshold standard in evaluating aircraft crash hazards for an ISFSI.⁴ Further, the Licensing Board's decision provides a full analysis of this issue,

² See "Applicant's Motion for Summary Disposition Motion of Utah Contention K and Confederated Tribes Contention B" ("Motion"), dated December 30, 2000, at 9-10.

³ See "State of Utah's Response to Applicant's Motion for Summary Disposition on Utah Contention K/Confederated Tribes Contention B," dated January 30, 2000, at 5-8.

⁴ See "NRC Staff's Response to Applicant's Motion for Summary Disposition of Utah Contention K and Confederated Tribes Contention B," dated January 30, 2000, at 7; "Safety Evaluation Report Concerning the Private Fuel Storage Facility," issued on September 29, 2000, at 15-41 and 15-77 (discussing the NUREG-0800 probability screening threshold of 10^{-7} per year, and providing the basis for the Staff's view that "the threshold probability of 1×10^{-6} crashes per
(continued...)

which provides a sufficient basis for the Commission to review. See LBP-01-19, slip op. at 18-22. Accordingly, briefing of this issue does not appear to be necessary. Nonetheless, in the event that the Commission determines to afford the State an opportunity to brief this issue, the Staff requests that it be afforded a commensurate opportunity to brief the issue, in response to the State.

CONCLUSION

For the reasons set forth above, the Staff submits that no further briefing of this issue is required, but that if the Commission determines that the filing of such briefs would be useful in its consideration of this matter, the Staff requests that it be afforded an opportunity to file a brief in response to the State.

Respectfully submitted,

/RA/

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 18th day of June 2001

⁴(...continued)
year is an acceptable value for evaluating aircraft crash hazards at the PFS facility”).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO 'STATE OF UTAH'S REQUEST FOR AN OPPORTUNITY TO BRIEF THE LICENSING BOARD'S CERTIFIED QUESTION TO THE COMMISSION IN LBP-01-19'" 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 18th day of June, 2001:

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