

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE COMMISSIONERS

OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:

) Docket No. 72-22-ISFSI

PRIVATE FUEL STORAGE, LLC

) ASLBP No. 97-732-02-ISFSI

(Independent Spent Fuel

Storage Installation)

) May 22, 2002

**UTAH'S MOTION FOR AN ORDER ALLOWING
REPLY BRIEFS AND/OR ORAL ARGUMENT
REGARDING UTAH'S SUGGESTION OF LACK OF JURISDICTION**

Relative to Utah's pending Suggestion of Lack of Jurisdiction, Utah moves the Commission for an order allowing for the filing of reply briefs (by a reasonable deadline) and/or oral argument.

The basis for the motion is simple: Long prior to the 15 May 2002 deadline for final briefs, Utah had set forth comprehensively and in detail its analysis and arguments supporting its position, but before that deadline neither PFS nor Staff had done the same. Their earlier efforts were short and superficial, as shown by, among other things, the fact that their respective 15 May 2002 briefs were lengthy, detailed, and filled with new arguments relative to new material. In other words, Utah made full disclosure of the bases of its position at a time enabling PFS and Staff to have a fair shot at those bases, but PFS and Staff did not do the same regarding the bases of their (unified) position, thereby depriving Utah of an equally fair shot.

Such a fair shot is crucial in this matter – not so much as to avoid fundamental unfairness (although that is a weighty consideration) but primarily to assure a correct resolution of the

important issue now before the Commission. The fact is that a substantial number of the new arguments and materials advanced by PFS and Staff are misleading and if unchecked and relied on might well lead the Commission to an indefensible conclusion. Yet as things stand now, Utah has no chance to illuminate the misleading arguments for what they are, and the Commission has no means to receive that illumination from a party with the motivation and the ability to provide it. Moreover, it is simply wise for the Commission to have the same full ventilation of the legal issue that the reviewing Court of Appeals will certainly have.

The fair and sensible solution is for the Commission to allow, by a reasonable deadline, reply briefs and then to allow oral argument. The importance of the legal issue and the magnitude of the proposed project giving rise to that issue merit no less.¹

Mr. Silberg on behalf of the Applicant and Mr. Heck on behalf of the Staff have stated that they will oppose this motion.

Respectfully submitted,



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¹ After all, the proposed Skull Valley facility is more than half the size of the proposed Yucca Mountain facility (40,000 MTU versus 77,000 MTU) and is more than 60 larger than any now-existing facility of the same type (dry cask storage).

CERTIFICATE OF SERVICE

I hereby certify that a copy of UTAH'S MOTION FOR AN ORDER ALLOWING
REPLY BRIEFS AND/OR ORAL ARGUMENT REGARDING UTAH'S SUGGESTION OF
LACK OF JURISDICTION was served on the persons listed below by electronic mail (unless
otherwise noted) with conforming copies by United States mail first class, this 22nd day of May,
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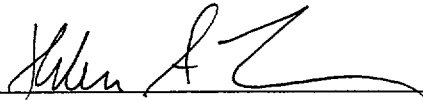
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