

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE 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 MOTION FOR CLARIFICATION AND/OR AN
EXTENSION OF TIME TO RESPOND TO THE STATE OF UTAH'S
PETITION FOR REVIEW OF LBP-03-08 (GEOTECHNICAL ISSUES)

Pursuant to 10 C.F.R. § 2.730, the NRC Staff ("Staff") hereby requests clarification and/or an extension of time in which to file its response to the "State of Utah's Petition for Review of LBP-03-08," filed June 11, 2003 ("Petition"). In support hereof, the Staff states as follows:

1. On May 22, 2003, the Licensing Board issued LBP-03-08 in which it resolved all outstanding geotechnical issues in this proceeding in favor of Private Fuel Storage, L.L.C. ("PFS" or "Applicant").¹ In its PID, as pertinent here, the Board stated as follows:

Within fifteen (15) days after service of this partial initial decision (which shall be considered to have been served by regular mail for the purpose of calculating that date), any party may file a petition for review with the Commission on the grounds specified in 10 C.F.R. § 2.786(b)(4). . . . Within ten (10) days after service of a petition for review, any party to the proceeding may file an answer supporting or opposing Commission review. The petition for review and any answers shall conform to the requirements of 10 C.F.R. § 2.786(b)(2)-(3).

LBP-03-08, slip op. at 372; emphasis added.

¹ *Private Fuel Storage* (Independent Spent Fuel Storage Installation), LBP-03-08, 57 NRC ____ (2003).

2. In effect, the Licensing Board's PID added five days to the time in which a party may file a petition seeking Commission review thereof. See 10 C.F.R. § 2.710.² In accordance therewith, petitions for review were due to be filed by June 11, 2003 (*i.e.*, 20 days after service of the PID, if deemed to be served by regular mail). On June 11, 2003, the State filed its Petition.

3. The Licensing Board's PID is silent as to whether a petition for review should be deemed to have been served by regular mail or by other means for purposes of calculating a date in which to file a response thereto. If the 5-day grace period which the Board afforded to petitions is not applied to responses, any responses to the State's Petition would be due on Monday, June 23, 2003; however, if the 5-day period is applied, responses to the Petition would be due on June 26, 2003.

4. The Staff believes that the Board's PID, as a matter of parity and fairness to other parties, may be construed to afford the same additional 5-day period for filing responses that it afforded for filing a petition for review. This result, however, is far from certain. Accordingly, the Staff requests clarification and/or a three-day extension of time, to permit its response to the State's Petition to be filed on or before June 26, 2003. This additional period of time for filing the Staff's response is necessary due to Staff Counsel's involvement in other pressing matters during this period -- including the Staff's June 16 filing of a response to the Applicant's motion for

² The Commission's Rules of Practice provide that a five-day period is to be added to the computation of time for taking an action after service of papers by regular mail:

Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served upon by mail, five (5) days shall be added to the prescribed period.

10 C.F.R. § 2.710. In this proceeding, however, the Commission has directed that "the five-day grace period for answering pleadings served by first-class mail shall not be applicable." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), [unpublished] "Order" (May 14, 1998), at 1.

reconsideration of the Licensing Board's recent financial assurance decision, and participation in the aircraft crash consequence proceeding.

5. The Staff has discussed this request with Counsel for the State and Counsel for the Applicant. Neither of those parties oppose the Staff's request that it be permitted to file its response to the State's Petition on or before June 26, 2003.

WHEREFORE, the Staff respectfully requests clarification and/or a three-day extension of time, until June 26, 2003, in which to file its response to the State's Petition.

Respectfully submitted,

/RA/

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 19th day of June 2003

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S MOTION FOR CLARIFICATION AND/OR EXTENSION OF TIME TO RESPOND TO THE STATE OF UTAH'S PETITION FOR REVIEW OF LBP-03-08 (GEOTECHNICAL ISSUES)," 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 19th day of June, 2003:

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/RA/

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