

June 19, 2003

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

June 24, 2003 (11:30AM)

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of )

PRIVATE FUEL STORAGE L.L.C. )

Docket No. 72-22

(Private Fuel Storage Facility) )

APPLICANT'S REQUEST TO FILE REPLY TO STATE OF UTAH'S  
RESPONSE TO APPLICANT'S MOTION FOR CLARIFICATION AND/OR  
RECONSIDERATION OF UTAH E DECISIONS  
*[NON-PROPRIETARY VERSION]*

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") hereby requests leave to file a short reply to the State of Utah's Response to Applicant's Motion for Clarification and/or Reconsideration of Memorandum and Order (Rulings on Summary Disposition Motion and Other Filings Related to Remand from CLI-00-13) and Partial Initial Decision (Contention Utah E/Confederated Tribes F) ("State Response", dated June 16, 2003) which the State of Utah ("State") filed in response to PFS's June 6, 2003 motion for reconsideration and/or clarification of the two aforementioned decisions.<sup>1</sup> The Atomic Safety and Licensing Board ("Licensing Board" or "Board") issued the decisions on May 27, 2003 and thereby resolved the remaining issues in Contention Utah E/Confederated Tribes F.<sup>2</sup>

<sup>1</sup> Applicant's Motion for Clarification and/or Reconsideration of Memorandum and Order (Rulings on Summary Disposition Motion and Other Filings Related to Remand from CLI-00-13) and Partial Initial Decision (Contention Utah E/Confederated Tribes F) (June 6, 2003) ("PFS Motion").

<sup>2</sup> Memorandum and Order (Rulings on Summary Disposition Motion and Other Filings Related to Remand from CLI-00-13) (May 27, 2003) ("MSA M&O"), Partial Initial Decision (Contention Utah E/Confederated Tribes F) (May 27, 2003) ("Utah E PID").

In its motion, PFS requested clarification of license conditions LC-1 and LC-2 so that they would be worded and applied to PFS as they were stated by the Commission in CLI-00-13. PFS Motion at 5-6. In its response, the State has requested additional changes to the wording of LC-1 and LC-2 to explicitly incorporate individual findings from the Utah E PID. State Response at 4, 10. The State's response essentially constitutes an unjustifiably late motion for reconsideration of its own. Thus, PFS seeks leave to file a reply, both to object to the lateness of the State's motion and to respond to its substance, which PFS obviously could not have done in its initial motion.

The Utah E PID stated that PFS may not commence operations before service agreements with prices of a specific dollar amount, based on estimated lifetime operating and maintenance ("O&M") and decommissioning costs for a full-capacity, 4,000-cask facility, were in place. Utah E PID at 95; see id. at 86. In its motion PFS also requested reconsideration and/or clarification of that ruling because of [redacted].

PFS Motion at 6-8. In its response, the State claimed that PFS's request was improper because PFS had never before raised the issue [redacted].

State Response at 4-6. PFS requests leave to file a reply to point out that it had, in fact, raised the issue earlier, in its Utah E reply findings and its motion for summary disposition on issues related to the MSA, and indeed the Board recognized the potential effect [redacted] in the Utah E PID itself.

Finally, the State claimed that in oral argument concerning a PFS motion before Judge Farrar's licensing board for a license condition to limit the size of the PFS facility to 336 casks, PFS "argued that the MSA was not the only funding mechanism to finance construction and O&M." State Response at 7 n.12. PFS seeks leave to file a reply to show that the State's claim is erroneous, in that PFS made no such argument.

PFS requests leave to file a reply to address the foregoing issues, with a maximum of five pages, to be due on Tuesday, June 24, 2003.

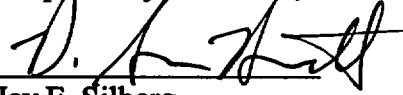
Counsel for PFS conferred with counsel for the NRC Staff and counsel for the State regarding this request. Counsel for the NRC Staff does not object to it. The State objects as follows:

The State opposes PFS's request to file a reply to address two issues: where it previously raised its [redacted] argument and the State's response relating to the wording of the license conditions.<sup>3</sup> When it filed its Motion for Reconsideration, at that time, PFS was required to meet the legal standard, one part of which is that PFS address where it had previously raised an issue it is now relying upon. Private Fuel Storage, LLC, LBP-00-31, 52 NRC 340, 342 (2000) ("A properly supported reconsideration motion is one that does not rely upon [ ] entirely new theses or arguments . . ."). PFS had the obligation to properly support its Motion when it filed it; PFS has not shown good cause to file a reply on this matter. As to re-writing the license conditions, PFS's Motion opened the door to that issue by specifically raising how the license conditions should be written and also how the Board's findings relating to those license conditions should be rewritten. If PFS did not want the State to comment on how the license conditions should be re-worded, it should not have brought that matter up in its Motion. Again PFS has not shown good cause to file a reply.

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<sup>3</sup> The State understands that PFS will raise a third issue relating to a statement it made during oral argument before the Farrar Board as applying only to construction costs. This appears to be a minor point of clarification and not the main bases upon which PFS seeks to file a reply.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. E. Silberg", written over a horizontal line.

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Dated: June 19, 2003

**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
	)	
(Private Fuel Storage Facility)	)	ASLBP No. 97-732-02-ISFSI

**CERTIFICATE OF SERVICE**

I hereby certify that copies of Applicant's Request to File Reply to State of Utah's Response to Applicant's Motion for Clarification and/or Reconsideration of Utah E Decisions [*Non-Proprietary Version*] were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 19<sup>th</sup> day of June, 2003.

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