

April 7, 2004 (9:34AM)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONOFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFFBEFORE THE COMMISSIONERS

In the Matter of:

Docket No. 72-22-ISFSI

PRIVATE FUEL STORAGE, LLC

ASLBP No. 97-732-02-ISFSI

(Independent Spent Fuel
Storage Installation)

April 1, 2004

STATE OF UTAH'S MOTION FOR CLARIFICATION
(Date of Filing Petition for Review of Board Confidentiality Rulings)

Utah files this Motion for Clarification because there is a Commission Order and a separate Board Memorandum that appear to provide for different filing deadlines by which Utah has the opportunity to petition for review of the Board's confidentiality rulings relating to Contentions Utah E/Confederated Tribes F and Utah S. Utah seeks to file a petition for review of the confidentiality rulings pursuant to the Board's March 31, 2004 Memorandum.

Yesterday, the Bollwerk Licensing Board issued a number of rulings relating to redactions to the evidentiary and decisional materials that may be placed in the public record and the basis thereof. As part of those rulings, the Board advised that any party wishing to petition for review of the Board's ruling must do so, in accordance with 10 C.F.R. § 2.786(b)(4), within 15 days after service of the Board's Memorandum.¹

In an Order dated June 16, 2003, the Commission granted Utah's June 4, 2003 request to expand the page limit and allowed it to file its petition for review of the Board's

¹Memorandum and Order (Disclosure/Redaction of Evidentiary and Decisional Materials Relating to Contentions Utah E/Confederated Tribes F and Utah S; Adopting Transcript Corrections Relating to Contentions Utah E/Confederated Tribes F and Utah S) at 36 (March 31, 2004).

Contention Utah E and Utah S Partial Initial Decisions within 10 days of the Board's ruling on PFS's Motion for Clarification. As part of the Commission's June 16 Order, the Commission stated that if the Bollwerk Board issued its confidentiality ruling after ruling on PFS's Motion for Clarification, "Utah may file a supplemental petition for review addressing confidentiality matters only, not exceeding seven pages, within seven days." Order at 2.² On March 24, 2004, the Commission acted on petitions for review filed by Utah and PFS; it granted PFS's petition and denied Utah's petition. CLI-04-10, slip op at 18.

The State has good cause for filing a petition in accordance with the Board's Memorandum. Given the posture of the case at the time the Commission issued its June 16, 2003 Order, there was the potential that the Bollwerk Board's confidentiality decision could issue concurrent with its ruling on PFS's clarification motion. Since the Board's ruling has occurred nine months after its clarification ruling and shortly after the Commission's denial of Utah's petition for review, fairness and efficiency provide good cause for Utah to file its petition pursuant to 10 C.F.R. § 2.786 (within 15 days of service of the Board's ruling). The Bollwerk Board has given the parties the opportunity to seek a stay of the release of any non-redacted material within seven days of the Board's ruling, with responses due seven days later. Moreover, there is the potential that there will be an additional issuance when the disclosed materials are actually placed in the public record. Board Memorandum at n. 21. Accordingly, if the State were to act under the Commission's Order it would do so before all filings were completed with the Board. More significantly, the Board has given all parties the

²PFS and the Staff were permitted to file a seven page response within seven days of Utah's supplement.

same opportunity to file a petition within 15 days, and if Utah were to file under the Commission's Order it would carve out a more vigorous filing requirement applicable only to Utah. Finally, it should be more efficient for the parties and Commission to file, review and respond to each party's petition for review on the same filing schedule.

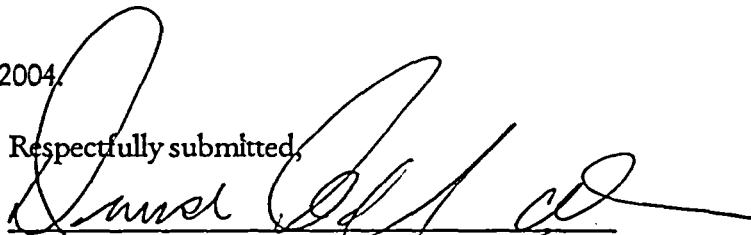
In light of the Commission's rejection of Utah's petition for review, the June 16, 2003 Order could be considered to be moot. In any event, if the Commission grants the State's clarification request to file a petition for review pursuant to 10 C.F.R. § 2.786, the State is willing to forego any supplement to its already filed and acted-upon petition.

The State has contacted counsel for the Applicant and the Staff, neither of whom oppose this motion.

WHEREFORE, the State requests clarification that it may file a 10 C.F.R. § 2.786(b)(4) petition for review within 15 days of service of the Board's March 31, 2004 Memorandum and Order and forego any supplemental petition for review under the Commission's June 16, 2003 Order.

DATED this 1st day of April, 2004.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S MOTION FOR CLARIFICATION (Date of Filing Petition for Review of Board Confidentiality Rulings) was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 1st day of April, 2004:

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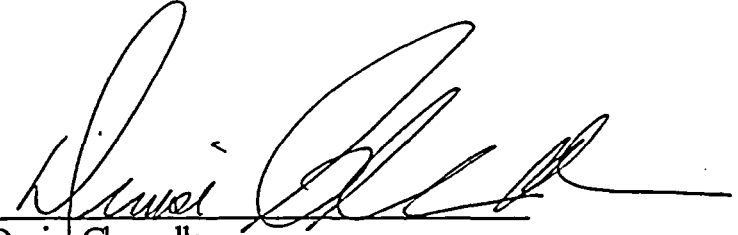
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