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DOCKETED
USMRCUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'99 DEC -6 P5:49

BEFORE THE COMMISSIONOFFICE OF SECURITY
RULE MAKING
ADJUDICATING STAFF

In the Matter of:

Docket No. 72-22-ISFSI

PRIVATE FUEL STORAGE, LLC
(Independent Spent Fuel
Storage Installation)

ASLBP No. 97-732-02-ISFSI

November 30, 1999

NOTIFICATION OF CHANGED CASE LAW CITED IN STATE OF UTAH'S
PETITION FOR INTERLOCUTORY REVIEW OF LBP-99-43

The State of Utah hereby notifies the Commission of a change in the status of a case relied on by the State in its November 19, 1999 Petition for Interlocutory Review of LBP-99-43. In support of its request for interlocutory review, the State cited a recent decision by the U.S. Court of Appeals for the D.C. Circuit, *National Whistleblower Center v. Nuclear Regulatory Commission*, No. 99-1002, 1999 WL 1024662, __ F.3d __ (D.C. Cir., November 12, 1999). In a *per curiam* order dated November 22, 1999, the Court vacated the November 12th decision, and announced that further briefing and rehearing will be held after a third judge is selected to replace Judge Wald, who left the Court shortly after the November 12th decision was issued. The November 22nd Order is reported at 1999 WL 1054724 (D.C. Cir.).

Although *National Whistleblower Center* decision has not been reversed, it may no longer be relied on as binding authority. Nevertheless, the cases cited in the *National Whistleblower Center* decision in support of the Court's holding, see 1999 WL

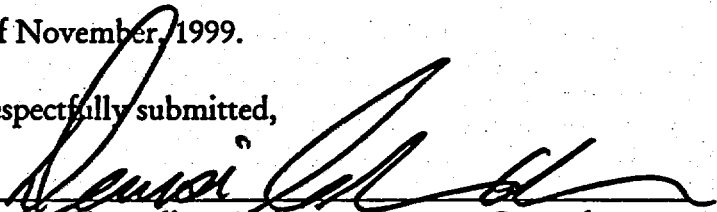
PDR ADOCK

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1024662 at * 4, are unaffected by the withdrawal of the *National Whistleblower Center* decision, and remain on point in support of the State's petition.¹

DATED this 30th day of November, 1999.

Respectfully submitted,



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¹ See, e.g., *Alaska Professional Hunters Association v. FAA*, 177 F.3d 1030, 1035 (D.C. Cir. 1999); *Guard v. NRC*, 753 F.2d 1144, 1148-49 (D.C. Cir. 1985); *Union of Concerned Scientists v. NRC*, 711 F.2d 370, 381 (D.C. Cir. 1983); and *Paralyzed Veterans of America v. D.C. Arena L.P.*, 117 F.3d 579, 586 (D.C. Cir. 1997), cert. denied *Pollin v. Paralyzed Veterans of America*, 118 S.Ct. 1184, 140 L. Ed.2d 315 (1998).

CERTIFICATE OF SERVICE

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I hereby certify that a copy of NOTIFICATION OF CHANGED CASE

LAW CITED IN STATE OF UTAH'S PETITION FOR INTERLOCUTORY

OFFICE OF SECRETARY
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REVIEW OF LBP-99-43 was served on the persons listed below by electronic mail

(unless otherwise noted) with conforming copies by United States mail first class, this

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