

21258

UNFILED CORRESPONDENCE

DOCKETED
February 14, 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'00 FEB 15 AM 11:50

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

ADJUDICATED

In the Matter of)	
)	
PRIVATE FUEL STORAGE, LLC)	Docket No. 72-22-ISFSI
)	
(Independent Spent)	
Fuel Storage Installation))	

NRC STAFF'S OBJECTIONS AND RESPONSES
TO THE "STATE OF UTAH'S FIFTH SET OF
DISCOVERY REQUESTS DIRECTED TO THE
NRC STAFF (UTAH CONTENTIONS E, H AND L)"

INTRODUCTION

On January 31, 2000, the State of Utah ("State") filed the "State of Utah's Fifth Set of Discovery Requests Directed to the NRC Staff (Utah Contentions E, H and L)" ("Fifth Request"), concerning the application for an Independent Spent Fuel Storage Installation ("ISFSI") filed by Private Fuel Storage, L.L.C. ("PFS" or "Applicant"). In its Request, the State filed ten document requests concerning Contention Utah E / Confederated Tribes Contention F (financial assurance); six requests for admissions, two interrogatories, and seven document requests concerning Contention Utah H (thermal design); and four document requests concerning Contention Utah L (geotechnical).

The NRC Staff ("Staff") hereby files its objections and responses to the State's Request, as follows.¹

¹ The Staff files these objections and responses on February 14, 2000, as agreed to by Counsel for the State.

DS07

GENERAL OBJECTIONS

Objection 1. The Staff objects to each of the State's discovery requests, in that the State has not complied with the Commission's regulations that govern discovery from the Staff. In this regard, it is well established that discovery against the Staff rests on a different footing than discovery in general. *Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-634, 13 NRC 96, 97-98 (1981). While discovery from parties in an NRC adjudicatory proceeding is generally governed by the provisions of 10 C.F.R. § 2.740 *et seq.*, interrogatory and document discovery against the Staff is governed by the provisions of 10 C.F.R. §§ 2.720(h)(ii)-(iii), 2.744 and 2.790.² These regulations establish certain limits to the Staff's obligation to respond to requests for discovery.

In particular, with regard to interrogatories, the Commission's rules provide:

[A] party may file with the presiding officer written interrogatories to be answered by NRC personnel with knowledge of the facts designated by the Executive Director for Operations. Upon a finding by the presiding officer that answers to the interrogatories are necessary to a proper decision in the proceeding and that answers to the interrogatories are not reasonably obtainable from any other source, the presiding officer may require that the staff answer the interrogatories.

10 C.F.R. § 2.720(h)(2)(ii). With regard to requests for the production of documents, the Commission's rules similarly provide:

(a) A request for the production of an NRC record or document not available pursuant to 10 C.F.R. § 2.790 . . . shall set forth the records or documents requested, either by individual item or by category, and shall describe each item or category with reasonable particularity and shall state why that record or document is relevant to the proceeding.

² See also 10 C.F.R. §§ 2.740(f)(3), 2.740a(j), 2.740b(a), and 2.741(e) (excluding discovery from the Staff from the general provisions of those regulations).

(b) If the Executive Director for Operations objects to producing a requested record or document on the ground that (1) it is not relevant or (2) it is exempted from disclosure under § 2.790 and the disclosure is not necessary to a proper decision in the proceeding or the document or the information therein is reasonably obtainable from another source, he shall so advise the requesting party.

10 C.F.R. § 2.744(b). The rule further provides for application by the requesting party to the presiding officer to compel production of the documents, where the movant shows that the document is relevant to the issues in the proceeding; and the document is not exempt from disclosure under 10 C.F.R. § 2.790 -- or, if exempt, that the document or information is necessary to a proper decision in the proceeding and is not reasonably obtainable from another source. 10 C.F.R. §§ 2.744(c)-(d).³

Moreover, it is an adequate response to *any* discovery request for a party to state that the information or document requested is available in the public domain and to provide information to locate the material requested. 10 C.F.R. § 2.740(b)(1); *accord*, *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No. 1), CLI-79-8, 10 NRC 141, 147-148 (1979).

Here, the State has not complied with any of the Commission's requirements governing discovery against the Staff. First, the State has not indicated that the requested documents and information are not available in the public domain. Indeed, many of the documents requested by the State are available to the public at the Commission's Public Document Room (PDR) or the Local PDR (LPDR) in Salt Lake City. The State has not indicated that the requested information and documents are exempt from disclosure under 10 C.F.R. § 2.790 or that it can not obtain the

³ Additionally, 10 C.F.R. § 2.744(e) provides a framework for limited disclosure (under a protective order) of documents exempt from disclosure under 10 C.F.R. § 2.790, upon a finding by the presiding officer that such disclosure is necessary to a proper decision in the proceeding. *Cf.* 10 C.F.R. § 2.740(c).

documents from public sources. Similarly, to the extent that any documents may be exempt from disclosure, the State has not explained why any such exempt items are necessary to a proper decision in the proceeding. Finally, to the extent that the instant discovery requests seek information that has been withheld from public disclosure as PFS' proprietary information, the State has been afforded access to that material by the Applicant under a confidentiality agreement, and the State has shown no reason why it could not obtain the requested information from the Applicant.

Objection 2. The Staff objects to each of the State's discovery requests, insofar as they request information that is not relevant to the issues in this proceeding and/or that exceeds the scope of admitted contentions in this proceeding.

Objection 3. The Staff objects to the State's discovery requests insofar as they relate to matters which are outside the jurisdiction of the NRC and/or are beyond the proper scope of this proceeding.

Objection 4. The Staff objects to each of the State's discovery requests, insofar as they request information or documents from the "Nuclear Regulatory Commission," "NRC," or other persons or entities who are not NRC Staff members or consultants in this proceeding. *See, e.g.,* Definition A (Request at 4). The NRC and persons other than Staff members (*e.g.,* Commissioners, Commissioners' Assistants, Licensing Board members, ACRS members, etc.) are not parties to this proceeding and are not properly subject to the State's requests for discovery in this proceeding.

Objection 5. The Staff objects to each of the State's discovery requests, insofar as they seek to impose an obligation to respond that is different from or greater than the obligations imposed by Commission requirements in 10 C.F.R. Part 2. *See, e.g.,* Instruction B, "Lack of Information" (Request at 2).

Objection 6. The Staff objects to each of the State's discovery requests, insofar as they may request information or documents protected under the attorney-client privilege, the doctrines governing the disclosure of attorney work product and trial preparation materials, and/or any other privilege or exemption that warrants or permits the non-disclosure of documents under the Freedom of Information Act, as set forth in 10 C.F.R. § 2.790(a). Notwithstanding this objection, the Staff is preparing a privilege log to identify documents that are sought to be withheld from discovery as privileged, and will produce that log to the State.

RESPONSES TO DISCOVERY REQUESTS

Notwithstanding the above objections to the State's Request, and without waiving these objections or its right to interpose these or other objections in the future, the Staff hereby voluntarily provides the following responses to the State's Request.

A. **CONTENTION E- FINANCIAL ASSURANCE**
Document Requests - Utah E

DOCUMENT REQUEST NO. 1 - UTAH E: Please refer to Staff's Response dated January 28, 2000, to Admission Request No. 53, State's 4th Set of Discovery to the Staff. Please provide all documents that describe or otherwise address "the shipping reactor's primary responsibility for accidents involving its fuel" when the fuel is shipped from an ISFSI and not from a reactor. ⁴

⁴ The State's Request for Admission No. 53, and the Staff's response thereto, dated January 28, 2000, were as follows:

REQUEST FOR ADMISSION NO. 53. Please refer to Staff's Position page 6, Item 10, ¶2: "The Staff believes ... [t]his amount [\$200 million] should be sufficient to provide a reasonable level of insurance for contingency funding . . ." Do you admit that the Staff's belief that \$200 million "should be sufficient" is not based on any fact-based analysis of the PFS facility, or of similar facilities.

(continued...)

STAFF RESPONSE. The Staff objects to this request on the grounds that it seeks information that may be available to the State from other sources including, without limitation, documents filed by PFS in this proceeding. Notwithstanding this objection, the Staff states as follows: To the extent that such documents exist and are not otherwise available in the public docket or privileged, predecisional or otherwise exempt from disclosure under 10 C.F.R. § 2.790, they will be produced.

DOCUMENT REQUEST NO. 2 - UTAH E: Please provide all documents that the Staff has written or compiled relevant to cases where NRC Part 50 or Part 72 licensees have violated NRC rules in order to cut financial costs.

STAFF RESPONSE. The Staff objects to this request on the grounds that it (a) is vague and ambiguous, (b) seeks information that is not relevant to Utah Contention E and is not reasonably calculated to lead to the discovery of admissible evidence, and (c) is unduly burdensome and overbroad in its request for information concerning every other entity licensed by the Commission under Part 50 or Part 72 which at any time, to any extent, and in any manner, may have “violated NRC rules in order to cut financial costs.”

⁴(...continued)

STAFF RESPONSE. No. The Staff’s determination is based upon a judgment which considered various factors, such as, without limitation, the shipping reactor’s primary responsibility for accidents involving its fuel; the cask’s ability to withstand credible accidents without a significant radiological release; the remote location of the site in relation to population centers; and the level and type of land use in the site vicinity.

See “NRC Staff’s Objections and Responses to the ‘State of Utah’s Fourth Set of Discovery Requests Directed to the NRC Staff (Utah Contention E)’” (“Fourth Response”), dated January 28, 2000, at 20.

DOCUMENT REQUEST NO. 3 - UTAH E: Please provide all documents that describe or otherwise address the demand for the service PFS proposes to provide.

STAFF RESPONSE. The Staff objects to this request on the grounds that it (a) is vague and ambiguous, (b) is unduly burdensome and overbroad, and (c) seeks information that, at least in part, may be available to the State from other sources including, without limitation, documents filed by PFS in this proceeding. Notwithstanding these objections, the following documents may be responsive to this request:

1. NUREG-1571, "Information Handbook on Independent Spent Fuel Storage Installations" (NRC Spent Fuel Project Office, December 1996).
2. DOE/RW-0431-Rev.1, "Spent Fuel Storage Requirements 1994-2042" (DOE Office of Civilian Radioactive Waste Management, June 1995).

DOCUMENT REQUEST NO. 4 - UTAH E: Please provide all documents that describe or otherwise address the cost of constructing an NRC licensed ISFSI.

STAFF RESPONSE. The Staff objects to this request on the grounds that it (a) seeks information that is not relevant to Utah Contention E and is not reasonably calculated to lead to the discovery of admissible evidence, and (b) is unduly burdensome and overbroad in its request for information concerning the cost of constructing any and all other NRC-licensed ISFSI, and (c) seeks information that, at least in part, may be available to the State from other sources including, without limitation, the public docket for such other facilities.

DOCUMENT REQUEST NO. 5 - UTAH E: Please provide all documents that describe or otherwise address the cost of operating and maintaining an NRC licensed ISFSI.

STAFF RESPONSE. The Staff objects to this request on the grounds that it (a) seeks information that is not relevant to Utah Contention E and is not reasonably calculated to lead to the discovery of admissible evidence, (b) is unduly burdensome and overbroad in its request for information concerning the cost of operating or maintaining any and all other NRC-licensed ISFSI, and (c) seeks information that, at least in part, may be available to the State from other sources including, without limitation, the public docket for such other facilities.

DOCUMENT REQUEST NO. 6 - UTAH E: Please provide all documents that describe or otherwise address the cost of decommissioning an NRC licensed ISFSI.

STAFF RESPONSE. The Staff objects to this request on the grounds that it (a) seeks information that is not relevant to Utah Contention E and is not reasonably calculated to lead to the discovery of admissible evidence, (b) is unduly burdensome and overbroad in its request for information concerning the cost of decommissioning any and all other NRC-licensed ISFSI, and (c) seeks information that, at least in part, may be available to the State from other sources including, without limitation, the public docket for such other facilities.

DOCUMENT REQUEST NO. 7 - UTAH E: Please provide all testimony or affidavits filed by the Staff in any part 72 licensing proceeding on the issue of financial qualifications.

STAFF RESPONSE. The Staff objects to this request on the grounds that it (a) seeks information that is not relevant to Utah Contention E and is not reasonably calculated to lead to the discovery of admissible evidence, (b) is unduly burdensome and overbroad in its request for all testimony or affidavits filed by the Staff in any Part 72 licensing proceeding on the issue of financial qualifications, and (c) seeks information that may be available to the State from other sources

including, without limitation, the public docket for other facilities. Notwithstanding these objections, the Staff states that it has no documents that are responsive to this request.

DOCUMENT REQUEST NO. 8 - UTAH E: Please provide all documents which address the issue of the implications for health and safety when a Part 50 or Part 72 NRC licensee is in poor or deteriorating financial condition.

STAFF RESPONSE. The Staff objects to this request on the grounds that it (a) is vague and ambiguous, (b) seeks information that is not relevant to Utah Contention E and is not reasonably calculated to lead to the discovery of admissible evidence, (c) is unduly burdensome and overbroad in its request for information, without limitation, concerning “the implications for health and safety when a Part 50 or Part 72 NRC licensee is in poor or deteriorating financial condition,” and (d) seeks information that, at least in part, may be available to the State from other sources.

DOCUMENT REQUEST NO. 9 - UTAH E: Please provide all documents that relate in any way to the two license conditions that appeared in the Staff’s Safety Evaluation Report (SER), dated December 15, 1999, including how the conditions were developed.

STAFF RESPONSE. The Staff objects to producing documents in response to this request, to the extent that (a) it seeks information that is not relevant to Utah Contention E and is not reasonably calculated to lead to the discovery of admissible evidence, (b) it seeks documents which may be available to the State from PFS or other sources, including, without limitation, the documents submitted by PFS in this proceeding, and applicable regulations, regulatory guidance and/or adjudicatory decisions in this and other proceeding(s), and (c) it seeks the disclosure of draft, predecisional or privileged documents that are exempt from disclosure under 10 C.F.R. § 2.790.

DOCUMENT REQUEST NO. 10 - UTAH E: Please provide all documents that relate in any way to the development of the two license conditions that appear in the Staff's corrected version of the SER, including how the conditions were developed.

STAFF RESPONSE. See Response to Document Request No. 9 - Utah E, *supra*.

B. CONTENTION H- THERMAL DESIGN

1. Requests for Admissions - Utah H

REQUEST FOR ADMISSION NO. 1 - UTAH H. In the SER for the HI-STORM 100 cask system, the Staff states that: "Previous staff evaluations of the applicant's HI-STAR 100 SAR's FLUENT computer code results, using the ANSYS finite element computer code, confirmed the temperature calculation results of this method." Do you admit that this representation is incorrect?

STAFF RESPONSE. The Staff objects to this request, to the extent that it (a) seeks information that is not relevant to Utah Contention H and is not reasonably calculated to lead to the discovery of admissible evidence, and (b) seeks documents which may be available to the State from PFS or other sources, including, without limitation, documents in the public docket for the HI-STAR and HI-STORM rulemaking proceedings. Notwithstanding these objections, the Staff states as follows: No.

REQUEST FOR ADMISSION NO. 2 - UTAH H. Do you admit that the NRC Staff has no basis for verifying the representation quoted above in Request for Admission No. 1?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (a) is vague and ambiguous, (b) constitutes an improper compound question, and (c) seeks information that is not relevant to Utah Contention H and is not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding these objections, the Staff states as follows: No.

REQUEST FOR ADMISSION NO. 3 - UTAH H. At page 3.4-7 of the HI-STAR TSAR (Rev. 8), Holtec states that: "The FLUENT model was found to yield conservative results in comparison to the ANSYS model for the 'black' surface case." Do you admit that the NRC Staff ran the ANSYS code to verify Holtec's ANSYS model for the "black" surface case?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (a) is vague and ambiguous, (b) constitutes an impermissible compound question, and (c) seeks to discover information that is not relevant to Utah Contention H and is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 4 - UTAH H. At page 3.4-7 of the HI-STAR SER [sic] (Rev 8), Holtec states: "The FLUENT model benchmarked in this manner is used to solve the gray body radiation problem to provide the necessary results for determining the effective thermal conductivity of the governing PWR fuel assembly." Do you admit that the NRC Staff ran the ANSYS code to verify Holtec's ANSYS model for the "gray body radiation problem?"

STAFF RESPONSE. The Staff objects to this request on the grounds that it (a) is vague and ambiguous, (b) constitutes an impermissible compound question, and (c) seeks to discover information that is not relevant to Contention Utah H and is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 5 - UTAH H. In the Staff's January 10, 2000, response to the State's Request for Admission No. 17 regarding Contention H, the Staff states that "Mr. Steven Hogsett performed an ANSYS computer run for the purpose of obtaining a better understanding of the HI-STAR cask design and to confirm the Holtec ANSYS calculations." Do you admit that this statement contradicts the statement in the HI-STORM SER that is quoted above in Request for Admission No. 1, in the sense that the Staff used ANSYS to evaluate only Holtec's black body ANSYS calculations?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (a) is vague and ambiguous, (b) improperly characterizes the Staff's previous statements,⁵ (c) constitutes an improper compound question, and (d) seeks information that is not relevant to Contention Utah H and is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 6 - UTAH H. With reference to the Staff's response to Request for Admission No. 17 that is quoted in Request for Admission No. 5 above, do you admit that Mr. Hogsett did not use ANSYS to evaluate Holtec's FLUENT calculations?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (a) is vague and ambiguous, (b) improperly characterizes the Staff's response of January 10, 2000, and (c) seeks information that is not relevant to Contention Utah H and is not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding these objections, the Staff states as follows: No.

⁵ The State's Request for Admission No. 17, concerning Contention Utah H, and the Staff's response thereto, dated January 10, 2000, were as follows:

REQUEST FOR ADMISSION NO. 17: Do you admit that the NRC Staff or one of its contractors ran the ANSYS computer program for the purpose of evaluating the thermal design of the HI-STAR 100 transportation cask system.

STAFF RESPONSE. No. However, on information and belief, an individual member of the Staff (Mr. Steven Hogsett) performed an ANSYS computer run for the purpose of obtaining a better understanding of the HI-STAR cask design and to confirm the Holtec ANSYS calculations. Mr. Hogsett is no longer employed at the NRC.

See "NRC Staff's Objections and Responses to the 'State of Utah's Third Set of Discovery Requests Directed to the NRC Staff (Utah Contention H)'" ("Third Response"), dated January 10, 2000.

2. **Interrogatories - Utah H** ⁶

INTERROGATORY NO. 9 - UTAH H. Identify all NRC Staff members who participated in the review and/or approval of the thermal design of the HI-STAR 100 and HI-STORM cask systems, including each individual's title, his or her role in the review process, the time period of their participation in the review, when he or she subsequently left his or her position or the agency (if applicable), and whether he or she left complete records of his or her work on departing.

STAFF RESPONSE. The Staff objects to this request on the grounds that it (a) seeks to discover information that is not relevant to Utah Contention H and is not reasonably calculated to lead to the discovery of admissible evidence, (b) is unduly burdensome and overbroad, insofar as it seeks the names of every individual who may have been involved, to any extent whatsoever, in the Staff's HI-STAR or HI-STORM thermal design review and/or approval, (c) to the extent that it seeks the discovery of information concerning transportation casks, exceeds the permissible scope of this proceeding, and (d) is not necessary to a proper decision in the proceeding and is thus improper under 10 C.F.R. § 2.720(h)(2). In this regard, the Staff notes that it has previously identified and made available for deposition an individual (Jack Guttman) whom it believes possesses the necessary knowledge to respond to the State's discovery requests within the scope of this proceeding and Contention Utah H. The State has not shown that this individual lacks the necessary knowledge to respond to its discovery requests (as would be required to show "exceptional circumstances" in order to compel the appearance of such other persons for deposition), or that this

⁶ The State indicates that "[n]umbering for these interrogatories is continued from the last interrogatory previously submitted to the Staff." Request at 11 n.1.

information is necessary to a proper decision in the proceeding, as required under 10 C.F.R. § 2.720(h)(2)(i) and (ii).⁷

INTERROGATORY NO. 10 - UTAH H. Explain the apparent discrepancy between (a) the Staff's statements in Section 4.5.4 of the HI-STORM 100 SER and Section 4.5.4 of the HI-STAR 100 SER to the effect that the Staff performed an independent computer analysis to confirm the results of the Holtec thermal analysis, and (b) the Staff's January 10, 2000 response to Request for Admission No. 17, which indicates that the Staff believes, but is unable to verify, that any such analysis was performed. Your explanation should include a discussion of whether the NRC Staff intends to retract and/or modify any statements in the SERs for the HI-STAR 100 or HI-STORM 100 cask systems regarding the adequacy of Holtec's thermal analysis for those cask systems.

STAFF RESPONSE. The Staff objects to this request on the grounds that it (a) is vague and ambiguous, (b) mischaracterizes the Staff's previous statements, (c) constitutes an improper compound question, (d) is improperly argumentative, and (e) seeks to discover information that is not relevant to Contention Utah H, and is not reasonably calculated to lead to the discovery of admissible evidence.

3. Document Production Requests - Utah H

DOCUMENT REQUEST NO. 1 - UTAH H: Provide all documents, other than documents generated by Holtec or PFS, on which the NRC Staff relied in reaching the safety findings reported in Section 4.5.4 of the SER for the HI-STAR 100 cask system.

⁷ In addition, in light of the State's demand that the Staff produce other persons for deposition on Contention Utah H, the Staff has offered to receive the State's questions in writing, so it may make a determination as to whether any person other than the named Staff witness should be produced. The State has declined this offer. See Exhibit 1 hereto. Accordingly, there is no reasonable basis for the State to require a response to its Interrogatory No. 9.

STAFF RESPONSE. The Staff objects to this request on the grounds that it (a) is unduly burdensome and overly broad, (b) seeks to discover information that is not relevant to Contention Utah H and is not reasonably calculated to lead to the discovery of admissible evidence, and (c) seeks the production of documents that may reasonably be obtainable from other sources, including, without limitation, documents available to the public in the HI-STAR and HI-STORM cask rulemaking proceedings and the PFS licensing proceeding.

DOCUMENT REQUEST NO. 2 - UTAH H: Provide all documents, other than documents generated by Holtec or PFS that are in the public record, on which the NRC Staff relied in reaching the safety findings reported in Section 4.5.4 of the SER for the HI-STORM 100 cask system.

STAFF RESPONSE. See Response to Document Request No. 1 - Utah H, *supra*.

DOCUMENT REQUEST NO. 3 - UTAH H: Provide all documents, other than documents generated by Holtec or PFS that are in the public record, on which the NRC Staff relied in reviewing the thermal design for the PFS facility.

STAFF RESPONSE. See Response to Document Request No. 1 - Utah H, *supra*.

Notwithstanding the objections stated in response to Document Request No. 1 and incorporated here by reference, to the extent that any such documents exist that are not otherwise available from other sources, or are privileged, predecisional or otherwise exempt from disclosure under 10 C.F.R. § 2.790, they will be identified or produced.

DOCUMENT REQUEST NO. 4 - UTAH H: Provide all documents, other than documents generated by Holtec or PFS that are in the public record, on which the NRC Staff relied in reaching the safety findings reported in Section 4.5.4 of the SER for the HI-STORM 100 cask system.

STAFF RESPONSE. See Response to Document Request No. 1 - Utah H, *supra*.

DOCUMENT REQUEST NO. 5 - UTAH H: Provide all documents which discuss in any way Mr. Hogsett's review of the HI-STAR 100 and HI-STORM 100 TSARs; the implications of his departure from the agency with respect to the safety findings in the SERs for the HI-STAR 100 and HI-STORM 100 cask systems or the safety review of the PFS facility thermal design; and/or the implications of the lack of documentation of his analyses with respect to the safety findings in the SERs for the HI-STAR 100 and HI-STORM 100 cask systems or the safety review of the PFS facility thermal design.

STAFF RESPONSE. The Staff objects to this request on the grounds that it (a) is vague and ambiguous, (b) improperly characterizes the Staff's previous statements, (c) constitutes an improper compound question, (d) is improperly argumentative, (e) seeks to discover information that is not relevant to Utah Contention H and is not reasonably calculated to lead to the discovery of admissible evidence, and (f) is improper to the extent that it seeks to discover draft, predecisional or privileged information that is exempt from disclosure under 10 C.F.R. § 2.790.

DOCUMENT REQUEST NO. 6 - UTAH H: If the NRC admits Requests for Admission No. 3 and/or No. 4 above, provide all calculations, correspondence, and any other materials that the Staff relied on or generated in performing the analysis. This request does not include materials submitted by PFS or Holtec that are on the public record.

STAFF RESPONSE. See Response to Requests for Admission 3 and 4, *supra*.

DOCUMENT REQUEST NO. 7 - UTAH H: In the SER for the HI-STORM 100 cask system, the Staff states that: "The staff performed independent calculations for the form loss and friction loss coefficients used by the applicant to simulate the hydraulic characteristics of the internal air passage." Please provide copies of all calculations that were performed.

STAFF RESPONSE. The Staff objects to this request on the grounds that it seeks to discover information that is not relevant to Utah Contention H and is not reasonably calculated to lead to the

discovery of admissible evidence. Notwithstanding these objections, the Staff states that it has no documents that are responsive to this request.

C. CONTENTION L - GEOTECHNICAL

1. Document Requests - Utah Contention L

DOCUMENT REQUEST NO. 1 - UTAH L. As referenced in the Safety Evaluation Report dated December 15, 1999, please produce a copy of Stamatakos, J., R. Chen, M. McCann, and A.H. Chowdhury, 1999, *Seismic Ground Motion at the Private Fuel Storage Facility Site in the Skull Valley Indian reservation*, San Antonio, TX: Center for Nuclear Waste Regulatory Analyses. This document is directly relevant to the Staff's analyses of seismic ground motion and the grant of the Applicant's seismic exemption request. See SER at 2-36. According to the State's knowledge, the document is not exempt from disclosure under 10 C.F.R. § 2.790.

STAFF RESPONSE. The Staff objects to this request on the grounds that it mischaracterizes the Staff's position concerning the Applicant's seismic exemption request, as set forth in the Staff's Safety Evaluation Report (SER) for the PFS facility. Notwithstanding this objection, a copy of the referenced report will be produced.

DOCUMENT REQUEST NO. 2 - UTAH L. As referenced in the Safety Evaluation Report dated December 15, 1999, please produce a copy of Chen, R., and A.H. Chowdhury, 1998, *Seismic Ground Motion at the Three Mile Island Unit 2 Independent Spent Fuel Storage Installation Site in Idaho National Engineering and Environmental Laboratory—Final Report*, CNWRA 98-007. San Antonio, TX: Center for Nuclear Waste Regulatory Analyses. This document is directly relevant to the Staff's justification of granting the Applicant's seismic exemption request conditional on using a 2,000 year return period interval. See SER at 2-45. According to the State's knowledge, the document is not exempt from disclosure under 10 C.F.R. § 2.790.

STAFF RESPONSE. The Staff objects to this request on the grounds that (a) it mischaracterizes the Staff's position concerning the Applicant's seismic exemption request, as set forth in the Staff's SER for the PFS facility, (b) it seeks to discover information that is not relevant to Contention Utah L and is not reasonably calculated to lead to the discovery of admissible evidence, and (c) the State has not demonstrated that the information requested could not have been obtained from another source.⁸ Further, the State fails to indicate why it could not have obtained the requested document from other sources, including, without limitation, PFS or files pertaining to the Three Mile Island seismic exemption request, located in the Commission's PDR or LPDR. Notwithstanding these objections, however, a copy of the referenced report will be produced.

DOCUMENT REQUEST NO. 3 - UTAH L. Please produce copies of the exemption request and the deterministic and probabilistic ground-motion analyses, for the Three Mile Island Unit 2 Independent Spent Fuel Storage Installation in Idaho National Engineering and Environmental Laboratory. These document(s) are directly relevant to the Staff's justification of granting the Applicant's seismic exemption request conditional on using a 2,000 year return period interval. See SER at 2-45. According to the State's knowledge these documents are not exempt from disclosure under 10 C.F.R. § 2.790.

STAFF RESPONSE. The Staff objects to producing documents in response to this request, in that (a) it mischaracterizes the Staff's position concerning the Applicant's seismic exemption request, as set forth in the Staff's SER for the PFS facility, (b) it seeks to discover information that is not relevant to Contention Utah L and is not reasonably calculated to lead to the discovery of admissible evidence, and (c) the State has not demonstrated that the information requested could not

⁸ See, e.g., 10 C.F.R. § 2.740(b)(1) (a party may respond to discovery by stating that the information is available in the public domain and by providing information to locate the material requested.)

have been obtained from another source. Further, the State fails to indicate why it could not have obtained the requested documents from other sources, including, without limitation, PFS or files pertaining to the Three Mile Island seismic exemption request, located in the Commission's PDR or LPDR. Notwithstanding these objections, copies of the requested documents will be produced, to the extent that they are not privileged or protected from disclosure under 10 C.F.R. § 2.790.

DOCUMENT REQUEST NO. 4 - UTAHL. To the extent the Staff is relying on the specific cask stability analyses to support its justification of the Applicant's seismic exemption request conditioned on using a 2,000 year return period interval, please produce copies of those analyses for cask tipover. These document(s) may be directly relevant to the Staff's justification for granting the Applicant's seismic exemption request conditional on using a 2,000 year return period interval. According to the State's knowledge, these documents are not exempt from disclosure under 10 C.F.R. § 2.790.

STAFF RESPONSE. The Staff objects to this request on the grounds that (a) it is vague and ambiguous, in that it does not identify "the specific cask stability analyses" that are referred to in the request, (b) it constitutes an impermissible compound question, (c) it mischaracterizes the Staff's position concerning the Applicant's seismic exemption request, as set forth in the Staff's SER for the PFS facility, and (d) the State has not demonstrated that the requested information could not be obtained from another source. *See* 10 C.F.R. § 2.740(b)(1).

Respectfully submitted,



Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 14th day of February 2000

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-ISFSI
)
(Independent Spent Fuel)
Storage Installation))

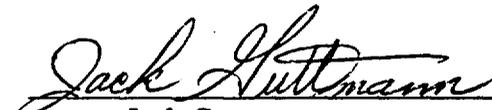
AFFIDAVIT OF JACK GUTTMANN

COUNTY OF MONTGOMERY)
) SS:
STATE OF MARYLAND)

Jack Guttman, having first been duly sworn, does hereby state as follows:

1. I am employed as a Senior Nuclear Engineer in the Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, in Washington, D.C. A statement of my professional qualifications is attached hereto.

2. I have reviewed the foregoing NRC Staff responses to the "State of Utah's Fifth Set of Discovery Requests Directed to the NRC Staff (Utah Contentions E, H and L)," as they pertain to Utah Contention H (Thermal Design), and verify that they are true and correct to the best of my knowledge, information and belief.


Jack Guttman

Sworn to before me this
14th day of February 2000


Notary Public
My commission expires: 12/01/2001

Jack Guttman
Senior Nuclear Engineer
Spent Fuel Project Office
Office of Nuclear Material Safety and Safeguards (NMSS)
U. S. Nuclear Regulatory Commission

B.S. in Mechanical Engineering, Michigan Technological University, 1973
M.S. Nuclear Engineering, University of Michigan, 1974

Mr. Guttman has experience in nuclear engineering related to thermal-hydraulic and mechanical engineering analysis. Mr. Guttman worked at the Idaho National Engineering Laboratory as a contractor to the NRC in the area of thermal-hydraulic computer code validation and analysis. He performed analyses that quantified the conservatism between the accident analysis requirements for licensing nuclear power plants (10 C.F.R. Part 50, Appendix K), validated the computer code RELAP for regulatory application by the NRC, and performed independent confirmatory transient and accident analyses of operating reactor events and safety issues defined by the NRC.

While working at the NRC, Mr. Guttman was responsible for reviewing and approving the computer codes used by the nuclear industry for transient and accident analysis. He was the Office of Nuclear Reactor Regulation (NRR) representative on the Advanced Code Review Committee, the Loss of Fluid Test Facility, and the Semiscale Test Facility. Mr. Guttman performed independent analyses of plant operating events, including regulatory responses to the TMI event. He was a member of the BWR Bulletins and Orders Task Force that reviewed the ramifications of the TMI-2 events for boiling water reactors. He reviewed and approved emergency operator procedures for PWR designs and performed quality assurance inspections. Mr. Guttman developed standard review plans for analyzing reactor transient and accident events, developed regulatory guidance and NUREG documents for implementing Risk-Informed In-Service Testing of Piping, and was on the task force for developing Risk-Informed regulatory guidance documents.

With respect to policy development, Mr. Guttman served as a technical assistant to Commissioner Forrest J. Remick. He advised Commissioner Remick on policy development of advanced nuclear power plants, operating reactor issues, research needs, and represented the Commission as an observer on INPO inspections.

Mr. Guttman is currently performing thermal and containment evaluations of spent nuclear fuel transportation and storage casks. His work includes the evaluation of normal, off-normal and accident dose analyses, and the adequacy of the thermal design of spent nuclear fuel casks.

PROFESSIONAL CHRONOLOGY: Jr. Engineer, Detroit Edison Co., Enrico Fermi Atomic Power Plant-I, 1972-73; Research Engineer, Idaho National Engineering Laboratory, 1975-1976; Nuclear Engineer, Office of Nuclear Reactor Regulation, NRC, 1976-1985; Technical Coordinator, Office of the Secretary, NRC, 1985-1990; Technical Assistant, Office of the Commission, NRC, 1990-1994; Sr. Reliability and Risk Assessment Engineer, Office of Nuclear Regulatory Research, NRC, 1994-1999; Sr. Nuclear Engineer, Office of Nuclear Material Safety and Safeguards, NRC, 1999-present.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'00 FEB 15 AM 11:50

In the Matter of)
)
PRIVATE FUEL STORAGE LLC)
)
(Independent Spent)
Fuel Storage Installation))

Docket No. 72-22-ISFSI

OFFICE OF THE SECRETARY
ADJUDICATIONS

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S OBJECTIONS AND RESPONSES TO THE 'STATE OF UTAH'S FIFTH SET OF DISCOVERY REQUESTS DIRECTED TO THE NRC STAFF (UTAH CONTENTIONS E, H AND L)'" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the Nuclear Regulatory Commission's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the United States mail, first class, as indicated by double asterisk, with copies by electronic mail as indicated, this 14th day of February, 2000.

G. Paul Bollwerk, III, Chairman*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to GPB@NRC.GOV)

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Jerry R. Kline*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to kjerry@erols.com)

Office of the Secretary*
ATTN: Rulemakings and Adjudications
Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to
HEARINGDOCKET@NRC.GOV)

Dr. Peter S. Lam*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to PSL@NRC.GOV)

Office of the Commission Appellate
Adjudication
Mail Stop: 16-C-1 OWFN
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

James M. Cutchin, V*
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail to JMC3@NRC.GOV)

Jay E. Silberg, Esq.**
Ernest Blake, Esq.
Paul A. Gaukler, Esq.
SHAW, PITTMAN, POTTS &
TROWBRIDGE
2300 N Street, N.W.
Washington, DC 20037-8007
(E-mail copies to [jay_silberg](mailto:jay_silberg@shawpittman.com),
[paul_gaukler](mailto:paul_gaukler@shawpittman.com), and [ernest_blake](mailto:ernest_blake@shawpittman.com)
@shawpittman.com)

Denise Chancellor, Esq.**
Fred G. Nelson, Esq.
Laura Lockhart, Esq.
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, UT 84114-0873
(E-mail copy to dchancel@State.UT.US)

Connie Nakahara, Esq.**
Utah Dept. of Environmental Quality
168 North 1950 West
P.O. Box 144810
Salt Lake City, UT 84114-4810
(E-mail copy to cnakahar@state.UT.US)

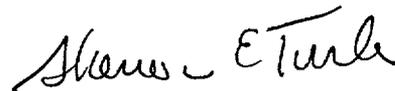
Danny Quintana, Esq.**
Danny Quintana & Associates, P.C.
68 South Main Street, Suite 600
Salt Lake City, UT 84101
(E-mail copy to quintana@Xmission.com)

Joro Walker, Esq.**
Land and Water Fund of the Rockies
2056 East 3300 South, Suite 1
Salt Lake City, UT 84109
(E-mail copy to
joro61@inconnect.com)

John Paul Kennedy, Sr., Esq.**
1385 Yale Ave.
Salt Lake City, UT 84105
(E-mail copy to john@kennedys.org)

Land and Water Fund of the Rockies**
2260 Baseline Road, Suite 200
Boulder, CO 80302

Diane Curran, Esq.**
Harmon, Curran, Spielberg & Eisenberg
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
(E-mail copy to dcurran@harmoncurran.com)



Sherwin E. Turk
Counsel for NRC Staff