

21291

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'00 FEB 23 P4:41

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF THE
GENERAL COUNSEL
ADJUDICATION

| | | |
|---------------------------|---|---------------------------|
| In the Matter of: |) | Docket No. 72-22-ISFSI |
| |) | |
| PRIVATE FUEL STORAGE, LLC |) | ASLBP No. 97-732-02-ISFSI |
| (Independent Spent Fuel |) | |
| Storage Installation) |) | February 16, 2000 |

**STATE OF UTAH'S REPLY TO APPLICANT'S
RESPONSE TO THE BOARD'S MEMORANDUM AND ORDER
REQUESTING CLARIFICATION ON CONTENTION UTAH GG**

Pursuant to the Board's February 2, 2000 Order, the State hereby files its Reply to the Applicant's February 9, 2000, Response to Memorandum and Order Requesting Clarification ("Applicant's Response") on whether Utah Contention GG "continues to present a matter in controversy in this proceeding." Order at 2.

The Applicant filed a Motion for Summary Disposition of Utah Contention GG¹ on December 30, 1999; the State and the Staff filed responses² on January 21, 2000; the State did not file a Reply. Also on January 21, 2000, the Applicant informed the Board that BNFL Fuel Solutions Corporation ("BFS"), the vendor of the TranStor cask system,

¹ See Applicant's Motion for Summary Disposition of Utah Contention GG – Failure to Demonstrate Cask-pad Stability During Seismic Event for Transtor Casks, dated December 30, 1999.

² See State of Utah's Response to Applicant's Motion for Summary Disposition of Utah Contention GG - Failure to Demonstrate Cask-Pad Stability During Seismic Event for TranStor Casks, and NRC Staff's Response to Applicant's Motion for Summary Disposition of Utah Contention GG - Failure to Demonstrate Cask-pad Stability During Seismic Event for TranStor Casks, both dated January 21, 2000.

D503

had requested the Staff discontinue its review of the TranStor license application and return the application to BFS.

The State submits that Contention Utah GG continues to present a controversy cognizable in this proceeding because the Applicant still retains the TranStor cask system as one of the two cask systems it will use at the proposed PFS ISFSI.

In its Response, the Applicant states that it is “still in the process of consulting with BFS.” Applicant’s Response at 1-2. The Applicant says it hopes to have information in two to three weeks about BFS’s plans for resubmitting the TranStor license application to the NRC. *Id.* at 2. It, therefore, appears that the Applicant has not yet made a decision that it will not use the TranStor cask at the PFS site.

It is evident from the PFS application, that the Applicant plans to use the Holtec cask system as well as the TranStor cask system. There is nothing in the application currently on file to suggest that PFS will not use the TranStor system. *See e.g.*, LA at Ch. 3 (Technical Information, SAR); LA at App. A §§ 2 through 5 (Proposed Technical Specifications); SAR § 1.3 (General systems Description), Ch. 3 (Principal Design Criteria); Ch. 4 (Facility Design); Ch. 5 (Operational Systems); and Section 7.3 (Dose Protection Design Features). Moreover, if TranStor re-submits its license application to the NRC at some future date, PFS will be able to claim that its ISFSI application contains a site specific analysis that will enable PFS to use the TranStor system. Thus, the State must be able to retain its challenge in Utah GG to PFS’s site specific analysis of the TranStor cask system. Accordingly, unless and until PFS amends its license application

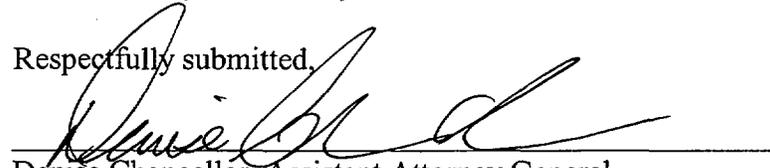
to remove the use of the TranStor cask system from the PFS facility, the issues in Contention GG still present a live controversy in this proceeding.

Further, the State suggests that in order to conserve the Board's and the parties's resources, the Board defer rendering a decision on the Applicant's Summary Disposition Motion until there is more certainty on how the TranStor application affects PFS. If PFS submits information to the Board that TranStor is going to re-submit its application and PFS is going to retain the TranStor cask system in its ISFSI license application, the Board could then render a decision on the Applicant's Motion for Summary Disposition of Utah GG. On the other hand, if PFS decides to amend its ISFSI license application by deleting all references to the TranStor cask system, then Utah Contention GG will be moot.

The State's suggestion will not delay the overall schedule if the Board were to dismiss the Applicant's Motion for Summary Disposition and Contention GG were to go forward to hearing. Depending on the timing of PFS's advice to the Board, Contention GG could be heard either in June 2000 as currently scheduled or during the July 2001 hearings. Deferring any hearing on Utah GG until July 2001 should not cause a delay in the schedule because Contention L (Geotechnical) is also set for hearing at that date and, thus, the Board and the parties would have the benefit of hearing and presenting all seismic issues at the same time.

DATED this 16th day of February 2000.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Denise Chancellor", is written over a horizontal line.

Denise Chancellor, Assistant Attorney General

Fred G Nelson, Assistant Attorney General

Connie Nakahara, Special Assistant Attorney General

Diane Curran, Special Assistant Attorney General

Laura Lockhart, Assistant Attorney General

Attorneys for State of Utah

Utah Attorney General's Office

160 East 300 South, 5th Floor, P.O. Box 140873

Salt Lake City, UT 84114-0873

Telephone: (801) 366-0286, Fax: (801) 366-0292

CERTIFICATE OF SERVICE

'00 FEB 23 P 4:41

I hereby certify that a copy of STATE OF UTAH'S REPLY TO APPLICANT'S RESPONSE TO THE BOARD'S MEMORANDUM AND ORDER REQUESTING CLARIFICATION ON CONTENTION UTAH GG was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 16th day of February, 2000:

Rulemaking & Adjudication Staff
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington D.C. 20555
E-mail: hearingdocket@nrc.gov
(original and two copies)

G. Paul Bollwerk, III, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555
E-Mail: gpb@nrc.gov

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555
E-Mail: jrk2@nrc.gov
E-Mail: kjerry@erols.com

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555
E-Mail: psl@nrc.gov

Sherwin E. Turk, Esq.
Catherine L. Marco, Esq.
Office of the General Counsel
Mail Stop - 0-15 B18
U.S. Nuclear Regulatory Commission
Washington, DC 20555
E-Mail: set@nrc.gov
E-Mail: clm@nrc.gov
E-Mail: pfscase@nrc.gov

Jay E. Silberg, Esq.
Ernest L. Blake, Jr., Esq.
Paul A. Gaukler, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N. W.
Washington, DC 20037-8007
E-Mail: Jay_Silberg@shawpittman.com
E-Mail: ernest_blake@shawpittman.com
E-Mail: paul_gaukler@shawpittman.com

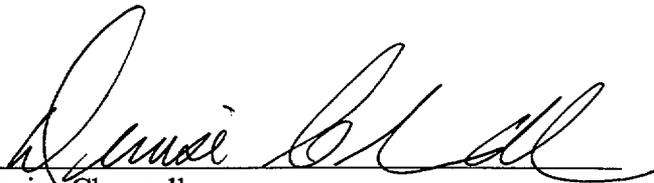
John Paul Kennedy, Sr., Esq.
1385 Yale Avenue
Salt Lake City, Utah 84105
E-Mail: john@kennedys.org

Joro Walker, Esq.
Land and Water Fund of the Rockies
2056 East 3300 South Street, Suite 1
Salt Lake City, Utah 84109
E-Mail: joro61@inconnect.com

Danny Quintana, Esq.
Danny Quintana & Associates, P.C.
68 South Main Street, Suite 600
Salt Lake City, Utah 84101
E-Mail: quintana@xmission.com

James M. Cutchin
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-Mail: jmc3@nrc.gov
(*electronic copy only*)

Office of the Commission Appellate
Adjudication
Mail Stop: O14-G-15
U. S. Nuclear Regulatory Commission
Washington, DC 20555



Denise Chancellor
Assistant Attorney General
State of Utah