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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Office of the  
Board  
ADJUTANT GENERAL

In the Matter of:	)	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, LLC	)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel Storage Installation)	)	March 17, 2000

**STATE OF UTAH'S MOTION TO DELAY  
THE HEARING SCHEDULE FOR UTAH CONTENTION E**

The State refers to the Licensing Board's Memorandum and Order (Granting in Part, Denying in Part, and Referring Ruling on Summary Disposition Motion Regarding Contention Utah E/Confederated Tribes F), LBP-00-06, dated March 10, 2000 (hereinafter "LBP-00-06"). In that decision the Board basically dismissed all of Utah Contention E except portions contesting the cost of constructing and operating the facility (Basis 6), and the adequacy of the Applicant's on-site insurance coverage (part of Bases 5 and 10). In addition, the Board referred its Summary Disposition decision to the Commission for the Commission's immediate consideration. The State requests that the Licensing Board postpone the hearing on what is left of Contention E until the Commission has rendered its decision on the Board's referral so that all issues relating to Contention E can be heard together.

**DISCUSSION**

The Board in LBP-00-06 stated that "[a]t the heart of our [summary disposition] determination here is the legal question of the application and interpretation of the

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reasonable assurance standard of 10 C.F.R. § 72.22(e) in light of the Commission's financial assurance ruling in Claiborne." LBP-00-06 at 71. Recognizing that the issues before it presented novel legal or policy questions relating to Utah Contention E, the Board referred its decision to the Commission pursuant to 10 C.F.R. § 2.730(f). The foregoing regulation allows Licensing Boards to refer their rulings to the Commission "in instances when a prompt Commission decision is necessary to prevent detriment to the public interest or unusual delay or expense." Id. at 70.

The balance of Utah Contention E is currently set for hearing, along with Utah Contentions H, R, S and GG, during the time period June 19 to June 30, 2000. In addition, Utah Contentions K and L are on a different schedule such that discovery is to be completed during late 2000 and testimony pre-filed by January 15, 2001. Hearings on Group III Contentions, Utah O, T, U, V, W, Z, AA, DD and OGD O and SUWA B, as well as Contentions Utah K and L, are set for hearing July 9 through August 3, 2001.

The State requests the Board postpone the hearing on what is left of Utah Contention E until the Commission has rendered a decision on the Board's referral. The State recognizes that under 10 CFR § 2.730, certification to the Commission does not stay the proceeding or extend the time for performance of any act. The State, however, is not requesting a stay or an extension.

The State maintains that proceeding with the hearing on the balance of Contention E before knowing what the Commission's decision will be on the certified question will have a pervasive effect on the hearing of Utah Contention E. Not only would hearing Contention E in June be costly and time consuming because of the duplication of work

needed to prepare for the June hearing and any other hearing that may result from the Commission's action, it would also destroy the integrity of the State's presentation of its case on all the issues relevant to Contention E. The State will be using the same witness or witnesses to challenge both the cost aspects of the project and PFS's financial resources to construct and operate the facility. Thus, the same witnesses will have to re-review documents and develop anew various aspects of the case instead of presenting the case as a whole. Moreover, the crux of the State's concern is whether PFS has the financial wherewithal to conduct the license activities under Part 72 and, therefore, in order to get a fair and meaningful hearing, the State requests that all those issues be heard together. See 10 CFR § 2.718. Finally, the State's request to defer the hearing on Contention E should not affect the overall schedule that the Board has set to hear all matters in this proceeding. There is sufficient time built into the overall schedule that deferring Contention E until later will not delay the final decision. For example, if the Commission renders a decision in the next few months, Contention E could follow the same schedule as Contentions K and L.

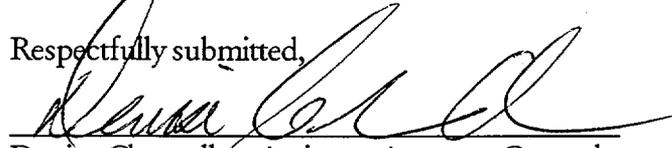
The State has contacted counsel for the Applicant and the Staff, both of whom oppose this motion. The Staff requests the opportunity to respond to this Motion.

#### CONCLUSION

For the reasons set forth above, the State requests a delay in the hearing schedule for Contention E.

DATED this 17<sup>th</sup> day of March, 2000.

Respectfully submitted,

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

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CERTIFICATE OF SERVICE

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I hereby certify that a copy of STATE OF UTAH'S MOTION TO DELAY THE HEARING SCHEDULE FOR UTAH CONTENTION E was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 17th day of March, 2000:

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

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