

May 22, 2000

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In the Matter of
Private Fuel Storage L.L.C.
(Independent Spent Fuel Storage Installation)
Docket No. 72-22-ISFSI

Dear Ms. Curran:

I have received your letter of May 19, 2000 concerning your May 17, 2000 E-mail request for documentation concerning the TEMPEST and COBRA analyses performed on behalf of the NRC Staff (Staff) and referenced in the Staff's testimony on Contention Utah H.

As I informed you on May 17, 2000, I was unable to respond to your request until today, inasmuch as Mr. Guttman was on travel last week, and documentation of the type you requested is only available from the Staff's consultants at Pacific Northwest National Laboratory (PNL). Now that Mr. Guttman has returned to the office and he has been able to communicate with PNL, I am pleased to be able to respond to your request.

First, the Staff will voluntarily produce documents in response to your request -- regardless of whether any such production is required under 10 C.F.R. § 2.740(e). Indeed, I have already voluntarily responded to your subsequent E-mail request (within two hours after receiving that request on May 18, 2000), concerning the availability of the TEMPEST code, its cost, and the platforms on which it may be run.

Second, with respect to your specific document requests, please be advised as follows:

1. Written report. To date, no written report exists concerning the Staff's TEMPEST and COBRA computer runs, inasmuch as the Staff's work was commenced only in the past few weeks, and is still preliminary; indeed, the preliminary results of these analyses only began to become available on May 12, 2000, one business day before testimony was due to be filed. We hope to receive a preliminary report from PNL soon, and will provide a copy to you upon our receipt and review thereof.
2. Computer printouts, computer disks of inputs and outputs, user's manuals, and sensitivity studies. We have asked that PNL provide copies of these materials to us, by express mail. At this time, I believe we should be able to produce paper copies of these materials to you within the next few days, without requiring the execution of a non-disclosure agreement. If you wish to obtain an electronic version of the inputs and outputs, these can also be made available on the PNL website.

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Finally, I do not agree with your complaint regarding the timing of the Staff's production of these materials to the State of Utah (State). The Staff did not commence its computer modeling of these matters (i.e., the inlet air and cask temperatures under normal conditions, as a result of the heating of air by the concrete casks and pads) until recently, after learning of these concerns in the continued depositions of your witnesses in April 2000. Prior to that time, Utah Contention H had been interpreted by all parties (and the Licensing Board) as raising other issues -- i.e., (a) the ambient air temperatures in Skull Valley, (b) concrete temperature limits; (c) the effect of radiative heating by the concrete casks and pads; and (d) the adequacy of Holtec International's "EHT" model -- which only addressed the impact of heat transfer under off-normal conditions, relevant to the short-term temperature limits. The Applicant's filings (such as its motion for partial summary disposition), the State's filings (such as its June 25, 1999 response to the Applicant's motion for partial summary disposition), the Staff's filings (such as its statement of position dated December 15, 1999), and the Licensing Board's decision on summary disposition, LBP-99-42, 50 NRC 295 (November 2, 1999), all reflect this understanding.

By waiting to identify its new concerns regarding ambient temperature conditions until the resumption of its witnesses' depositions in April 2000 -- fully two and one-half years after the State filed Contention Utah H, and just one month before testimony was due to be filed in the proceeding -- the State's witnesses put the Staff and other parties in the untenable position of having to develop new analyses under extremely rushed conditions, in order to be able to respond effectively to this surprise development. If the State had identified this issue sooner, the Staff would have had more time to address that concern, and the State would have had more time to study the Staff's response. I believe the Staff acted commendably in hastening to analyze the State's new concerns under the extremely tight time constraints occasioned by the State witnesses' conduct, so as to be able to provide the Licensing Board and the Commission a better basis upon which to evaluate this new theory. I therefore do not share your view that you have been unfairly deprived of sufficient time to evaluate the Staff's response to this concern.

You may, of course, seek to raise this matter with the Licensing Board, as suggested in your letter, either with a motion to compel, a motion to strike the Staff's testimony, or a motion to delay hearings. However, inasmuch as the State's witnesses identified this issue only recently, perhaps the better course would be to move to strike this issue from the testimony of all parties, as beyond the proper and admitted scope of Contention Utah H.

The Staff will provide the documents you have requested shortly. Please do not hesitate to contact me if I may provide any further assistance in this regard.

Sincerely,

Sherwin E. Turk */RA/*
Counsel for NRC Staff

cc: Denise Chancellor, Esq.
Paul Gaukler, Esq.