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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF ATTORNEY
GENERAL
RULEMAKING AND
ADJUDICATIONS 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

) June 7, 2000

**STATE OF UTAH'S RESPONSE TO APPLICANT'S BRIEF
ON THE SCOPE OF UTAH CONTENTION S, BASIS ONE**

The State of Utah responds to the Applicant's Brief on the Scope of Utah Contention S, Basis One, filed on May 31, 2000. As described below, the Board need not rule on whether the State has exceeded the scope of Basis One, because the State has not raised the issue in its pre-filed testimony. Therefore, the State suggests that the Board defer ruling on this issue. Instead, the Board could rule on the issue if or when the State raises it during the hearing.

In the Joint Motion by the State of Utah and the Applicant to Approve Stipulation for the Hearing of Utah Contention S (April 7, 2000) ("Stipulation"), the Applicant reserved its right to object that the original Basis One did not include funding decommissioning of the storage casks with a letter of credit.

The Stipulation has not changed the State's fundamental concern under Basis One: "The Applicant has failed to provide reasonable assurance, as required by 10 CFR § 72.22(b), that funds will be available to decommission the ISFSI." State of Utah's Contentions on the

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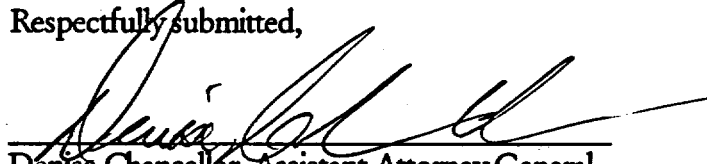
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Construction and Operating License Application by Private Fuel Storage, LLC for an Independent Spent Fuel Storage Facility (November 23, 1997) ("State's Contentions") at 123; *see also*, Stipulation, Attachment A. The original Basis 1 then merely quoted from the PFS license application, which stated that the PFS would obtain a letter of credit "in the amount of \$1,631,000 to cover the estimated facility and site decommissioning costs, exclusive of the storage casks." State's Contentions at 123 (*quoting* LA at 5-2). The State further added that as a newly formed entity PFS offers no reasonable assurance that it will qualify to obtain the letter of credit, incorporating Contention E by reference. Thus, the State does not believe that Basis One is limited to decommissioning costs, exclusive of storage casks but that Basis One encompasses whether funds will be available to decommission the entire ISFSI, including the casks.

Pre-filed testimony by the State's only witness for Contention S, Dr. Michael Sheehan, refers to the letter of credit in only the last paragraph of his response to question 22. Dr. Sheehan's response refers to whether the bank committed to issuing the letter of credit will increase the amount of the letter of credit if and when decommissioning cost estimates increase. Dr. Sheehan's testimony does not refer to the cost estimates for decommissioning the storage casks. Accordingly, the State believes the Applicant's motion is not ripe at this time and the Board can rule on the issue if or when the State raises it during the hearing.

DATED this 7th day of June, 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

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I hereby certify that a copy of STATE OF UTAH'S RESPONSE TO
APPLICANT'S BRIEF ON THE SCOPE OF UTAH CONTENTIONS, BASIS ONE
was served on the persons listed below by electronic mail (unless otherwise noted) with
conforming copies by United States mail first class, this 7th day of June, 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

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

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*)

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

Denise Chancellor
Assistant Attorney General
State of Utah