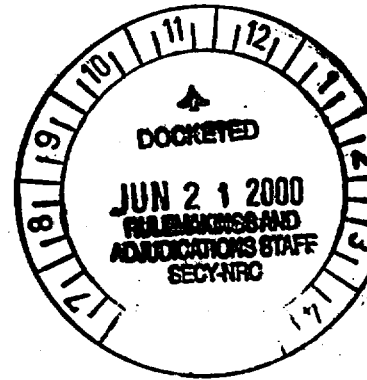


RAS 1841

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of:

PRIVATE FUEL STORAGE, LLC
(Independent Spent Fuel
Storage Installation)

) Docket No. 72-22-ISFSI

) ASLBP No. 97-732-02-ISFSI

) June 16, 2000

**STATE OF UTAH'S RESPONSE TO APPLICANT'S MOTION FOR
RECONSIDERATION OF THE BOARD'S DENIAL OF THE APPLICANT
AND STAFF MOTIONS TO STRIKE PORTION OF TESTIMONY OF
MICHAEL SHEEHAN ON UTAH CONTENTION S**

Pursuant to the Board's Order of June 15, 2000, the State files this response to the Applicant's June 13, 2000, Motion for Reconsideration of the Licensing Board's denial to strike the portion of Dr. Sheehan's testimony that relates to the vintage of the Applicant's decommissioning cost estimates on Contention Utah S. On June 12, 2000 the Board denied the Applicant's and the Staff's initial requests to strike this same testimony finding the matter "fairly within the scope of the contention, as set forth in the parties' April 7, 2000 stipulation that was approved by the Board on May 1, 2000." Board Order dated June 12, 2000, at 4.

The Applicant has raised no new issues in its Motion for Reconsideration. Instead, it merely complains that the Board did not reach the decision that the Applicant favored. The Applicant says that by allowing the State to question the age of the underlying cost data "the State effectively would be allowed to challenge PFS's estimates of \$17,000 per cask and \$1,631,000 for the site." Motion for Reconsideration at 2 (electronic version). There is no merit to this assertion.

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SECY-02

The State plainly stated in its June 7, 2000, Response to Staff's and Applicant's Motions to Strike Dr. Sheehan's testimony that it will not challenge "the absolute dollar amount of the estimates." State's Response at 2. It cannot be more plainly stated: the State will not challenge the \$17,000 estimated cost to decommission a storage cask; the State will not challenge the \$1,631,000 estimated cost to decommission the site. This, however, does not mean that the State is barred from obtaining an explanation from the Applicant about the baseline of those cost estimates.

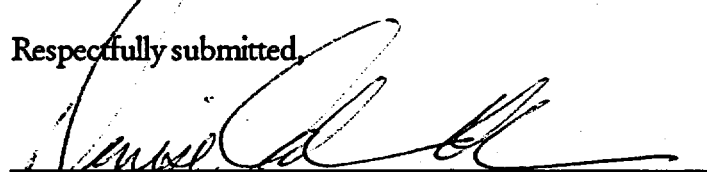
It is unreasonable of PFS to expect that the State will turn a blind eye to the vintage of the data when one of the issues left for hearing is how current costs will be escalated to determine whether PFS may need, in the future, to increase its decommissioning funds. Basis 4 to Contention S, as set forth in Attachment A to the parties' stipulation,¹ states in part that the "Decommissioning Plan 'must compare the cost estimate with present funds, and if there is a deficit in present funding the plan must indicate the means for providing sufficient funds for completion of decommissioning.'" Stipulation, Attachment A at 1 (*quoting* NUREG 1567, at 61-4). *See also* 10 CFR 72.30(a). In order to ascertain whether PFS's Decommissioning Plan has provided sufficient funds for completion of decommissioning, the vintage of the data upon which the cost estimates are based must be disclosed. The State is not challenging the vintage of the data; it merely wants to know the baseline of PFS's cost estimates such that the amount of the "real" cost increase will not be underestimated in the future.

¹ Joint Motion by the State of Utah and the Applicant to Approve Stipulation for the Hearing of Utah Contention S (April 7, 2000) ("Stipulation").

As more fully described in the State's Response to the Applicant's and the Staff's initial Motions to Strike part of Dr. Sheehan's testimony, the State considers the baseline information necessary to allow it (and the Staff) to ascertain whether PFS's continued future decommissioning funding is adequate, as required by 10 CFR §§ 72.22(e)(3) and 72.30(a). Accordingly, the vintage of the data in Dr. Sheehan's testimony is fairly within the scope of Contention S. The Board's Order of July 12, 2000 should stand as issued.

DATED this 16th day of June, 2000.

Respectfully submitted,



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

I hereby certify that a copy of STATE OF UTAH'S RESPONSE TO APPLICANT'S MOTION FOR RECONSIDERATION OF THE BOARD'S DENIAL OF THE APPLICANT AND STAFF MOTIONS TO STRIKE PORTION OF TESTIMONY OF MICHAEL SHEEHAN ON UTAH CONTENTIONS 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 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

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