

October 14, 1997

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before the Atomic Safety and Licensing Board**

In the Matter of	)	
	)	
PRIVATE FUEL STORAGE L.L.C.	)	Docket No. 72-22
	)	
(Private Fuel Storage Facility)	)	ASLBP No. 97-732-02-ISFSI

**APPLICANT'S ANSWER TO THE STATE  
OF UTAH'S MOTION TO SUSPEND LICENSING  
PROCEEDINGS AND RE-NOTICE OPPORTUNITY FOR HEARING**

**I. INTRODUCTION**

Applicant Private Fuel Storage L.L.C. ("PFS" or "Applicant") submits this answer to the "State of Utah's Motion to Suspend Licensing Proceedings Pending Establishment of a Local Public Document Room and Applicant's Submission of a Substantially Complete Application, and Request for Re-Notice of Construction Permit/Operating License Application" (the "Motion" or "Motion to Suspend and Re-notice"), dated October 1, 1997. In the Motion, the State of Utah (the "State") requests the Licensing Board to suspend the licensing proceeding of the Private Fuel Storage Facility (the "Facility") and to re-notice the opportunity for hearing after the local public document room ("local PDR") has been established and after PFS submits what the State characterizes as "a substantially complete application."

PFS opposes the State's Motion. It is totally devoid of legal basis or other merit and would serve solely to delay the licensing of the Facility to the great harm of PFS and its participating utilities. As stated in the Applicant's Answer to the State of Utah's Motion for an Extension of Time to File Contentions, dated October 6, 1997,<sup>1</sup> the electric utility participants of PFS urgently need this proceeding to progress expeditiously to its ultimate conclusion. Some participating utilities currently have limited capability to store additional spent nuclear fuel on their respective plant sites and need to ensure such storage to allow continued operations. Others cannot decommission their plants because of the absence of off-site storage.

The State has provided no legal or factual basis to disrupt this proceeding properly initiated by the NRC Staff pursuant to Commission regulations. The State is asking the Atomic Safety and Licensing Board appointed in this proceeding (the "Board") to exceed its delegated authority. The authority to accept an application as sufficiently complete for docketing and initiation of license proceedings is a function delegated to the NRC Staff and not to licensing boards, which are established to preside over initiated proceedings.

Similarly, no legal or factual basis exists for the Board to suspend this proceeding and to require re-noticing because a local PDR has not yet been formally established. The State has shown absolutely no harm to itself by the asserted lack of a local PDR. It received two copies of the license application on the same day as the NRC and, by at least

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<sup>1</sup> Hereinafter referred to as "Applicant's Answer to State's Motion for Extension of Time."

early August 1997, had retained Washington D.C. counsel for whom the main NRC public document room in Washington is readily available. Thus, the State has shown no factual basis to support suspension and re-noticing of this proceeding, even assuming the Board possessed that authority, which it does not.

In short, the Board should deny outright the State's Motion and adhere to the schedule set forth in its Initial Prehearing Order of September 23, 1997.

## II. FACTUAL BACKGROUND

### A. Availability Of The Application To State And Local Government Officials And The Public

PFS submitted a license application (dated June 20, 1997) which the NRC received June 25, 1997, to construct and operate an Independent Spent Fuel Storage Installation ("ISFSI") pursuant to 10 C.F.R. Part 72 on the reservation of the Skull Valley Band of the Goshutes (the "Skull Valley Band" or the "Band"). On that same day, June 25, 1997, PFS hand delivered two copies of the license application (and the accompanying safety analysis report, environmental report and emergency plan) to the State as well as one copy to the Tooele County Commissioners. Five days later, on June 30, 1997, PFS sent two additional copies of the application and the accompanying documents to the Tooele County Commissioners, one copy to the Tooele County Sheriff, three copies to the Tooele Department of Emergency Management, and one copy to the Utah office of the Bureau of Indian Affairs.

Further, on June 25, 1997, PFS publicly announced that it had filed an application with the NRC for the construction and operation of the Facility on the Band's reservation. PFS's announcement that it had filed the application, together with statements of the State's opposition, was reported in the Salt Lake Tribune and other Utah papers. See, e.g., Exhibit 1.

On August 5, 1997, at the request of the NRC Staff, PFS sent a copy of the license application and the accompanying safety analysis report, environmental report and emergency plan by overnight delivery to the Marriott Library at the University of Utah in Salt Lake City. See Exhibit 2. On August 6, 1997, PFS also sent at the request of the NRC Staff a copy of the license application and accompanying documents to the Tooele Library by overnight delivery. See Exhibit 3. PFS has confirmed that both libraries received the copies, that they have been made available for review by the public, and that members of the public have reviewed the application. The application at the Marriott Library is currently located in the Special Collection section, which is the location suggested by the State for the local PDR. See Exhibit 1 to the State's Motion. At the Tooele Library, the application has been placed on the library shelves.

Additionally, PFS has made copies of the application available, upon request, to members of the public who eventually filed petitions to intervene to oppose the Facility in this proceeding. On July 18, 1997, PFS forwarded a copy of the application to David Allen, a representative of the petitioners in the Castle Rock et al. petition. See Exhibit 4. On September 5, 1997, PFS made the application and the accompanying documents

available for review at the Offices of Stone & Webster in Denver, Colorado to Jean Belille (located in Boulder Colorado), lawyer for the petitioner Ohngo Gaudadeh Devia.

B. Establishment Of A Local Public Document Room

On July 7, 1997, the NRC published a notice of its intent to establish a local PDR in Utah upon the docketing of the license application and requested public comments by July 25, 1997 on possible locations for the room. 62 Fed. Reg. 36,320 (1997). A total of seven comments were filed, one by PFS, four by various State officials, one by the Skull Valley Band, and one by a member of the public at large. PFS understands that the NRC has chosen the Marriott Library at the University of Utah in Salt Lake City as the location for the local PDR. PFS further understands that the Library has set aside a room for the local PDR and, upon receiving equipment and other documents from the NRC, the license application -- which it received in early August -- will be moved to that room from its current location in the Special Collection section of the library where it is already available to the public.

C. Acceptance Of The Application For Docketing

On June 25, 1997, the license application for the Facility was received by both the NRC and the State. More than two months earlier, on April 9, 1997, PFS sent a draft of the emergency plan in accordance with 10 C.F.R. § 72.32(a)(14) to the Director, Tooele County Emergency Management, which is the off-site agency PFS expects to respond in the event of an accident at the Facility. See Exhibit 5. The Director's comments as well

as PFS's response to those comments were included with the emergency plan submitted with the application that both the NRC and the State received on June 25, 1997. Two days later, on June 27, 1997, the State filed a petition under 10 C.F.R. § 2.206 requesting the NRC to reject the application because, according to the State, PFS had not made the draft emergency plan available to those offsite emergency response organizations expected to respond in the case of an accident for comment 60 days prior to filing the application as required by the regulations.

On July 21, 1997, the NRC sent a letter informing PFS that the NRC had determined that the "application contained the necessary information to begin [its] review" and that the application had been docketed under 10 C.F.R. Part 72 as Docket No. 72-22. See Exhibit 6. On that same day, the State submitted another petition under 10 C.F.R. § 2.206 requesting the NRC to reject the license application because of asserted deficiencies in the application.

By letter dated August 6, 1997, the NRC rejected the two Section 2.206 petitions filed by the State because they were not requests for enforcement actions, which is the purpose of 10 C.F.R. § 2.206. See Exhibit 4 to the State's Motion. The NRC further stated that it had completed "its acceptance review of the PFS application and [had] found it acceptable." Id. The Staff also noted that its determination that the application contains sufficient information for docketing is "independent of any subsequent determination on

the sufficiency of the information in the application in terms of demonstrating compliance with the applicable regulatory requirements in 10 CFR Part 72.” Id.

### III. ARGUMENT

#### A. Licensing Boards May Only Exercise Powers Delegated By The Commission

It is well-established under NRC jurisprudence that licensing boards “are delegates of the Commission and, as such, they may exercise authority only over those matters that the Commission commits to them.” Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 N.R.C. 785, 790 (1985) (footnote omitted). See also, Safety Light Corporation (Bloomsburg Site Decontamination and License Renewal Denials), CLI-92-13, 36 N.R.C. 79, 86 (1992); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-88-7, 27 N.R.C. 289, 291 (1988).

Thus, for example a licensing board may not “direct the holding of hearings following the issuance of a construction permit.” Florida Power and Light Company (Turkey Point Nuclear Generating Station, Units 3 and 4), 4 A.E.C. 9, 15-16 (AEC 1967). Nor may licensing boards “direct the staff in the performance of their administrative functions.” Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), CLI-80-12, 11 N.R.C. 514, 516 (1980). That authority rests with the Commission and not the boards. Id.

The notice establishing a licensing board and the proceeding defines the scope of the Commission's delegation of authority to the board. See Catawba, supra, 22 N.R.C. at 791-92. Here the notice establishing the Board provides:

[A]n Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for hearing and for leave to intervene and to preside over the proceeding in the event that a hearing is ordered.

62 Fed. Reg. 49,263 (1997).

The State's Motion to Suspend and Re-notice requests the Board to undertake actions beyond the scope of its delegated authority as reflected in this notice. The notice provides no hint of delegating authority to the Board to suspend this proceeding pending the submittal of a new application and the establishment of a local PDR. Rather, it states that the Board's delegated authority is to "rule on petitions" and "to preside over the proceeding in the event" the Board orders a hearing. Nor can the actions requested by the State be construed to fall within the Board's authority "to regulate the course of the hearing" under 10 C.F.R § 2.718(e). To the contrary, the State is requesting the Board to decline considering and ruling on the petitions to intervene -- the first express purpose for which the Board was established -- and to start the entire application, docketing, and notice process anew.

The authority cited by the State (see State's Motion at 1, fn. 1), Rochester Gas & Electric Corporation (R.E. Ginna Nuclear Plant, Unit 1), LBP-83-73, 18 N.R.C. 1231 (1983), does not support such a far reaching course of action. That case involved a



situation where the Staff had halted its review of the conversion of provisional operating licenses, the Ginna proceeding had been held in abeyance, and more than 10 years had elapsed since the original notice of opportunity for hearing had been issued. Id. at 1232-34. In those circumstances, the board ordered the re-noticing of the opportunity for intervention because the delay had caused the original notice to become “manifestly stale,” id. at 1233-36, certainly not the case here. Not even there did the board order the entire application, docketing, and notice process to be undertaken anew at the outset of the proceeding as sought by the State here.

More analogous to this proceeding is the licensing board’s decision in New England Power Company (NEP, Units 1 and 2), LBP-78-9, 7 N.R.C. 271 (1978). In that case, the intervenors had argued that the license application was defective and should never have been docketed because the applicant did not own the site on which the facility was to be located. Id. at 280. Accordingly, they requested the board to suspend all licensing proceedings and to direct the Staff to cease its review of the license application. Id. at 272. The board rejected these arguments. The board concluded that the acceptance of the application for docketing and the subsequent licensing review of an application were functions that the Commission had assigned to the Staff and that it had been delegated no authority to direct or oversee the Staff in the performance of those functions. Id. at 278-281. The board similarly held that it lacked authority to order “the suspension of all licensing proceedings.” Id. at 281-83.

In short, as set forth more fully below, the state's Motion requests the Board to undertake actions that are beyond the scope of its delegated authority and must therefore be denied.

B. The State's Claims Concerning The Docketing And The Asserted Deficiencies Of The Application Are Without Merit

Relying upon its 10 C.F.R. § 2.206 petitions urging the Staff not to accept the license application for docketing, the State asserts that there are numerous deficiencies in the application and that the Staff "prematurely" accepted an "inadequately developed application." Motion at 11-14. Accordingly, the State requests the Board to suspend the proceeding until "PFS has submitted a substantially complete application." *Id.* at 1. The relief requested by the State, however, both exceeds the Board's delegated authority and is unsupported by the record.

1. The State's Requested Relief Exceeds The Board's Delegated Authority

The New England Power case discussed above directly refutes the State's claims that the NRC improperly accepted the docketing of the application and that the Board should order PFS to submit a new, more complete application. There, in concluding that the Commission had not delegated licensing boards the authority to supervise and oversee the review and acceptance of license applications for docketing, the licensing board stated as follows:

We concur with the Staff's position that the question of whether or not an application is acceptable for docketing is a determination to be made by the Staff. Congress has directed the Commission to delegate the Director of Nuclear Reactor Regulation (DNRR) to perform, *inter alia*, the principal

licensing and regulation of nuclear reactors under the Atomic Energy Act and to review the safety and safeguards of all such facilities and activities (42 U.S.C. § 5843(b)(1) and (b)(2)). The regulations promulgated by the Commission pursuant to such authority recognize these Staff functions.

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These regulations contemplate Staff determinations of the acceptability of license applications, together with continued Staff review and analysis after docketing. Such Staff review is part of a continuous licensing process, not a single discrete step which requires complete and final design and technical information when an application is tendered.

7 N.R.C. at 280-81 (footnote omitted).<sup>2</sup> Thus, the State's request to have the Board reject and require the resubmittal of PFS's application, which the Staff has determined to be acceptable, exceeds the Board's delegated powers and is at odds with established Commission practice.

Moreover, the alleged harm claimed by the State to result from the asserted deficiencies in the application is simply non-existent. By accepting docketing of the application, the Staff has not determined that the information contained in the application is sufficient to satisfy regulatory requirements. As stated in the Staff's August 6, 1997 letter to the State rejecting the State's 10 C.F.R. § 2.206 petitions:

This determination that the PFS application contained sufficient information for docketing is independent of any subsequent determination on the sufficiency of the information in the application in terms of

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<sup>2</sup> Although the congressional authority relied upon by the licensing board in New England Power deals with the authority of the Director of Nuclear Reactor Regulation, a parallel statutory provision, 42 U.S.C. § 5488, provides a parallel delegation to the director of Nuclear Materials Safety and Safeguards, the individual with responsibility for Part 72 applications, such as PFS's application here.

demonstrating compliance with the applicable regulatory requirements in 10 CFR Part 72. That determination will be made on the basis of the staff's review of the application, and the concerns raised in your request will be considered in that context.

Exhibit 4 to the State's Motion. Similarly, the licensing board in New England Power observed as follows:

Here, the important question is not whether the application was sufficiently complete when filed (which the Staff determines), but rather whether the Staff's analysis and evaluation is adequately supported by the evidence adduced at the evidentiary hearing in connection with the construction permit proceedings. The moving parties will have full opportunity to address these matters at the hearing.

7 N.R.C. at 281.

Thus, acceptance of the application for docketing is a Staff administrative determination of whether the application is sufficiently complete such that the Staff can begin its substantive review of the application. The fact that an application may be lacking certain information, as alleged by the State, does not prevent the Staff from accepting the application for docketing. As stated by the board in New England Power:

[N]o statutes or regulations are violated by NRC's announced, longstanding practice of docketing incomplete applications which the applicant is required to flesh out by means of detailed requests for further information and data.

7 N.R.C. at 280 (footnote omitted).

Moreover, the alleged lack of required information in the application does not -- contrary to the State's argument -- prevent the State or other intervenors from framing contentions. Such contentions would specify the alleged inadequacies in the application

that the State believes must be cured. Further, to the extent new information is subsequently provided, such new information may provide a basis to establish good cause for the late filing of contentions under 10 C.F.R. § 2.714(b). See, e.g., Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-737, 18 N.R.C. 168, 172-73 (1983).

Thus, the alleged inadequacies in the license application do not call for the relief sought by the State, even assuming that the State's claims were correct.

2. The State's Claimed Inadequacies Lack Merit

The State's Motion suggests that the license application is generally inadequate as a whole as well as claiming specific omissions and inadequacies with respect to the application. As discussed below, the State's general characterization of the license application as "woefully incomplete" is completely inaccurate and the specific inadequacies asserted by the State are either incorrect or the source of controversy between the parties.

The State first suggests that the safety analysis report ("SAR") for the Facility lacks the "considerable detail" called for by the Commission. Motion at 11.<sup>3</sup> However, the SAR is a comprehensive document containing extensive and detailed information on

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<sup>3</sup> The State suggests in its Motion that the degree of detail required for a spent fuel storage facility license application is significantly different than that required for a power reactor license application because "construction permits and operating license proceedings are combined for ISFSIs." Motion at 11. The difference in information, however, is one of type rather than of degree. See 45 Fed. Reg. 74,693, 74,695 (1980). The difference in detail between the one-step process (construction and operation) in Part 72 and the two-step process (construction first, then operation) in Part 50 is sensibly that in Part 72 the applicant must provide the information up front to address both "design and construction" and "operations," rather than just one or the other. Id.

the various design and related requirements for constructing and operating the Facility. It contains extensive, detailed information on Site Characteristics (Chapter 2), the Principal Design Criteria for the Facility (Chapter 3), the Facility Design itself (Chapter 4), the Operation Systems for safe control at the Facility (Chapter 5), the Confinement and Management of any Site-Generated Waste (Chapter 6), Radiation Protection (Chapter 7), Accident Analysis (Chapter 8), Conduct of Operations (Chapter 9), Operating Controls and Limits (Chapter 10), and implementation of Quality Assurance at the site (Chapter 11).

The State specifically claims that the SAR is deficient because Chapter 11 does not set forth a quality assurance program but incorporates the PFS Quality Assurance program already approved by the NRC for use under 10 C.F.R. Part 71, which the State claims is inadequate for purposes of 10 C.F.R. Part 72. Motion at 13. The State's claim is, however, without merit. First, the regulations permit incorporation by reference of applications, statements or reports previously filed with the NRC. See 10 C.F.R. § 72.18 ("Elimination of repetition"). Second, Chapter 11 of the SAR describes how the PFS Quality Assurance program, approved for use under 10 C.F.R. Part 71, will be implemented with respect to the Facility so as to satisfy the quality assurance requirements of 10 C.F.R. Part 72. Third, by letter dated July 1, 1997, the NRC Staff provided the State with a copy of the approved PFS Quality Assurance program for 10 C.F.R. Part 71. See Exhibit 7. Accordingly, the State has all the information that it needs to file

contentions if it believes that the PFS Quality Assurance program, as it will be implemented with respect to the Facility, is inadequate.

The State also claims that the SAR is inadequate because it "does not address financial qualifications, decommissioning or construction costs." Motion at 12. However, information on financial qualifications and construction costs is not, and never has been, included in SARs; such information appears instead in the license application itself. See 10 C.F.R. §§ 72.22(e) and 72.24. See also 10 C.F.R. §§ 50.33 and 50.34. The license application has two sections devoted to providing information concerning PFS's financial qualifications with respect to the estimated construction, operating and decommissioning costs for the Facility as required by 10 C.F.R. § 72.22(e). See Section 1.6 ("Financial Qualifications") and Section 1.7 ("Decommissioning Funding Assurance"). With respect to decommissioning, PFS has provided the information required by 10 C.F.R. § 72.30 in a 15-page appendix to the license application. See Appendix B ("Decommissioning Plan"). Thus, the State's claim that "[t]here are merely passing references to these items in the License Application" (Motion at 12) is unsupported hyperbole. The application provides substantial information on these topics. To the extent the State believes that this information is insufficient or inadequate to satisfy applicable requirements, it may seek to raise those matters in its contentions.<sup>4</sup>

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<sup>4</sup> The State also asserts that the application is inadequate because there is "no discussion of emergency planning and decommissioning planning or funding" for the rail transfer point. Motion at 12. However, there is no provision in either 10 C.F.R. Part 71 or 10 C.F.R. Part 72 that requires emergency planning and decommissioning planning or funding with respect to

The State's motion also suggests that the environmental report does not evaluate the environmental impacts of the Facility, particularly those related to the transportation of spent fuel to and from the Facility as required by the Commission. See Motion at 11.<sup>5</sup> Again this is incorrect. PSF has identified two alternatives for transporting casks from the main rail line to the Facility, either by heavy haul tractor/trailer via the Skull Valley Road or by rail transport via a new rail spur. The environmental report evaluates both. Section 4.3 of the environmental report evaluates the environmental impacts of using the Skull Valley Road; Section 4.4 evaluates the environmental impacts of using a new rail spur. In addition, Section 4.7 of the environmental report evaluates the radiological environmental impacts associated with normal, incident free transportation of the spent nuclear fuel; Section 5.2 evaluates the radiological environmental impacts associated with postulated transportation accidents.<sup>6</sup>

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the transportation of spent nuclear fuel, including those locations at which spent fuel casks are transferred from one means of conveyance to another.

<sup>5</sup> The State cites (Motion at 11) the statement of considerations for the original promulgation of 10 C.F.R. Part 72 for the proposition that the transportation of spent fuel shipments to an ISFSI is an important consideration in evaluating a site's suitability. 45 Fed. Reg. 74,693, 74,698 (1980). As reflected there, the Commission agreed with this proposition and added a new provision (10 C.F.R. § 72.70 now 10 C.F.R. § 72.108) to the rule "to specifically address this point." *Id.* This provision requires that a "proposed ISFSI . . . must be evaluated with respect to the potential impact on the environment of the transportation of spent fuel . . . within the region." 10 C.F.R. § 72.108. As discussed in the text, the environmental report filed with the application includes such an evaluation.

<sup>6</sup> Thus, the State's assertion that the application sets forth "no plan as to how the casks will be transported from the railhead to the [F]acility" (Motion at 12) is simply incorrect. The application sets forth two alternative plans that may be used and evaluates the environmental impacts of both in accordance with 10 C.F.R. § 72.108. Similarly, the State's asserted claim that the application is inadequate because it reflects "no documentation of the right to use and



The State also claims that the application was incomplete as filed because it did not include a calculation package later submitted to the NRC, and expresses concern that there may be other "important licensing documents" submitted by PFS that are similarly unavailable to the State. Motion at 10. The calculations, however, are just more detailed backup for information already included in the license application. Such calculation packages are not submitted with or considered part of the license application but are often provided to the NRC Staff in the license review process. PFS submitted its backup calculations package to the Staff as early as possible in the review process to facilitate the Staff's timely review of the application. Thus, submittal of the calculation package does not reflect an incomplete application as argued by the State, but rather the early submittal of information which the NRC Staff may desire in connection with its review of the application. The State's logic would lead to the nonsensical result that any additional information submitted by an applicant during the NRC Staff's review would mean that the application was incomplete as filed and must be resubmitted and renoticed.

Finally, the State claims that numerous specific omissions and inadequacies exist with respect to the application. In general, the State's asserted inadequacies are either incorrect or the source of controversy between the parties, some of which have already

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control land at the site and at the rail transfer point" (Motion at 12) is without merit. The NRC has a long "settled practice of permitting docketing and consideration of applications for after-acquired sites." Concerned Citizens of Rhode Island v. NRC, 430 F. Supp. 627, 632 (D.R.I. 1977) (footnote omitted), and NRC cases cited therein. See also New England Power, supra; Wisconsin Electric Power (Koshkonong Nuclear Plant, Units 1 and 2), CLI-74-45, 8 A.E.C. 928, 930 (1974) (NRC licensing proceedings generally are to be held concurrently with applicants obtaining necessary state and local permits).

been discussed above and refuted. In addition to those addressed above, for example, the State asserts that the application does not provide any information to show the source of the decommissioning estimate. Motion at 12. However, Section 4 to Appendix B of the application provides a breakdown of the various estimated decommissioning costs by component that adds up to the total estimated decommissioning cost for the Facility.

Similarly, for example, the State also claims -- again incorrectly -- that PFS has supplied no information on "contingency measures for leaking and contaminated casks." Motion at 12. Section 8.2.7 of the SAR, however, analyzes a hypothetical loss of canister confinement barrier even though such an event is not considered to be a credible accident at the Facility. The recovery plan for such an event is set forth in subsection 8.2.7.4 and includes sealing the leaking canister in a shipping cask and sending it back to the originating nuclear power plant (or other facility having the capability to handle individual spent fuel assemblies) or, alternatively, sealing the leaking canister in a cask for storage on site until shipment offsite at a later date. Similarly, the proposed technical specifications set forth in Appendix A to the license application (Page TS -19) provide that canisters will be inspected upon receipt and, if contaminated, will be returned via the shipping cask to the originating nuclear power plant. Thus, contrary to the State's assertion, the application does address "contingency measures for leaking and contaminated casks."

As another example, the State claims that the application is defective because PFS failed to provide its emergency response plan to various governmental entities 60 days prior to the filing of the application in accordance with 10 C.F.R. § 72.32(a)(14). Motion

at 13. However, that provision only requires an applicant to provide a copy of the emergency plan to those emergency organizations expected to respond in case of an accident. The NRC has determined that there are no credible accidents for ISFSIs, such as that proposed by PFS, that would require offsite emergency preparedness.<sup>7</sup>

Accordingly, only an on-site emergency plan is required for the Facility, and the only emergency response organizations that PFS expects to respond to an on-site emergency are those of Tooele County to whom (as the State itself acknowledges) PFS provided its emergency plan for comment. In this regard, the NRC Staff has just recently rejected a claim in the context of a 10 C.F.R. § 2.206 petition that an ISFSI applicant must provide a copy of its emergency plan for comment to emergency response organizations other than those which it expects to respond to an on-site emergency.<sup>8</sup>

In short, the State's asserted deficiencies in the application are either non-existent or the source of controversy between the parties. In no way do they reflect that the Staff "prematurely" accepted and docketed an "inadequately developed application" as claimed by the State. There is no factual basis for the Board to grant the relief sought by the State, even assuming such relief were within the scope of the Board's delegated powers.

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<sup>7</sup> See 60 Fed. Reg. 32,430, 32,431 (1995); NUREG-1140, "A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees," (1988).

<sup>8</sup> Northern States Power Co. (Independent Spent Fuel Storage Installation) Director's Decision under 10 C.F.R. § 2.206 (DD-97-24), 62 Fed. Reg. 51,916 (1997).

C. The State's Claims Concerning The Lack Of A Local PDR And Alleged Unavailability Of Information Are Without Merit

The State claims that "the commencement of this proceeding without establishing [a local PDR] deprives the State and the public of an opportunity for meaningful participation." Motion at 6. However, the State's claims concerning the lack of a local PDR and the alleged unavailability of information are equally lacking in merit.

1. The State Has Not, And Cannot, Show Harm

At the outset, there is simply no basis for the State to claim that the lack of a local PDR or the asserted unavailability of information has in any way impaired its meaningful participation in this proceeding. The State was delivered two copies of the application and the accompanying safety analysis report, environmental report and emergency plan on the same day that the NRC received the application. Further, as set forth in Applicant's Answer to State's Motion for Extension of Time, the State has been actively opposing the Facility since at least April of this year. It established at that time a multi-agency task force to "do everything possible to block storage of high level nuclear waste in Utah"<sup>9</sup> and an "Office of High Level Nuclear Waste Storage Opposition" within the Utah Department of Environmental Quality to serve as a focal point for the State's opposition to the Facility. The State's actions since then, described in the Applicant's Answer to State's Motion for Extension of Time, show that it has actively reviewed the license application and taken other steps to effectuate its opposition.

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<sup>9</sup> See Exhibit 1 to Applicant's Answer to State's Motion for Extension of Time.

The State complains about lack of access to related TranStor and Holtec documents, yet on March 19, 1997, State officials (including a State Assistant Attorney General) attended a meeting between the Applicant and the NRC Staff at which the State was informed that PFS was considering using both the TranStor shipping and storage cask systems and the Holtec cask systems at the Facility. The State has had ample time since then to obtain both the non-proprietary and proprietary versions of the SARs for these cask systems. Although the State advised counsel to PFS in early September that it would contact Sierra Nuclear and Holtec to obtain the SARs, we understand that neither has yet been contacted by the State to enter into the necessary confidentiality agreements in order to be provided access to the proprietary versions of the SARs. Further, at least by early August, the State had retained Diane Curran, of the law firm of Harmon, Curran, and Spielberg located in Washington D.C., an experienced nuclear licensing attorney who has served as counsel on numerous nuclear licensing cases representing groups opposing the licensing of nuclear facilities.<sup>10</sup> Because her office is located in Washington D.C., she has ready access to the NRC's PDR and the documents available there.<sup>11</sup>

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<sup>10</sup> Although Ms. Curran's Notice of Appearance, dated October 1, 1997, stated that she was appointed a Special Assistant Attorney General to act for the State of Utah by letter dated September 22, 1997, Ms. Curran told counsel for PSF in August that she was working with the State in this proceeding.

<sup>11</sup> As discussed in Applicant's Answer to State's Motion for Extension of Time (at 11-12), the non-proprietary versions of the Holtec SARs are available in the NRC PDR in Washington, contrary to the assertions of the State. See Motion at 11. The non-proprietary versions of the TranStor SARs are also available in the NRC PDR.

In short, the State has not shown -- and cannot show -- any harm arising from the asserted lack of a local PDR being established in Utah. The State was hand-delivered copies of the license application upon filing and has had both sufficient time and the means to obtain the other documents that it claims are necessary for its "meaningful participation" in this proceeding. As such, this Motion is simply another example of the State's carrying out its self-proclaimed threat to do "everything possible to block storage of high level nuclear waste in Utah."<sup>12</sup>

2. The State's Claims Concerning a Local PDR Are Without Merit

The State acknowledges that the regulations governing ISFSIs set forth in 10 C.F.R. Part 72 "do not specifically require the establishment of a [local] PDR before commencing hearings." Motion at 6.<sup>13</sup> Indeed, the only authority cited by the State for the establishment of a local PDR is Appendix A to 10 C.F.R. Part 2. That Appendix by its terms applies only to the "Conduct of Proceedings for the Issuance of Construction Permits and Operating Licenses for Production and Utilization Facilities," which are issued under 10 C.F.R. Part 50. Unlike 10 C.F.R. Part 50, however, which provides for the

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<sup>12</sup> See Exhibit 1 to Applicant's Answer to State's Motion for Extension of Time.

<sup>13</sup> The closest provision in 10 C.F.R. Part 72, 10 C.F.R. § 72.20, provides that "[a]pplications and documents submitted to the Commission in connection with applications may be made available for public inspection in accordance with provisions of the regulations contained in Parts 2 and 9 of this chapter." (Emphasis added). 10 C.F.R. Part 9 concerns requests under Freedom of Information Act. The only applicable provision in 10 C.F.R. Part 2, 10 C.F.R. § 2.790, refers only to making documents available in the "NRC Public Document Room."

establishment of a local PDR in 10 C.F.R. § 50.30(a)(5), 10 C.F.R. Part 72 does not provide for the establishment of a local PDR.

The State's acknowledgment that the applicable regulations do not require the establishment of a local PDR should end the discussion, particularly in view of the fact that the relief requested by the State here is beyond the scope of the Board's delegated authority as discussed above. However, even assuming the local PDR provisions of 10 C.F.R. Part 50 were applicable, here, upon filing of the application, the NRC has undertaken steps to establish a local PDR.<sup>14</sup> Moreover, the license application and the accompanying safety analysis report, environmental report and emergency plan were sent by overnight delivery the first week in August -- within a week of the publication of the notice of opportunity for hearing -- to two public libraries in Utah, the Marriott Library in Salt Lake City and the Tooele Library and have been made available for public review.

Further, PFS also provided seven copies of the application with the accompanying safety analysis report, environmental report and emergency plan to Tooele County officials -- the county in which the reservation of the Skull Valley Band is located. Further, the

---

<sup>14</sup> Obviously, a local PDR could not be established instantaneously upon the filing of an application. Accordingly, even assuming the requirement under 10 C.F.R. Part 50 for establishing a local PDR (10 C.F.R. § 50.30(a)(5)) were applicable, it would necessarily need to be interpreted as allowing some reasonable amount of time for the establishment of a local PDR. As noted in the "NRC Staff's Response to State of Utah's Motion to Suspend Licensing Proceedings and to Require Renote of the Application," at pages 5-6 and note 10, dated October 10, 1997, a local PDR will be "functioning shortly." The approximate four months for the establishing a local PDR is not unreasonable, particularly where, as here, the license application has previously been made widely available in the local area as discussed in the text above.

Salt Lake City Tribune and other Utah papers reported the filing of the application, and the State's strong opposition, such that interested parties could have inquired and obtained access to the application if they so desired. In this regard, PFS itself made the application available to one of the Castle Rock petitioners and the legal counsel for petitioner Ohngo Gaudadeh Devia.

Thus, the license application has been made widely available in the local area even though a local PDR had not been formally established. Indeed, despite the State's strenuous arguments, it has identified no one in its motion who claims to have been unable to file a petition to intervene because of an inability to review the application or otherwise to have been harmed by the asserted lack of information. Nor have any other persons come forward on their own. As discussed above, the State itself cannot show such harm in its representative capacity for its citizens.

Finally, even assuming a lack of local availability of certain documents, suspension of the proceeding as requested by the State is beyond the delegated authority of the Board, as discussed above, and is not an appropriate remedy. See also Georgia Institute of Technology (Georgia Tech Research Reactor), LBP-95-6, 41 N.R.C. 281, 297-98 (1995).<sup>15</sup> In short, the State has provided no factual or legal basis for the relief it seeks.

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<sup>15</sup> Georgia Tech involved the renewal of a 10 C.F.R. Part 50 operating license for the research reactor at Georgia Tech. The research reactor had initially been licensed prior to adoption of the 10 C.F.R. § 50.30(a)(5) requiring local PDRs for 10 C.F.R. Part 50 licenses and a local PDR had not been established for the reactor. Although the Board in Georgia Tech urged the establishment of a local PDR in that proceeding, one was not established until April 25, 1996, over one year after the Board had urged its establishment, and over a year and a half into the proceeding. See Georgia Institute of Technology (Georgia Tech Research Reactor), LBP-96-8,



D. The Applicant Will Be Harmed By Suspension And Re-noticing Of This Proceeding

Contrary to the State's claim (Motion at 15-16), PFS and its participating utilities will be harmed by a suspension and delay of this proceeding. As already stated, the electric utility participants of PFS urgently need this proceeding to progress expeditiously to its ultimate conclusion. Although the U.S. Department of Energy ("DOE") is under a statutory obligation to begin accepting spent fuel from the participating utilities beginning in January 1998,<sup>16</sup> DOE has announced its intent not to honor its statutory obligation. This impending default by DOE is causing the participating utilities tremendous concern and difficulty. They currently have limited capability to store additional spent nuclear fuel on their respective plant sites and, in view of DOE's impending default, need to ensure additional storage to allow continued operations. For example, as noted in Applicant's Answer to State's Motion for Extension of Time, the storage capability of Northern States Power (one of the participating utilities) at its Prairie Island nuclear plant, as currently permitted by the State of Minnesota, will allow operation of the plant only until about the year 2002. For participating utilities where all reactors at a site have been permanently shutdown, the absence of an offsite option for spent fuel storage will result in the added

---

43 N.R.C. 178, 181 (1996); Georgia Tech, LBP-95-6, 41 N.R.C. at 284, 297-98. Though the Georgia Tech Board believed a Local PDR would be valuable, it took no action to suspend the licensing proceeding until a local PDR could be established (the Board did not even discuss suspension of proceedings as a possible option). In fact, the proceeding continued for well over a year without a local PDR. See Georgia Tech, LBP-96-8, 43 N.R.C. at 181.

<sup>16</sup> Nuclear Waste Policy Act of 1992, 42 U.S.C. §§ 10101 *et seq.*

cost of maintaining the licensed site as well as increasing decommissioning costs. For example, the LaCrosse reactor of Dairyland Power Cooperative (another participating utility) cannot be decommissioned because of spent fuel stored on site and, as a result, is costing its owner approximately \$2.8 million per year in additional costs.

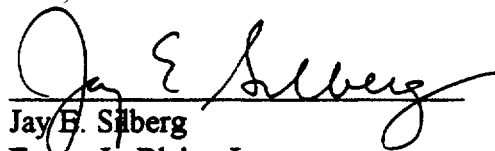
The need for additional storage combined with DOE's impending default is forcing the participating utilities to make other plans for spent fuel storage. Because developing dry storage capability can require three to five years, any delay in the implementation of this proceeding has an immediate impact on the participating utilities. Delay forces the utilities to examine and pursue other options, and each option requires the expenditure of time and fiscal resources. It costs money to leave options open.

Finally, the State's suggestion that suspending the proceedings would save the Applicant resources is both patronizing and erroneous. See Motion at 16. PFS has already expended considerable resources on technical expertise and legal resources to respond to five petitions to intervene and the State of Utah's series of attempts to delay and sidetrack this proceeding. Forcing PFS to return to ground zero on this application and proceeding would waste all of the resources the Applicant has expended to date, and would harm the participating utilities through uncertainty as to spent fuel storage and decommissioning planning.

IV. CONCLUSION

For the reasons stated above, PFS opposes the State's Motion To Suspend and Re-notice this proceeding. The resulting delay from such a course of action would have an unavoidable and damaging cascading effect that will significantly prejudice the Applicant's interests.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Jay E. Silber", is written over a horizontal line.

Jay E. Silber  
Ernest L. Blake, Jr.  
SHAW, PITTMAN, POTTS &  
TROWBRIDGE  
2300 N Street, N.W.  
Washington, D.C. 20037  
(202) 663-8000  
Counsel for Private Fuel Storage L.L.C.

Dated: October 14, 1997

# **EXHIBIT 1**

Copyright 1997 The Salt Lake Tribune  
The Salt Lake Tribune

June 26, 1997, Thursday

SECTION: Utah; Pg. D1

LENGTH: 533 words

HEADLINE: Group Files Request for N-Waste Site; Downwinders, State Ready To  
Fight Goshute Facility; Utilities File Request For N-Storage

BYLINE: BY JIM WOOLF THE SALT LAKE TRIBUNE

BODY:

A consortium of seven utilities with nuclear power plants applied Wednesday to build a storage facility for highly radioactive spent fuel on an Indian reservation in western Utah.

"Today marks the first time any group has filed a license application for a private, temporary storage facility that will serve customer needs from around the country," said Scott Northard, project manager for the consortium.

"No other group, not even the Department of Energy, has reached this important milestone," he added.

"Let the battle be joined," said Steve Erickson from the Downwinders citizen group that tracks military and radiation issues. "Now is the time for citizens of Tooele County and the state of Utah to say 'No!' in a serious way."

Utah Gov. Mike Leavitt is opposed to the utilities' plan and recently created a special state office to fight it.

Tooele County commissioners are willing to consider the proposal if certain conditions are met.

Utah Democratic Party legislators issued a statement Wednesday claiming the storage facility would have "disastrous health, economic and environmental effects" on the state.

"We are here to tell them they have made an error in judgment," said Rep. Gene Davis, D-Salt Lake.

The utilities have formed a company known as **Private Fuel Storage** (PFS), charged with finding a place to build some 4,000 concrete casks where nuclear waste can be stored until a permanent disposal site is developed in Nevada.

The only group in the country interested in PFS's plan is the 120-member Skull Valley Band of the Goshute tribe, which has an 18,000 acre reservation in Tooele County about 60 miles southwest of Salt Lake City. About 20 tribal members live on the reservation.



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PFS's selection of the site means tribal leaders -- not Utah's elected officials -- have control over local land-use decisions.

While Goshute leaders support the PFS proposal, not everyone on the reservation likes the idea.

"It is very disappointing," said Margene Bullcreek, who lives three miles from the proposed storage site. "It makes me more determined to stand up for our traditional cultural values."

PFS's application was submitted Wednesday to the U.S. Nuclear Regulatory Commission (NRC) in Washington, D.C. It consists of five loose-leaf binders -- each about three inches thick. They contain the license application, an environmental report, a safety analysis report, an emergency plan and a strategy for safeguarding the radioactive material.

NRC now has 30 days to review the application to ensure it contains all information needed to begin the review process. Once that determination is made, the commission will schedule a series of public meetings, and begin work on an environmental-impact statement and on a detailed safety-evaluation report.

A final decision from NRC is expected in about three years.

Eleven utilities initially proposed the project, but only seven were named in Wednesday's application. They are: Northern States Power, Genoa Fuel Technology (a subsidiary of Dairyland Power Co-Op), GPU Nuclear Corp., Southern Nuclear Operating Co., Consolidated Edison of New York, Illinois Power and Indiana Michigan Power.

LOAD-DATE: June 26, 1997



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# **EXHIBIT 2**



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Ms. Jill Moriearty  
Documents Division  
University of Utah  
Marriott Library  
295 S. 1500 East, Room: DOCK  
Salt Lake City, Utah 84112-0860

August 5, 1997

SWEC J. O. No. 05996.01  
Letter No. S-O-60  
File No. M1.1, R9.5A

**LICENSE APPLICATION – PUBLIC DOCUMENT ROOM  
PRIVATE FUEL STORAGE FACILITY  
PRIVATE FUEL STORAGE L.L.C.**

At the request of the Nuclear Regulatory Commission (NRC) staff, the Private Fuel Storage L.L.C. (PFSLLC) is providing the Marriott Library with one controlled copy (No. 55) of the Private Fuel Storage Facility (PFSF) Application, which was submitted to the NRC on June 25, 1997.

Controlled Copy No. 55 includes the following:

- License Application
- Safety Analysis Report
- Environmental Report
- Emergency Plan

This copy of the PFSF License Application is being submitted to you in response to your discussion with Ms. Jona Souder of the NRC's Office of Information Management.

If you have any questions concerning this letter, please feel free to call me at 303-741-7009.

**Stone & Webster Engineering Corporation**  
7677 East Berry Avenue, Englewood, Colorado 80111-2137  
Tel: 303-741-7700 Fax: 303-741-7670  
Telex: 289251 303-741-7671

Address all correspondence to P.O. Box 5406, Denver, Colorado 80217-5406



Ms. Jill Moriearty

2

August 5, 1997

Please acknowledge receipt of this Application by signing below and returning to me (by fax: 303-741-7806).

Thank you for your assistance.

Sincerely,



John L. Donnell  
Project Manager

JLD/smb

Enclosure

---

Receipt Acknowledgment

---

Date

cc: J. Parkyn-1/0  
S. Northard-1/0  
J. Silberg-1/0  
M. Delligatti-1/0



# **EXHIBIT 3**



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JAKARTA, INDONESIA  
SEOUL, KOREA  
TORONTO, CANADA

Ms. Geraldine Martinsen  
Director  
Tooele County Library  
47 East Vine Street  
Tooele, Utah 84074

August 6, 1997

SWEC J. O. No. 05996.01  
Letter No. S-O-61  
File No. M1.1, R9.5A

**LICENSE APPLICATION  
PRIVATE FUEL STORAGE FACILITY  
PRIVATE FUEL STORAGE L.L.C.**

At the request of the Nuclear Regulatory Commission (NRC) staff, the Private Fuel Storage L.L.C. (PFSLLC) is providing the Tooele County Library with one controlled copy (No. 56) of the Private Fuel Storage Facility (PFSF) Application, which was submitted to the NRC on June 25, 1997.

Controlled Copy No. 56 includes the following:

- License Application
- Safety Analysis Report
- Environmental Report
- Emergency Plan

This copy of the PFSF License Application is being submitted to you in response to your discussion with Ms. Jona Souder of the NRC's Office of Information Management.

If you have any questions concerning this letter, please feel free to call me at 303-741-7009.

**Stone & Webster Engineering Corporation**  
7677 East Berry Avenue, Englewood, Colorado 80111-2137

Tel: 303-741-7700 Fax: 303-741-7670  
Telex: 289251 303-741-7671

Address all correspondence to P.O. Box 5406, Denver, Colorado 80217-5406

Ms. Geraldine Martinsen

2

August 6, 1997

Please acknowledge receipt of this Application by signing below and returning to me (by fax: 303-741-7806).

Thank you for your assistance.

Sincerely,



John L. Donnell  
Project Manager

JLD/smr

Enclosure

---

Receipt Acknowledgment

---

Date

cc: J. Parkyn-1/0  
S. Northard-1/0  
J. Silberg-1/0  
M. Delligatti-1/0

# **EXHIBIT 4**

JLDonnell-1/0 CFile R2.1.6-1/0  
 SMMacie-1/0 Jb Bk M1.1-1/0  
 WPHennessy-1/0 Jb Bk R9.5A-1/0

STONE & WEBSTER ENGINEERING CORPORATION  
 P. O. BOX 5406, DENVER, COLORADO 80217

SKULL VALLEY RANCH  
 CASTROCK RANCH  
 801-328-1600

DATE	7/18/97
J. O. NO.	05996.01
P. O. NO.	
LTR. NO.	S-0-54
REF.	M1.1, R9.5A

VIA

Mr. David Allen  
 The Ensign Group  
 139 E. South Temple (Suite 310)  
 Salt Lake City, UT 84111

DEAR SIRs:

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<input type="checkbox"/> PRELIMINARY	<input type="checkbox"/> APPROVED AS REVISED	<input type="checkbox"/> ADDITIONS	<input type="checkbox"/> CORRECTIONS	<input type="checkbox"/> USE <input checked="" type="checkbox"/> INFORMATION
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☐ PLEASE REVISE AND SUBMIT ☐ PRINTS ☐ REPRODUCIBLES ☐ MICROFILM APERTURE CARDS.

☐ PLEASE SUBMIT ☐ PRINTS ☐ REPRODUCIBLES ☐ MICROFILM APERTURE CARDS OF ☐ DOCUMENTS ☐ DRAWINGS ☐ SHOP DETAIL

☐ PLEASE RETURN ONE COPY EACH OF THIS MATERIAL BEARING YOUR APPROVAL OR COMMENTS.

☐ PLEASE ACKNOWLEDGE RECEIPT OF THIS MATERIAL BY SIGNING AND RETURNING THE ENCLOSED COPY OF THIS FORM.

☐ WE TRUST THAT THESE NOTES ARE IN ACCORDANCE WITH YOUR UNDERSTANDING; IF NOT, PLEASE ADVISE US.

IMPORTANT SHOULD ANY REVISION TO DOCUMENTS OR DRAWINGS RETURNED HEREWITH INVOLVE A PRICE INCREASE, THE SUPPLIER MUST NOTIFY STONE & WEBSTER PURCHASING DEPARTMENT WITHIN TEN (10) DAYS EVEN THOUGH A DEFINITE ESTIMATE CANNOT BE GIVEN AT THE TIME. OTHERWISE, THE PURCHASER WILL CONSIDER THE REVISIONS MADE WITHOUT COST.

PFSF LICENSE APPLICATION  
PRIVATE FUEL STORAGE FACILITY

Attached, please find one copy of the following PFSF License Application documents which were submitted to the NRC on June 25, 1997:

- License Application
- Safety Analysis Report
- Environmental Report
- Emergency Plan

The documents are provided for your information and are "uncontrolled" copies.

If you have any questions or comments, please me at (303) 741-7009.

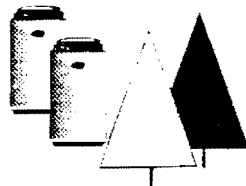
*Stan Macie*  
 J. L. Donnell  
 Project Manager

Enclosures

Copy to: J. Parkyn (LLC)-1/0  
 S. Northard (LLC)-1/0

JLD:SMM:smr

# **EXHIBIT 5**



*Private Fuel Storage, LLC*

*P.O. Box C4010, La Crosse, WI 54602-4010*

*John D. Parkyn, Chairman of the Board*

April 9, 1997

Ms. Kari Sagers  
Director, Tooele County Emergency Government  
47 South Main Street  
Tooele City, Utah 84074

Dear Ms. Sagers:

Attached for your review and comment is a copy of the Emergency Plan for the proposed Private Fuel Storage Facility as planned to be located on the Goshute Skull Valley Reservation of the Tooele County Township. This Emergency Plan has been prepared to establish the procedures and practices for management control over unplanned or emergency events that may occur at the Private Fuel Storage Facility.

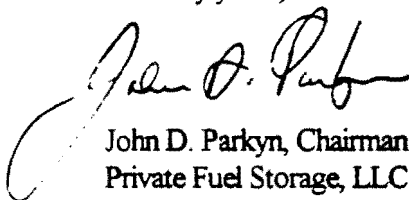
The Emergency Plan is being submitted for your review in accordance with the provisions of Title 10 of the Code of Federal Regulations Part 72.32.a (14), "Comments on the Plan." This Emergency Plan is intended to meet the requirements outlined in Title 10 of the Code of Federal Regulations, Part 72.32 (a), "Emergency Plan."

We appreciate your prompt attention in reviewing and commenting on the attached plan within 60 days of this letter. Please direct any questions or comments to myself at (608) 787-1236 or to any individual listed below who will be happy to assist you:

- Jerrie Morlino, Emergency Preparedness  
Office: (617) 740-4354
- William Hennessey, Stone & Webster  
Office: (303) 741-7430

I am looking forward to seeing and talking with you soon.

Sincerely yours,



John D. Parkyn, Chairman  
Private Fuel Storage, LLC

JDP:cls  
Attachment

Copy to: Frank Scharmann  
Sheriff, Tooele County



# **EXHIBIT 6**



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

July 21, 1997

Mr. John D. Parkyn, Chairman  
Private Fuel Storage, L.L.C.  
P.O. Box C4010  
La Crosse, WI 54602

SUBJECT: NOTICE OF DOCKETING AND ACCEPTANCE REVIEW OF APPLICATION FOR A  
LICENSE TO CONSTRUCT AND OPERATE AN INDEPENDENT SPENT FUEL STORAGE  
INSTALLATION AT THE SKULL VALLEY GOSHUTE INDIAN RESERVATION  
(TAC NO. L22462)

Dear Mr. Parkyn:

By letter dated June 20, 1997, Private Fuel Storage, Limited Liability Company, submitted an application to the Nuclear Regulatory Commission in accordance with 10 CFR Part 72 for the review and approval of an application to construct and operate the Private Fuel Storage Facility. This is to inform you that the application contained the necessary information to begin our review. We have docketed the application under 10 CFR Part 72. It was assigned Docket No. 72-22.

You are hereby advised that any subsequent issue that you identify that could affect the application must be submitted to the staff for review and approval as a supplement to the application.

Finally, I am enclosing for your information a copy of the "Notice of Consideration of Issuance of a Materials License for the Storage of Spent Fuel and Notice of Opportunity for Hearing" related to your June 20, 1997, request for a materials license under 10 CFR Part 72. The notice has been forwarded to the Office of the Federal Register for publication.

Please reference the above TAC No. in future correspondence related to this action.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark S. Delligatti", is written over a horizontal line.

Mark S. Delligatti  
Senior Project Manager  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-22

Enclosure: Federal Register Notice

cc: See attached

Mr. John D. Parkyn, Chairman

Letter dated:

cc: Mr. Leon Bear, Chief  
Skull Valley Goshutes

Ms. Diane R. Nielson  
Utah Dept. of Environmental Quality

Mr. Bill Sinclair  
Utah Dept. of Environmental Quality

# **EXHIBIT 7**

July 1, 1997

Ms. Connie Nakahara  
168 North 1950 West  
Salt Lake City, UT 84116

SUBJECT: PRIVATE FUEL STORAGE QUALITY ASSURANCE PROGRAM DESCRIPTION

Dear Ms. Nakahara:

Per your request in our June 27, 1997, telephone conversation, I am providing the enclosed copy of "Private Fuel Storage L.L.C. Quality Assurance Program Description." As you noted, this document is referenced in the Private Fuel Storage L.L.C. license application for its proposed Private Fuel Storage Facility, an independent spent fuel storage installation, to be located on the Skull Valley the Skull Valley Goshute Indian Reservation in Skull Valley, Utah.

If you have further questions, please contact me at (301) 415-8518.

Sincerely,

Original signed by /s/

Mark S. Delligatti, Senior Project Manager  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket 72-22

Enclosure: As Stated.

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C PDR

FILED 7/1/97 COF

October 14, 1997

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before the Atomic Safety and Licensing Board**

In the Matter of	)	
	)	
PRIVATE FUEL STORAGE L.L.C.	)	Docket No. 72-22
	)	
(Private Fuel Storage Facility)	)	ASLBP No. 97-732-02-ISFSI

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the "Applicant's Answer To The State Of Utah's Motion To Suspend Licensing Proceedings And Re-Notice Opportunity For Hearing," dated October 14, 1997 were served on the persons listed below (unless otherwise noted) by facsimile with conforming copies by US mail, first class, postage prepaid, this 14th day of October 1997.

G. Paul Bollwerk III, Esq., Chairman  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Dr. Jerry R. Kline  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Dr. Peter S. Lam  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

\* Adjudicatory File  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Catherine L. Marco, Esq.  
Sherwin E. Turk, Esq.  
Office of the General Counsel  
Mail Stop O-15 B18  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

\* Charles J. Haughney  
Acting Director, Spent Fuel Project Office  
Office of Nuclear Material Safety and  
Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Denise Chancellor, Esq.  
Assistant Attorney General  
Utah Attorney General's Office  
160 East 300 South, 5th Floor  
P.O. Box 140873  
Salt Lake City, Utah 84114-0873

Jean Belille, Esq.  
Ohngo Gaudadeh Devia  
Land and Water Fund of the Rockies  
2260 Baseline Road, Suite 200  
Boulder, Colorado 80302

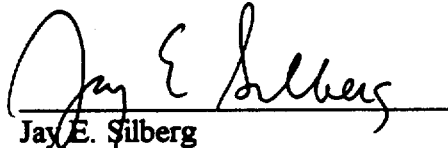
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Jay E. Silberg