

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
CONTENTIONS SECURITY-A THROUGH SECURITY -I BASED
ON APPLICANT'S CONFIDENTIAL SAFEGUARDS SECURITY PLAN**

I. INTRODUCTION

In its December 17, 1997 Memorandum and Order (Protective Order and Schedule for Filing Security Plan Contentions), the Atomic Safety and Licensing Board ("Licensing Board" or "Board") ordered that the State of Utah ("State") to file any contentions regarding the Applicant's security plan on or before January 5, 1998 and that answers be submitted by January 20, 1998. On January 3, 1998, the State filed nine such contentions in a pleading entitled "State of Utah's Contentions Security-A through Security-I Based on Applicant's Confidential Safeguards Security Plan." ("Security Contentions"). Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") submits this Answer to the State's Security Contentions.

As set forth in Part II of this Answer, the State's Security Contentions must be rejected because they are not supported by a qualified security expert as required under Commission precedent. Part III of this Answer sets forth additional reasons why Security Contentions A through I should be denied.

Because Applicant's response in Part III of this pleading contains protected safeguards information, that part of this pleading is being filed and served solely in accordance with the procedures for protected information set forth in the Board's December 17, 1997 Memorandum and Order. Because both the State's Contentions and Bases and Applicant's response contains Safeguards Information, Applicant anticipates that oral argument regarding at least some of the security plan contentions would likely involve discussing Safeguards Information so as to require an in camera session.

II. THE STATE'S SECURITY CONTENTIONS ARE NOT SUPPORTED BY A QUALIFIED SECURITY EXPERT

"[T]o pursue a security plan contention," an intervenor "must have a qualified expert and must submit to a protective order." Duke Power Company (Catawba Nuclear Station, Units 1 and 2), LBP-82-51, 16 NRC 167, 177 (1982) ("Catawba"). Here, the State has submitted to a protective order, but its security contentions are not supported by a qualified security expert. Accordingly, its security contentions must be dismissed. Id.

The State has presented William J. Sinclair, head of Utah's radiation control program, as its qualified technical expert to support of its security contentions. See Declaration of William J. Sinclair. As observed by the Board in its December 17, 1997

Memorandum and Order (in discussing the credentials of an expert necessary to be allowed access to protected information), "an expert must be demonstrated to possess the technical competence necessary to evaluate the portions of the security plan" to be reviewed by the expert. December 17, 1997 Memorandum and Order at 6. Moreover, the burden is on the party sponsoring an expert to "demonstrate that the expert is qualified to evaluate each section of the security plan that is to be reviewed by the expert." Id.; see also Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398, 1405 (1977) ("Diablo Canyon I") ("the party sponsoring the witness has the burden of demonstrating his expertise"). Here, neither the Security Contentions nor the Declaration of Mr. Sinclair demonstrate his technical qualifications to evaluate the Security Plan for the PFSF on which evaluation the State's Security Contentions are based. See Sinclair Declaration.

As a general matter, the qualifications of an expert are established by showing either "academic training or . . . relevant experience, or through some combination" of the two concerning the particular matter on which the expert is to opine. See Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-78-36, 8 NRC 567, 570 (1978) ("Diablo Canyon II"). Further, the training and experience required to qualify as a security expert for a nuclear facility have been elucidated by the licensing board in Catawba as follows:

[a]n expert in nuclear power plant security should possess extensive training or experience in that or closely related fields. Such a person should be able to assess overall plant

security with an appreciation for its interrelated aspects.
There is no basis for assuming that a former security
employee ipso facto has the necessary background.

16 NRC at 176 (emphasis added). Here, neither Mr. Sinclair's academic training nor his relevant experience provide him with the requisite extensive training or experience in nuclear security or closely related fields to qualify him as an expert on the security for the storage of spent nuclear fuel.

Mr. Sinclair's Curriculum Vitae, attached to his declaration, shows that his academic training does not provide the technical competence to evaluate the adequacy of Applicant's Security Plan for the storage of spent nuclear fuel at an away-from-reactor ISFSI. Mr. Sinclair received a Bachelor and Master of Science degrees in Environmental Health and is certified as a Registered Sanitation in the State of Utah and a Registered Hazardous Substances Professional by the National Environmental Health Association. Neither his field of academic study nor his professional certifications bear any relationship to nuclear security matters. Such academic training that bears "no particular relationship" to the matters for which an individual is proposed as an expert is insufficient, standing alone, to qualify the individual as an expert on such matters. Diablo Canyon II, LBP-78-36, 8 NRC at 570-571. Hence, based on his academic training and education alone, Mr. Sinclair is not qualified as a security expert.

Similarly, Mr. Sinclair's work experience as described in his Curriculum Vitae does not reflect any relevant experience -- much less extensive experience -- in nuclear

security matters. From 1970 through mid-1993, Mr. Sinclair worked extensively in the area of environmental sanitation and solid waste management, particularly from 1982 forward in the permitting and regulation of solid and hazardous wastes. His Curriculum Vitae reflects no security work experience of any type during this timeframe, much less nuclear security experience. Since mid-1993, Mr. Sinclair has been the Director of Division of Radiation Control responsible for the "management of 20 professional staff and x-ray registration/inspection, radioactive materials/licensing, environmental monitoring /low level waste programs with the Division." Again, this experience reflects no relevant security expertise or technical competence concerning security for spent nuclear fuel and related nuclear facilities. Similarly, the professional organizations in which Mr. Sinclair is or has been a member reflect no relevant nuclear security expertise.

Thus, none of Mr. Sinclair's work experience or professional activities give him the technical competence to review and evaluate Applicant's Security Plan for storage of spent nuclear fuel at an away-from-reactor ISFSI. See Catawba, LBP-82-51, 16 NRC at 176-77; Diablo Canyon II, LBP-78-36, 8 NRC at 569-73. As stated by the licensing board in Diablo Canyon II, qualification as a nuclear security expert requires "practical knowledge flowing from working with . . . the components of the security system, at least to the extent of being able to design an overall system;" "intimate . . . knowledge of the fabrication and assembly of each component;" and "evidence of actual practical knowledge or its equivalent." 8 NRC at 569. The board held there that "a well informed

layman, with broad general knowledge of the field, but [lacking] the requisite depth of knowledge” of nuclear security matters did not possess the technical competence necessary to qualify as a nuclear security expert. Id. at 573.

Similarly here, Mr. Sinclair lacks the requisite depth of knowledge to possess the technical competence necessary to qualify as a nuclear security expert. His Curriculum Vitae reflects no knowledge of the design of an overall nuclear security system, or knowledge of the fabrication and assembly of its components, or evidence of actual practical knowledge flowing from working with security systems and their components.

In sum, Mr. Sinclair does not “possess the extensive training or experience” to qualify as a nuclear security expert with respect to spent nuclear fuel and related nuclear facilities. Catawba, 16 NRC at 176. Hence, the security contentions submitted by the State relying on Mr. Sinclair as a security expert are inadmissible. Id. at 177.

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CERTIFICATE OF SERVICE

I hereby certify that copies of Parts I (Introduction) and Part II (The State's Security Contentions Are Not Supported by a Qualified Security Expert) without the remaining parts of the "Applicant's Answer to the State of Utah's Contentions Security-A Through Security-I Based on Applicant's Confidential Safeguards Security Plan" were served on the persons listed below (unless otherwise noted) by facsimile with conforming copies by U.S. mail, first class, postage prepaid, this 20th day of January 1998:

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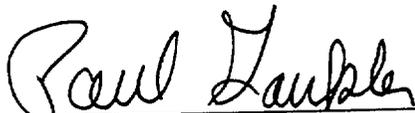
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