

May 20, 1999

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 RESPONSE TO
STATE'S PARTIAL MOTION TO STRIKE**

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") files this response to the State of Utah's Partial Motion to Strike Applicant's Response to Motion to Compel ("Motion") and urges that the Motion be denied. In its Motion, the State claims that when PFS characterized responding to the State's document requests as "burdensome," in its response to the motion to compel, PFS raised a new objection which was not made in its initial objections, and that therefore the word "burdensome" should be stricken from the Applicant's response.¹

The State's claim is not correct. In both its objections and its response to the State's motion to compel, PFS objected and argued that the requests are overbroad and

¹ Motion at 1. The sentence in Applicant's response that contains the word "burdensome" which the State seeks to strike states as follows: "Applicant, however, will not coincidentally be responding to the State's burdensome document requests but continues to object to these overly broad and irrelevant requests."

not relevant. PFS did not object on the grounds of burden, and no arguments of burden were advanced by PFS in its response to the State's motion to compel. Rather, as explained by counsel for PFS in his phone conversation with counsel for the State,² use of the term "burdensome" was in the context of explaining why Applicant was voluntarily responding to the interrogatories, to which Applicant had previously objected, but was not responding to the document requests. In this context, particularly, burdensome was simply an accurate and truthful general description of the effort involved in responding to overbroad and irrelevant discovery requests. It did not connote any new objection made by Applicant, nor were any arguments made to such effect (which is confirmed by the fact that the State seeks to strike only the word "burdensome" and no associated text or argument).

In short, the State's Partial Motion to Strike is not only unjustified but irrelevant as well since it does not affect the substantive arguments on the Motion to Compel.

Applicant's Response to State of Utah's Proprietary and Non-Proprietary Motions to Compel Applicant to Respond to State's First Set of Discovery Requests at 9 (emphasis in original).

² May 11, 1999 telephone conversation between Paul Gaukler and Diane Curran. PFS notes that the State had initially also taken issue with PFS's use of the term "overly broad" and the related argument of overbreadth, but dropped this issue after counsel for Applicant pointed out that PFS had objected to the document requests as being "overbroad." See Applicant's Objections and Proprietary Responses to State's First Requests for Discovery at 4.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the Applicant's Response To State's Partial Motion To Strike was served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 20th day of May 1999.

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