

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of:	)	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, LLC	)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel	)	
Storage Installation)	)	August 6, 1999

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**STATE OF UTAH'S RESPONSE TO APPLICANT'S MOTION TO STRIKE  
PART OF THE STATE OF UTAH'S RESPONSE TO THE APPLICANT'S  
MOTION FOR SUMMARY DISPOSITION OF CONTENTION UTAH K**

The State of Utah hereby responds to the Applicant's July 30, 1999 Motion to Strike Part of the State of Utah's Response to the Applicant's Motion for Summary Disposition of Contention Utah K ("Motion"). The State of Utah voluntarily withdraws its arguments relating to Tekoi Rocket Motor Facility. *See State's Opposition to Applicant's Motion for Partial Summary Disposition of Utah Contention K and Confederate Tribes Contention B (dated July 22, 1999), at 11 and accompanying "Statement of Material Facts in Dispute Regarding Utah Contention K and Confederate Tribes Contention B," at ¶ 1.*

Notwithstanding its voluntary withdrawal, the State reserves its right to oppose similar motions or arguments in the future. The State believes there are circumstances under which it is appropriate for a party to develop information or add witnesses after the close of discovery. The State also recognizes that it has an obligation, as do other parties,

to supplement its discovery responses as necessary to identify new witnesses and provide information about the scope of their expected testimony.

The Applicant itself has relied upon additional materials and witnesses that were not available to the State during discovery. In fact, relative to risk posed by the Tekoi Rocket Motor Facility, the very issue involved in its Motion to Strike, PFS has used three witnesses that have still never been identified in PFS's discovery responses. PFS supported its Motion for Summary Disposition of Utah Contention K and Confederated Tribes Contention B ("PFS Motion for Summary Disposition") with declarations from C. Floyd Davis (PFS Motion for Summary Disposition, Attachment 2), Jeffrey Johns (PFS Motion for Summary Disposition, Attachment 3), and Wesley Jacobs (PFS Motion for Summary Disposition, Attachment 4). PFS has not identified any of these individuals as witnesses in its discovery responses, nor has it provided information about the scope of their testimony.<sup>1</sup>

Finally, the State notes that PFS's dispute with the State in this matter is essentially a discovery dispute. The Board has required the parties to confer and attempt to resolve discovery disputes prior to filing motions to compel or motions for protective

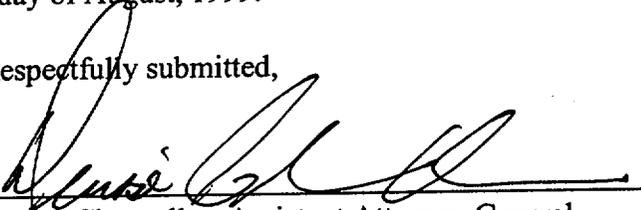
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<sup>1</sup> See Applicant's Objections and Non-Proprietary Responses to State's First Requests for Discovery (April 21, 1999) at 11-14; Applicant's Objections and Non-Proprietary (*sic*) Responses to State's Second Requests for Discovery (Group I)(June 4, 1999) at 5; Applicant's Objections and Non-Proprietary Responses to State's Second Requests for Discovery (Group II and III)(June 28, 1999) at 5-6; Applicant's Objections and Non-Proprietary Responses to State's Third Requests for Discovery (June 28, 1999) at 6.

orders. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LPB-98-7, 47 NRC at 142, 245 (1998). PFS made no such attempt before filing its Motion to Strike. The State requests that if similar situations arise in the future, PFS comply with the spirit of the Board's requirement and bring its concern to the State's attention before filing a motion.

DATED this 6<sup>th</sup> day of August, 1999.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of "State of Utah's Response to Applicant's Motion to Strike Part of the State of Utah's Response to the Applicant's Motion for Summary Disposition of Contention Utah K" was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 6th day of August, 1999:

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