

December 1, 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PRIVATE FUEL STORAGE, LLC) Docket No. 72-22-ISFSI
)
(Independent Spent)
Fuel Storage Installation))

NRC STAFF'S RESPONSE TO
STATE OF UTAH'S MOTION TO ADD A WITNESS
TO THE SAFEGUARDS PROTECTIVE ORDER

On November 23, 1999, the State of Utah ("State") filed a "Motion to Add a Witness to the Safeguards Protective Order" ("Motion"), in which it requested leave to add Lieutenant Roy A. Mackay to the list of persons who are authorized to have access to Safeguards Information in this proceeding under the Licensing Board's "Memorandum and Order (Protective Order and Schedule for Filing Security Plan Contentions)" ("Protective Order"), dated December 17, 1997. In accordance with the Licensing Board's "Order (Schedule for Motion Response)" dated November 29, 1999, the Staff hereby responds to the State's Motion.

In its Motion, the State indicated that it has named Lieutenant Mackay as the State's witness for the upcoming hearing on Utah Contention Security C, that he "has more than 30 years experience with the Utah Highway Patrol ('UHP') and is currently the UHP Field Commander for all of Tooele County," and that "during the hearing Lt. Mackay may be exposed to safeguards information" (Motion at 1). The State indicated that the Applicant "does not oppose the State request's to add Lt. Mackay to the State persons who may be afforded access to protected

information on a need to know basis" (*Id.* at 2). In addition, the State attached to its Motion a non-disclosure affidavit which the State represents has been executed by Lt. Mackay (*Id.*, Exh. 1), in the form attached to the Licensing Board's Protective Order of December 17, 1997.

The Staff has reviewed the State's Motion and agrees that Lt. Mackay's participation as a witness in the proceeding will require him to need to know details of the Applicant's physical protection plan. Further, the Staff has reviewed Lt. Mackay's Affidavit, and is satisfied that it conforms to the form of Affidavit attached to the Licensing Board's Protective Order of December 17, 1997.¹ Accordingly, the Staff is satisfied that Lt. Mackay may be afforded access to Safeguards Information in this proceeding, in accordance with the terms of the Licensing Board's Protective Order.²

Respectfully submitted,



Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 1st day of December, 1999

¹ The Staff notes that the paragraph 5(a) of the approved form of Affidavit was amended by "Memorandum and Order (Additional Amendments to Protective Order)," dated December 23, 1997, to permit the use of protected information at "(iii) an office to be provided by the Applicant or its contractor, Stone & Webster Engineering Corp., in Washington, D.C. and/or Denver, CO." Lieutenant Mackay's Affidavit does not reflect this revised language but, rather, conforms to the form of Affidavit approved by the Board's Protective Order of December 17, 1997.

² The State also requested that Rebecca Waldron be deleted from the list of persons under sub-paragraph I.B.1 of the Protective Order who may have access to protected information. The Staff does not oppose this request.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S RESPONSE TO STATE OF UTAH'S MOTION TO ADD A WITNESS TO THE SAFEGUARDS PROTECTIVE ORDER" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the United States mail, first class, as indicated by an asterisk, with copies by electronic mail as indicated, this 1st day of December, 1999.

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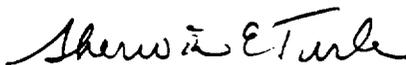
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