

January 31, 2000

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 OBJECTIONS AND RESPONSES TO STATE OF UTAH'S
NINTH SET OF DISCOVERY REQUESTS
*[Nonproprietary Version]***

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") files this non-proprietary response to the January 19, 2000 "State of Utah's Ninth Set of Discovery Requests Directed to the Applicant (Utah Contentions E & S)" ("State's Ninth Discovery Requests").¹ The general objections made by Applicant with respect to the State's discovery requests in this Nonproprietary Version of Applicant's discovery response are hereby incorporated into the concurrent Proprietary Version of this response.

I. GENERAL OBJECTIONS

These general objections apply to the Applicant's responses to all of the State's Ninth Discovery Requests.

¹ The responses to the discovery requests Request for Admission Nos. 3-4, 6-7, and 11-15 and Document Request Nos. 11-14, 18, 21, 23-25, and 30, pertaining to Contention Utah E, and Request for Admission No. 1, pertaining to Contention Utah S, are considered to contain proprietary information and are being filed in the concurrent proprietary response.

1. The Applicant objects to the State's instructions and definitions on the grounds and to the extent that they request or purport to impose upon the Applicant any obligation to respond in manner or scope beyond the requirements set forth in 10 C.F.R. §§ 2.740, 2.741 and 2.742.²

2. The Applicant objects to State's discovery requests to the extent that they request discovery of information or documents protected under the attorney-client privilege, the attorney work product doctrine, and limitations on discovery of trial preparation materials and experts' knowledge or opinions set forth in 10 C.F.R. § 2.740 or other protection provided by law. With respect to document production requests, the Applicant has provided the State with a Privilege Log which identifies documents subject to these privileges and protections, which the Applicant reserves the right to supplement.

3. The Applicant objects to the State's discovery requests to the extent they seek discovery beyond the scope of the Utah contentions, as admitted by the Board in this proceeding. The State is only permitted to obtain discovery on matters that pertain to the subject matter with which the State is involved in this proceeding. 10 C.F.R. § 2.740(b).

4. The Applicant objects to the State's discovery requests to the extent they seek discovery from entities that are not parties to this proceeding. The State is only permitted to directly propound requests for admission, interrogatories, and document

² In its Ninth Discovery Requests the State incorporated by reference the instructions and definitions it had included with its prior discovery requests. See Ninth Discovery Requests at 1-2.

production requests on entities that are parties to this proceeding. 10 C.F.R. §§ 2.740b, 2.741, 2.742.

5. The Applicant objects to all of the State's document requests in the Ninth Set, in that they are late. Pursuant to the Licensing Board's Memorandum and Order (General Schedule for Proceeding and Associated Guidance) of June 29, 1998, discovery requests must be filed in time for the respondent to file a timely response by the close of the relevant discovery window. Pursuant to this same Memorandum and Order, parties have 15 days to respond to document production requests. See June 29, 1998, Memorandum and Order at 7. Since the State's Ninth Set of Discovery Requests was filed on January 19, the 15 days would end on February 3. Pursuant to the Board's Memorandum and Order (Revised General Schedule) of September 20, 1999, the discovery window for Group II contentions, which include Contentions Utah E and Utah S, closes on January 31. Therefore, the State's document requests are late and PFS objects to each on that ground. PFS will, however, continue voluntarily to update its production of relevant documents in accordance with its agreement with the State.

II. UTAH CONTENTION E (Financial Assurance)

A. REQUESTS FOR ADMISSION – Utah Contention E

REQUEST FOR ADMISSION NO. 1. In the event PFS becomes a common carrier for the shipment of spent nuclear fuel ("SNF") from reactors to the PFS facility, do you admit that PFS would not be required by the Federal Highway Administration to have cargo insurance.

APPLICANT'S RESPONSE: PFS objects to this request as calling for a conclusion of law as to whether PFS would be required by the Federal Highway Administration to have cargo insurance. 10 C.F.R. § 2.742(a) (“a party may file a written request for the admission of . . . the truth of any specified relevant matter of fact”) (emphasis added).

REQUEST FOR ADMISSION NO. 2. Do you admit that the ownership and/or equity interests in PFS do not have to be evenly divided among members.

APPLICANT'S RESPONSE: PFS objects to this request as not pertaining to a matter of fact relevant to Contention Utah E. See 10 C.F.R. § 2.742(a). Whether the equity or ownership interests in PFS are evenly divided among PFS's members is irrelevant to PFS's demonstration of its financial qualifications. As PFS has indicated previously, PFS's financial qualifications are demonstrated through its commitments not to build the PFSF without committed funds sufficient to cover all construction costs and not to operate the facility without customer Service Agreements sufficient to cover the cost of operating and maintaining the facility (plus the amortization of any construction debt). The fractions of PFS owned by the various members thereof are irrelevant to whether PFS's commitments are sufficient to demonstrate PFS's financial qualifications.

Nevertheless, without waiving PFS's objection, the request is admitted.

REQUEST FOR ADMISSION NO. 5. Do you admit that PFS is considering changes to PFS's corporate structure to attract new members.

APPLICANT'S RESPONSE: PFS objects to this request as not pertaining to a matter of fact relevant to Contention Utah E. See 10 C.F.R. § 2.742(a). PFS's corporate structure is irrelevant to demonstrating its financial qualifications to build and operate the PFSF under PFS's commitment approach. As indicated in response to Request for Admission No. 3, whether construction and operation will go forward will depend, respectively, on the cumulative amount of committed funding PFS has available prior to the beginning of construction and the cumulative amount of funding available from customer Service Agreements prior to the beginning of operation.

REQUEST FOR ADMISSION NO. 8. Do you admit that PFS's customers will be responsible for damages in excess of any liability insurance carried by PFS for the off-site consequences from on-site accidents or natural occurrence.

APPLICANT'S RESPONSE: PFS objects to this request as asked and answered. See Applicant's Objections and Responses to State of Utah's Eighth Set of Discovery Requests, Utah E Request for Admission No 3.

REQUEST FOR ADMISSION NO. 9. Please refer to the Parkyn Declaration (hereinafter "Parkyn Dec.") in support of PFS's December 3, 1999 Motion for Partial Summary Disposition of Utah Contention E, at 7 ¶18. "PFS has no liabilities and will have no liabilities other than those relating to providing spent fuel storage services to PFS's customers under the Service Agreements PFS will enter into with them." Do you admit that PFS has incurred millions of dollars in liabilities over the life of PFS to date and will incur substantial additional liabilities into the future regardless of whether PFS ultimately "provides any spent fuel storage services to PFS's customers."

APPLICANT'S RESPONSE: PFS objects to this request as vague, in that the term "substantial additional liabilities" is undefined. Nevertheless, without waiving its objection, the request is denied.

REQUEST FOR ADMISSION NO. 10. Do you admit that PFS is currently negotiating with one or more utilities for membership in PFS.

APPLICANT'S RESPONSE: PFS objects to this request as not pertaining to a matter of fact relevant to Contention Utah E. See 10 C.F.R. § 2.742(a). First, as indicated in response to Request for Admission No. 3, the number of members PFS has does not bear on PFS's financial qualifications in any way. Second, PFS's negotiations with potential members, and PFS's marketing efforts generally, are irrelevant to PFS's demonstration of its financial qualifications under PFS's commitment approach. See Applicant's Motion for Partial Summary Disposition of Contention Utah E/Confederated Tribes F (December 3, 1999), at 5-10.

REQUEST FOR ADMISSION NO. 16. Do you admit that in estimating the cost of constructing its proposed ISFSI, PFS has reviewed the cost of constructing WEPCO's Point Beach ISFSI?

APPLICANT'S RESPONSE: PFS objects to this request as vague, in that the term "reviewed" is undefined. PFS is generally aware of the costs of constructing the Point Beach ISFSI but did not rely on them in developing the cost estimates for the PFSF.

REQUEST FOR ADMISSION NO. 17. Do you admit that PFS originally wanted to design the PFS facility to serve the entire commercial market for SNF storage?

APPLICANT'S RESPONSE: PFS objects to this request as not pertaining to a matter of fact relevant to Contention Utah E. See 10 C.F.R. § 2.742(a). The capacity of the facility PFS may or may not have wished to build at some time in the past is irrelevant to PFS's financial qualifications given PFS's license application before the NRC and the financial commitments PFS has made.

REQUEST FOR ADMISSION NO. 18. Do you admit that GPUN and Illinois Power will not continue to be members of PFS.

APPLICANT'S RESPONSE: PFS objects to this request as not pertaining to a matter of fact relevant to Contention Utah E. See 10 C.F.R. § 2.742(a). As indicated in response to Request for Admission No. 3, the number of members PFS has does not bear on PFS's financial qualifications in any way. Nevertheless, without waiving its objection the request is denied.

REQUEST FOR ADMISSION NO. 19. Do you admit that, currently, the members of the PFS LLC have the financial strength, in their individual corporate capacities, to provide a financial commitment to the construction and operation of PFS that would meet the criteria set forth in 10 CFR 72.22(e)?

APPLICANT'S RESPONSE: PFS objects to this request as calling for a conclusion of law, as the request asks PFS to admit whether the members of PFS could provide a financial commitment to facility construction and operation that would meet the criteria set forth in 10 C.F.R. § 72.22(e). See 10 C.F.R. § 2.742(a). PFS also objects to this request as irrelevant to PFS's financial qualifications, see id., in that what are relevant are the commitments that PFS has made, not those that might be potentially made by other entities.

REQUEST FOR ADMISSION NO. 20. Do you admit that PFS has not attempted in 1999 to secure financial commitments from its members sufficient to meet the criteria set forth in 10 CFR 72.22(e).

APPLICANT'S RESPONSE: PFS objects to this request as calling for a conclusion of law, as the request asks PFS to admit whether it attempted in 1999 to secure from its members financial commitments that would meet the criteria set forth in

10 C.F.R. § 72.22(e). See 10 C.F.R. § 2.742(a). PFS also objects to this request as not pertaining to a matter of fact relevant to Contention Utah E. See id. As indicated in response to Request for Admission No. 10, PFS's marketing efforts generally (to include negotiations with members as potential customers), are irrelevant to PFS's demonstration of its financial qualifications under PFS's commitment approach. See Applicant's Motion for Partial Summary Disposition of Contention Utah E/Confederated Tribes F (December 3, 1999), at 5-10.

REQUEST FOR ADMISSION NO. 21. Do you admit that, if a temporary or permanent federal repository is not available for all the SNF stored at PFS within the 20 year license being applied for in this proceeding, PFS has no contingency plan for fuel stored on-site other than to apply to NRC for a license renewal.

APPLICANT'S RESPONSE: PFS objects to this request as asked and answered. See Applicant's Objections and Non-Proprietary Responses to State's Second Requests for Discovery (Groups II and III) (June 28, 1999), Utah S, Request for Admission No. 1; Applicant's Objections and Proprietary Responses to State's Second Requests for Discovery (Groups II and III) (June 28, 1999), Utah E, Request for Admission No. 4.

REQUEST FOR ADMISSION NO. 22. Do you admit there is no reasonable assurance that SNF shipped to PFS for storage could be returned to the reactor that produced it in the event that a federal repository is either not open or is unable to take all the SNF stored at PFS at or before the end of PFS's 20 year license.

APPLICANT'S RESPONSE: PFS objects to this request outside the scope of this proceeding, as it is based upon an impermissible challenge to the NRC's regulations, specifically 10 C.F.R. § 51.23. See Private Fuel Storage, L.L.C. (Independent Spent Fuel

Storage Installation), LBP-98-7, 47 NRC 142, 213 (1998) (rejecting contention alleging absence of DOE facility able to receive spent fuel stored at the PFSF as a challenge to NRC regulations).

REQUEST FOR ADMISSION NO. 23. Please refer to the Parkyn Dec., at 11 ¶ 26. “The cost of recovery of an accident in transportation to the PFSF from a customer’s reactor would be the liability of the customer . . .” Do you admit that for shipments of SNF from an ISFSI to PFS, any liability from an accident involving damage to the public from a release in radioactivity will be the responsibility of the utility and not PFS, regardless of the cause of the accident.

APPLICANT'S RESPONSE: PFS objects to this request as calling for a conclusion of law. See 10 C.F.R. § 2.742(a). How liability would ultimately be assigned in the event of an accident is a legal question.

REQUEST FOR ADMISSION NO. 24. Do you admit that there are some commercial reactors that do not have rail access?

APPLICANT'S RESPONSE: PFS objects to this request as not pertaining to a matter of fact relevant to Contention Utah E. See 10 C.F.R. § 2.742(a). Whether or not a reactor has rail access has no bearing on PFS’s financial qualifications, in that it has no bearing on the cost of constructing, operating, or maintaining the PFSF. Nevertheless, without waiving its objection, the request is admitted.

REQUEST FOR ADMISSION NO. 25. Do you admit that there are some commercial reactors without rail access that are, as a practical matter, inaccessible to heavy haul trucks of the type PFS proposes to use to move SNF from the Intermodal Transfer Facility to the [PFS] facility?

APPLICANT'S RESPONSE: PFS objects to this request as not pertaining to a matter of fact relevant to Contention Utah E. See 10 C.F.R. § 2.742(a). Whether or not a

reactor without rail access is inaccessible to the heavy haul trucks PFS proposes to move fuel from the ITP to the PFSF has no bearing on PFS's financial qualifications, in that such has no bearing on the cost of constructing, operating, or maintaining the PFSF. Nevertheless, without waiving its objection, PFS has insufficient information to either admit or deny this request.

B. DOCUMENTS REQUESTS – Utah Contention E

As stated in General Objection 5, PFS objects to all the State's document requests in the Ninth Set, in that they are late. PFS indicates the additional objections it has to each individual document request below.

DOCUMENT REQUEST NO. 1. Please provide any correspondence or other documents to or from GPUN representatives discussing whether GPUN will continue as a member of PFS after GPUN's sale of TMI and Oyster Creek.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. In addition, PFS objects to this request as not reasonably calculated to lead to the discovery of admissible evidence relevant to contention Utah E. See 10 C.F.R. § 2.740(b)(1). Whether or not GPUN remains a member of PFS is irrelevant to PFS's financial qualifications. See Response to Request for Admission No. 18.

DOCUMENT REQUEST NO. 2. Please provide a complete and unredacted set of minutes of all PFS board meetings from April 1996 to the present.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request to the

extent that it seeks any documents not reasonably calculated to lead to the discovery of admissible evidence relevant to contention Utah E. The material that PFS has redacted from the Board minutes is not relevant to the contentions as admitted by the Licensing Board.

DOCUMENT REQUEST NO. 3. Please provide unredacted monthly Revenue/Expense reports for September and October 1997 for Step 3.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request to the extent that it seeks any documents not reasonably calculated to lead to the discovery of admissible evidence relevant to contention Utah E. The material that PFS has redacted from the monthly Revenue/Expense reports for September and October 1997 that PFS has produced to the State is not relevant to the contentions as admitted by the Licensing Board.

DOCUMENT REQUEST NO. 4. Please provide unredacted monthly Revenue/Expense reports for (a) April, May, June and July 1998; (b) every month for 1999; and (c) for all subsequent months on an ongoing basis.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request to the extent that it seeks any documents not reasonably calculated to lead to the discovery of admissible evidence relevant to contention Utah E. The material that PFS has redacted from the monthly Revenue/Expense reports that PFS has produced to the State is not relevant to the contentions as admitted by the Licensing Board.

DOCUMENT REQUEST NO. 5. Please provide copies of Project Director's Reports for the period April 1996 to the present.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request to the extent that it seeks any documents not reasonably calculated to lead to the discovery of admissible evidence relevant to contention Utah E.

DOCUMENT REQUEST NO. 6. Please provide documents showing the volume of SNF tonnage at member reactors for the most recent period available.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request on the grounds that it seeks documents not reasonably calculated to lead to the discovery of admissible evidence relevant to contention Utah E. The SNF tonnage at PFS members' reactors is irrelevant to Utah E. It has no bearing whatsoever on whether PFS is financially qualified to build and operate the PFSF, given the financial commitments PFS has made to the NRC.

DOCUMENT REQUEST NO. 7. Please provide documents showing the volume of SNF tonnage at non-member reactors for the most recent period available.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request on the grounds that it seeks documents not reasonably calculated to lead to the discovery of admissible evidence relevant to contention Utah E. The SNF tonnage at nuclear reactors, either those of members or non-members, is irrelevant to Utah E. It has no bearing

whatsoever on whether PFS is financially qualified to build and operate the PFSF, given the financial commitments PFS has made to the NRC.

DOCUMENT REQUEST NO. 8. Please provide a copy of PFS's balance sheet for each fiscal year since the end of 1995.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. Nevertheless, without waiving its objection, PFS has no such responsive documents.

DOCUMENT REQUEST NO. 9. Please provide a copy of PFS's federal and state income tax returns for the years 1997, 1998 and 1999.³

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request on the grounds that it seeks documents not reasonably calculated to lead to the discovery of admissible evidence relevant to contention Utah E. PFS's income and taxes paid thereon for 1997, 1998, and 1999 have no bearing on PFS's financial qualifications to build and operate the PFSF given PFS's financial commitments. PFS's qualifications flow from its commitments, not PFS's income now or in the recent past. As indicated above, PFS will fund construction of the PFSF through committed funding it arranges prior to facility construction and will fund operation and maintenance of the PFSF through customer Service Agreements. PFS's income in 1997, 1998, and 1999 have no bearing on whether PFS's commitments satisfy the Commission's financial assurance regulation.

³ Please provide the returns for 1999 as soon as they are ready.

DOCUMENT REQUEST NO. 10. Please provide any documents showing whether PFS members are funding their investments or contributions to PFS out of funds set aside for decommissioning.⁴

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request on the grounds that it seeks documents not reasonably calculated to lead to the discovery of admissible evidence relevant to contention Utah E. How PFS members are funding PFS at this time has no bearing on PFS's financial qualification to build and operate the PFSF. As indicated above, PFS's demonstrates its financial qualifications through its commitments, not its current income or the sources thereof.

Nevertheless, without waiving PFS's objections, PFS has no responsive documents.

DOCUMENT REQUEST NO. 15. Please provide any documents relating to the discussion of potential new members mentioned in the January 15-16, 1998 Board minutes, at PFS bates 16172 (from PFS discovery file labeled "Proprietary 071.1").

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request as not reasonably calculated to lead to the discovery of admissible evidence relevant to contention Utah E. See 10 C.F.R. § 2.740(b)(1). Whether or not any company become a member of PFS and/or any negotiations between any company and PFS regarding

⁴ This request is relevant because utility expenditures from decommissioning funds for participation in PFS may be subject to regulatory challenge at the state level.

membership are irrelevant to PFS's financial qualifications. Cf. Response to Request for Admission No. 3.

DOCUMENT REQUEST NO. 16. Please provide the internal audit reports from 1997 to the present.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request as not reasonably calculated to lead to the discovery of admissible evidence relevant to contention Utah E. See 10 C.F.R. § 2.740(b)(1). Internal audit reports are not relevant to PFS's financial qualifications to build and operate the PFSF. As indicated above, PFS's financial qualifications are based on its commitments not to build the PFSF without sufficient committed funding to cover the facility's construction costs and not to operate the PFSF without sufficient customer Service Agreements to cover the cost of operation and maintenance.

DOCUMENT REQUEST NO. 17. Refer to the June 1998 Business Plan at bates no. 12029, last paragraph. Please provide the "previously mentioned survey."

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request as not reasonably calculated to lead to the discovery of admissible evidence relevant to contention Utah E. See 10 C.F.R. § 2.740(b)(1). The market for spent fuel storage and/or PFS's marketing efforts are irrelevant to Contention Utah E. See PFS Utah E Mot. at 5-10.

DOCUMENT REQUEST NO. 19. Please provide documents showing PFS's current assets, liabilities and capital structure.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request as not reasonably calculated to lead to the discovery of admissible evidence relevant to contention Utah E. See 10 C.F.R. § 2.740(b)(1). PFS's current assets, liabilities, and capital structure are irrelevant to PFS's financial qualifications given its financial commitments regarding the construction and operation of the PFSF. See PFS Utah E Mot. at 13 (PFS's commitments render Utah E Basis 4 moot).

DOCUMENT REQUEST NO. 20. In PFS's Business Plan dated June 1998 at 104 of 117 (PFS bates no. 12128), PFS refers to partner investments and donations to date for Step 2 and Step 4. Please provide documentation showing the partners donations to date for Step 3 and Step 4.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request as asked and answered. See Response to Utah E Document Request No. 14, Eighth Set, January 11, 2000.

DOCUMENT REQUEST NO. 22. Between April 22 and April 30, 1997, a letter "offering Service Agreements to utilize our Spent Fuel Storage Facility which will be licensed and constructed in Utah" (PFS bates no. 9350, from PFS discovery file labeled 061.1) was sent to a long list of utilities. Please provide a copy of any further PFS documents, including correspondence, with each of the utilities to whom this letter was sent.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request as asked and answered. See Applicant's Objections and Proprietary Responses to State's Second

Requests for Discovery (Groups II and III) (June 28, 1999), Utah E, Document Request No. 7.

PFS also objects to this request as not reasonably calculated to lead to the discovery of admissible evidence relevant to contention Utah E. See 10 C.F.R. § 2.740(b)(1). The market for spent fuel storage and/or PFS's marketing efforts are irrelevant to Contention Utah E. See PFS Utah E Mot. at 5-10.

DOCUMENT REQUEST NO. 26. Please refer to the Parkyn Dec. at 11, ¶ 26. "The cost of recovery of an accident in transportation to the PFSF from a customer's reactor would be the liability of the customer . . ." Please provide the language from the Service Agreement or other document that supports the foregoing statement.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. Nevertheless, without waiving its objection, under the Price Anderson Act, 42 U.S.C. § 2210, accidents in transportation involving spent fuel from the reactors of NRC licensees are covered by the licensees' insurance policies mandated by Price Anderson. The Price-Anderson Act is a publicly available document.

DOCUMENT REQUEST NO. 27. Refer to the December 1998 PFS LLC Report at PFS bates no. 33418 (from PFS document file labeled PFS Document Production 10). Please provide the documents provided to non-members in PFS's "non-member utility presentations" listed under "Accomplishments."

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request as not reasonably calculated to lead to the discovery of admissible evidence relevant to

contention Utah E. See 10 C.F.R. § 2.740(b)(1). PFS's marketing efforts, including PFS's non-member utility presentations, are irrelevant to Contention Utah E. See PFS Utah E Mot. at 5-10.

DOCUMENT REQUEST NO. 28. Refer to the December 1998 PFS LLC Report at PFS bates no. 33418. Please provide the documents provided to subscribers or potential subscribers as part of PFS' effort to "complete the subscription process" listed under "Goals."

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request as not reasonably calculated to lead to the discovery of admissible evidence relevant to contention Utah E. See 10 C.F.R. § 2.740(b)(1). PFS's marketing efforts, including the requested documents provided to subscribers or potential subscribers in an effort to complete the subscription process, are irrelevant to Contention Utah E. See PFS Utah E Mot. at 5-10.

DOCUMENT REQUEST NO. 29. Refer to the July 13, 1999 letter from Donnell to Leon Berggren of the BLM: Please provide the two sets of information referred to in the letter as Reference 1 and Reference 2.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request as not reasonably calculated to lead to the discovery of admissible evidence relevant to contention Utah E. See 10 C.F.R. § 2.740(b)(1).

DOCUMENT REQUEST NO. 31. Please provide all documents addressing PFS's plan for the disposal of the SNF stored at the proposed ISFSI in the event that – for whatever reason – a federal repository is not able to receive all the SNF shipped to the

PFS ISFSI for storage within the 20 year license period, and the license is not renewed, for whatever reason.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request outside the scope of this proceeding, as it is based upon an impermissible challenge to the NRC's regulations, specifically 10 C.F.R. § 51.23. See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 213 (1998) (rejecting contention alleging absence of DOE facility able to receive spent fuel stored at the PFSF as a challenge to NRC regulations).

DOCUMENT REQUEST NO. 32. Please provide copies of the analyses, assessments, evaluations, reports and studies which examine or quantify utilities' need for additional off-site SNF capacity.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request as not reasonably calculated to lead to the discovery of admissible evidence relevant to contention Utah E. See 10 C.F.R. § 2.740(b)(1). The market for spent fuel storage, including utilities' need for off-site spent fuel storage capacity, are irrelevant to Contention Utah E. See PFS Utah E Mot. at 5-10.

DOCUMENT REQUEST NO. 33. Please provide copies of any analyses and assessments of at-reactor SNF storage costs that assume that the PFS facility will not be open to receive SNF until after the year 2002.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request as not

reasonably calculated to lead to the discovery of admissible evidence relevant to contention Utah E. See 10 C.F.R. § 2.740(b)(1). The market for spent fuel storage, including utilities' need for off-site spent fuel storage capacity, are irrelevant to Contention Utah E. See PFS Utah E Mot. at 5-10.

III. UTAH CONTENTION S (Decommissioning)

A. INTERROGATORIES – Utah Contention S

INTERROGATORY NO. 8.⁵ Please describe in detail (e.g., date, title, author, bates number, etc.) each and every responsive document that PFS has already produced to the State with respect to [Fourth Set Utah S] Document Request No. 13.

APPLICANT'S RESPONSE: PFS objects to this request as asked and answered. See Applicant's Objections and Responses to State of Utah's Eighth Set of Discovery Requests (January 11, 2000), Utah S Interrogatory No. 5. PFS also objects to this request in that it seeks information PFS has already provided to the State. See Applicant's Opposition to State of Utah's Motion to Compel on the State's Eighth Set of Discovery Requests (January 25, 2000), at 8-10. PFS has provided the State all the information it has requested in the form of documents sorted by contention and produced at PFS's document repository at Parsons, Behle, and Latimer in Salt Lake City. Neither the Commission's discovery rules nor the Federal Rules of Civil Procedure require PFS to do further analysis on the State's behalf.

⁵ Numbering for these interrogatories is continued from the last interrogatory previously submitted to PFS. Ninth Discovery Requests at 10 n.4.

INTERROGATORY NO. 9. Please describe in detail (e.g., date, title, author, bates number, etc.) each and every responsive document that PFS has already produced to the State with respect to [Fourth Set Utah S] Document Request No. 14.

APPLICANT'S RESPONSE: PFS objects to this request as asked and answered.

See Applicant's Objections and Responses to State of Utah's Eighth Set of Discovery Requests (January 11, 2000), Utah S Interrogatory No. 6.

INTERROGATORY NO. 10. Please describe in detail (e.g., date, title, author, bates number, etc.) each and every responsive document that PFS has already produced to the State with respect to [Fourth Set Utah S] Document Request No. 15.

APPLICANT'S RESPONSE: PFS objects to this request as asked and answered.

See Applicant's Objections and Responses to State of Utah's Eighth Set of Discovery Requests (January 11, 2000), Utah S Interrogatory No. 7.

B. DOCUMENTS REQUESTS – Utah Contention S

As stated in General Objection 5, PFS objects to all the State's document requests in the Ninth Set, in that they are late. PFS indicates the additional objections it has to each individual document request below.

DOCUMENT REQUEST NO. 1. Please refer to PFS['s] Response Fourth Set at 25, Contention Utah S, Response to Admission Request No. 3. Please provide the document or documents supporting your statement "that even in the event of a large accident, the amount set aside for decommissioning the facility would be sufficient."

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. Nevertheless, as PFS stated in its Response to Admission Request Nos. 2 and 3, if an accident were to occur at the PFSF (which would be extremely unlikely), it would be cleaned up promptly and recovery costs

would be paid by insurance, long before the facility would be decommissioned. Thus, such an accident would have no material effect on decommissioning costs. This is a logical proposition that PFS will have the means to implement if necessary. PFS, however, has no “documents” responsive to this request.

DOCUMENT REQUEST NO. 2. Please refer to PFS Supplemental Response Third Set at 39, Contention Utah S, Supplemental Response to Admission Request No. 5. Please provide the documents upon which the “less than \$17,000” estimate is predicated.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request as asked and answered. See Applicant’s Objections and Responses to State of Utah’s Eighth Set of Discovery Requests (January 11, 2000), Utah S Document Request No. 3.

DOCUMENT REQUEST NO. 3. If your response to Admission Request No. 1 is an admission, please provide the language from the Service Agreement or any other document that sets forth this requirement.

APPLICANT'S RESPONSE: PFS objects to this document request on the grounds that it is late. See General Objection 5. PFS also objects to this request as seeking material—draft Service Agreements—protected under the attorney-client privilege. See Applicant’s Objections and Responses to State of Utah’s Fourth Set of Discovery Requests and Supplemental Responses to State of Utah’s Third Set of Discovery Requests, Utah S, Document Request No. 5.

Respectfully submitted,



Jay E. Silberg
Ernest L. Blake, Jr.
Paul A. Gaukler
Shaw Pittman
2300 N Street, N.W.
Washington, DC 20037
(202) 663-8000

Dated: January 31, 2000

Counsel for Private Fuel Storage L.L.C.

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 "Applicant's Objections and Responses to State of Utah's Ninth Set of Discovery Requests [*Non-proprietary Version*]" and the declaration of John Parkyn were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 31st day of January, 2000.

G. Paul Bollwerk III, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: GPB@nrc.gov

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: JRK2@nrc.gov and kjerry@erols.com

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: PSL@nrc.gov

* Susan F. Shankman
Deputy Director, Licensing & Inspection
Directorate, Spent Fuel Project Office
Office of Nuclear Material Safety &
Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and Adjudications
Staff
e-mail: hearingdocket@nrc.gov
(Original and two copies)

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

John Paul Kennedy, Sr., Esq.
Confederated Tribes of the Goshute
Reservation and David Pete
1385 Yale Avenue
Salt Lake City, Utah 84105
e-mail: john@kennedys.org

Diane Curran, Esq.
Harmon, Curran, Spielberg &
Eisenberg, L.L.P.
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
e-mail: dcurran@harmoncurran.com

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

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
e-mail: dchancel@state.UT.US

Joro Walker, Esq.
Land and Water Fund of the Rockies
2056 East 3300 South, Suite 1
Salt Lake City, UT 84109
e-mail: joro61@inconnect.com

Danny Quintana, Esq.
Skull Valley Band of Goshute Indians
Danny Quintana & Associates, P.C.
68 South Main Street, Suite 600
Salt Lake City, Utah 84101
e-mail: quintana@xmission.com

* By U.S. mail only


Paul A. Gaukler