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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'00 JUL 31 12:01

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))	July 21, 2000

**STATE OF UTAH'S REQUEST FOR AN EXTENSION OF TIME
TO FILE FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON CONTENTION UTAH R**

Under the Board's schedule, findings of fact and conclusions of law from the evidentiary hearings held in Salt Lake City at the end of June are due to be filed by all parties no later than July 31, 2000. See Licensing Board Order (General Schedule Revision and Other Matters) dated February 2, 2000, Attachment A. Today, counsel for NRC staff informed the Board of a change to the Staff's guidance document and further that the document "is relevant to the Licensing Board's consideration of Contention Utah R, and likely will be referred to in the NRC Staff's proposed findings of fact and conclusions of law concerning that contention." The State requests a ten day of extension of time to file its Findings of Fact and Conclusion of Law on Contention Utah R.

The State's request for an extension of time to file Findings of Fact and Conclusions of Law is based solely on the Staff counsel's letter of July 20, 2000 to the

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Licensing Board. In that letter counsel informed the Board that on June 14, 2000 NRC staff sent a memo to E. William Branch "Requesting Approval of Interim Staff Guidance Memorandum No. 16, Emergency Plan, Revision 0" (hereafter "ISG-16"). The apparent effect of ISG-16 is to delete reference to Reg. Guide 3.67 in NUREG-1567, final report, published March 2000. According to NRC counsel, ISG-16 incorporates much of Appendix C that appeared in draft NUREG-1567.

The State has completed its draft findings and conclusion on Contention Utah R and has referred to and relied upon Reg. Guide 3.67 , "Standard Format and Content for Emergency Plans for Fuel Cycle and Materials Facilities." The State chose to first draft its findings and conclusions on Contention R and has now turned to drafting its findings and conclusions on Contentions E and S. Accordingly, the State has no time to turn back to Contention R with less only one week remaining before all three findings and conclusion are due. In addition, the State is also spending time reviewing the Draft Environmental Impact Statement to determine whether it has new or amended contentions to file with the Board.

The State has good cause for requesting an extension of time. The Staff in effect is trying to get new evidence before the Board, in the form a regulatory guide. ISG-16 was approved more than one month ago and only now is it being brought to the attention of the Board and the parties. Rather than timely notifying the Board and the parties that there has been a change in regulatory guidance, the Staff is requesting the

Board take official notice of ISG-16. This wholly unsolicited legal argument, with citations of numerous cases, one week before findings and conclusions are due puts the State at an unfair disadvantage. Now, not only must the State review ISG-16 against the Regulatory Guide 3.67, that the final NUREG 1567 states “contains the principal guidance on preparation of emergency plans for ISFSI[s]...,” but it must also analyze and respond to the Staff’s legal argument in counsel’s letter to the Board.

The State should not be penalized because of the way in which it decided to use its one month period to timely file findings and conclusion. The State has structured its legal arguments based on Reg. Guide 3.67 and it is not an easy matter of merely revising citations in the State’s draft findings and conclusion on Contention R.

The State has contacted counsel for the Staff and PFS. The Staff does not oppose the State’s ten day extension. The Applicant opposes the extension arguing that the State can address the issues in its reply findings. The State disagrees with the Applicant’s assessment. The State can only address the issues raised by the Staff and the Applicant in its reply findings. To the extent that the State has relied on Reg. Guide 3.67 to craft its legal arguments, it cannot re-structure those arguments, should it find it necessary after analyzing ISG-16, in its reply findings.

The State requests the Board grant the State until August 10, 2000 to file its findings of facts and conclusions of law for Contention Utah R. The ten day extension is not unreasonable given the other issues that State must address (e.g., NEPA

contentions) during this time frame. The State does not oppose the other parties filing their findings and conclusions on Contention R by August 10. Furthermore, the State is not requesting an extension of time to file its reply findings, which are due on August 28, 2000.

DATED this 21st day of July, 2000.

Respectfully submitted,



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CERTIFICATE OF SERVICE

'00 JUL 31 P12:01

I hereby certify that a copy of **State of Utah's Request for an Extension of Time to File Findings of Fact And Conclusions of Law on Contention Utah R** was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 21st day of July , 2000:

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A handwritten signature in black ink, appearing to read "Denise Chancellor", written over a horizontal line.

Denise Chancellor
Assistant Attorney General
State of Utah