



OFFICE OF THE
GENERAL COUNSEL

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 20, 2000

G. Paul Bollwerk, III, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Jerry Kline
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

In the Matter of
Private Fuel Storage L.L.C.
(Independent Spent Fuel Storage Installation)
Docket No. 72-22-ISFSI

Dear Administrative Judges:

Enclosed for the information of the Licensing Board and parties is a copy of a Memorandum from Earl P. Easton and Lawrence E. Kokajko to E. William Brach, dated June 14, 2000 (Subject: "Approval of Interim Staff Guidance Memorandum No. 16, Emergency Planning, Revision O"). The enclosed 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. This document is also available on ADAMS, under accession number ML003724570.

In particular, the Staff notes that the basis statement for Contention Utah R referred to Draft NUREG-1567, published in October 1996; that document was superseded by publication of the final version of NUREG-1567 in March 2000. While Draft NUREG-1567 contained specific emergency planning guidance in Appendix C thereto (which the State cited in Contention Utah R), the final version of NUREG-1567 omits Appendix C and states that Reg. Guide 3.67 "contains the principal guidance" for preparation of emergency plans for an ISFSI. See NUREG-1567 (March 2000), § 10.4.5. As indicated in the enclosure hereto, however, ISG-16 revises section 10.4.5 of NUREG-1567 by deleting the reference to Reg. Guide 3.67 and incorporating much of former Appendix C into NUREG-1567.

The Staff believes that the Licensing Board may cite ISG-16 as a "legal" or regulatory guidance document, like a regulatory guide or other regulatory guidance document (such as NUREG-1567, which ISG-16 modifies). In this regard, the Board may find it appropriate

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to take official notice of ISG-16, in accordance with 10 C.F.R. § 2.743(i), for the purpose of identifying applicable regulatory criteria. *See, e.g., Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-93-03, 37 NRC 135, 147 n.30 (1993)* ("The Commission can take official notice of 'a matter beyond reasonable controversy' and one that is 'capable of immediate and accurate determination by resort to easily accessible sources of indisputable accuracy'"). Indeed, official notice has been taken of regulatory guidance documents in other proceedings. *See, e.g., Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-87-10, 25 NRC 177, 192 n.11 (1987)* ("The Board takes official notice of pertinent Commission's NUREGs and Regulatory Guides"); *Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-84-37, 20 NRC 933, 939 n.2, and 971 (1984)* (official notice of NUREG-0654 and FEMA-43); *Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit No. 1), LBP-84-26, 20 NRC 53, 60 (1984)* (official notice of NUREG-0654).¹

I trust that this information may be useful to the Licensing Board, and to other parties in preparing their proposed findings of fact and conclusions of law.

Sincerely,



Sherwin E. Turk
Counsel for NRC Staff

cc: Service List

¹ In that event that official notice is taken of a factual matter, 10 C.F.R. § 2.743(i)(1) provides that the matter to be officially noticed "shall be . . . brought to the attention of the parties before final decision and each party adversely affected by the decision shall be given opportunity to controvert the fact." 10 C.F.R. § 2.743(i)(1).