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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF
PUBLIC
AFFAIRS

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 24, 2000

**STATE OF UTAH'S REQUEST FOR A CHANGE IN THE SCHEDULE WITH
RESPECT TO CONTENTIONS UTAH K AND L**

The Board has issued a General Schedule for the PFS proceedings. See Revised Schedule attached to Order dated February 2, 2000. The State of Utah requests a change in the schedule for litigating Contentions Utah K and L.

Under the current schedule, PFS and the State may conduct depositions for Contention Utah L during a discovery window from August 15 to September 29, 2000. The State and PFS have continued with discovery, exchanging updated discovery documents for Contentions Utah K and L.

In addition to State-PFS discovery, the Board's schedule provides discovery against the Staff on Contentions Utah L and K from September 15 to October 30, 2000. To date, the Staff has not taken a final position on certain aspects of Contention Utah K or the Applicant's seismic exemption request. The Staff expects to finalize its position on these issues when it issues the final Safety Evaluation Report ("SER"), scheduled to be issued September 30, 2000. The Board's schedule anticipated that the Staff would take a position on both Contentions Utah K and L by April 28, 2000.

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SECY-02

The current schedule for Contentions Utah K and L sets the summary disposition filing deadline by October 10, 2000, pre-filed testimony by January 15, 2001 and hearings at the same time as the NEPA contentions, July 9 to August 3, 2001.

The State finds that the current schedule is unworkable and involves conducting and completing discovery before substantive issues have been resolved, filing testimony that will be out-of-date by the time the hearings are held, and, in general, will require much duplication of effort by all of the parties. The State has contacted counsel for the Staff and Applicant on revisions to the proposed schedule.

Contention Utah K

The parties have agreed to a revised schedule for Contention Utah K: discovery against the Staff to start October 25 and end Monday, December 11, 2000. The State and PFS anticipate that they will request leave of the Board to depose witnesses, identified after the initial summary disposition proceeding in mid-1999, and conduct depositions during the proposed discovery time period.

The parties propose that the filing deadline for summary disposition be Friday, December 29, 2000, responses by Tuesday January 30, 2001 and the Board's decision by Thursday, March 1, 2001. PFS, however, requests that it have a maximum of 20 pages for any summary disposition motion filed by December 29. The State and the Staff do not oppose this request. PFS also requests that it may file summary disposition on all outstanding issues on Contention Utah K, including those for which summary disposition was not previously granted (*i.e.* cruise missiles and land based munitions). The State opposes PFS's opportunity to have a second chance at summary disposition on these two issues. The

Staff does not oppose PFS's request.

Finally, all parties agree that pre-filed testimony should be filed on June 11, 2001, the same date as pre-filed testimony for Group III contentions.

Contention Utah L

Because the Staff has not yet decided upon PFS's seismic exemption request, there is a disconnect between PFS's license amendments and calculations which relate to a 2000 year return period design basis earthquake and Contention Utah L which is bottomed on PFS pre-exemption quasi-deterministic earthquake analysis. The State has attempted on at least two occasions to amend Contention Utah L to challenge PFS's use of a 2,000 year return period earthquake only to be told it is too early because the Staff has not officially granted PFS's exemption request. The State is willing to go forward with depositions of all State witnesses for Contention Utah L except for Dr. Walter Arabasz, the State's expert on ground motions.¹ The State, therefore, requests deferral of Dr. Arabasz's deposition until it has had time to review the SER and file a new contention or amend Contention Utah L. The prime reason for this request is to avoid the confusing situation of which data set is open to discussion during the deposition: PFS's pre-amendment request information only or the current PFS application which contains data based on a 2,000 year return period. Furthermore, the State will not have the benefit of reviewing the Staff's SER prior to Dr. Arabasz's deposition. In addition, should an amendment to Contention Utah L be admitted,

¹ To the extent that PFS requests to depose the State's non-testifying expert Dr. James Pechmann, which the State would oppose, the State requests that such a deposition, if it were to take place, be deferred too.

it should be able to be accommodated in the State's proposed schedule. Finally, deferral of the deposition will avoid any duplication of effort for all parties on an extremely technical and difficult subject. The Staff and PFS oppose this request.

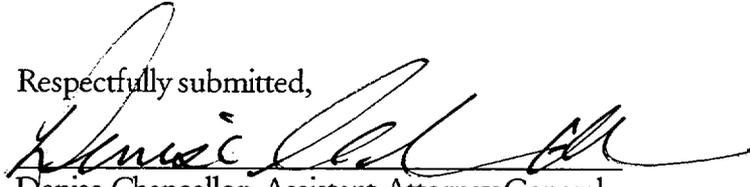
The State and the Staff agree on the following amendment to the current schedule for Contention Utah L: summary disposition filing deadline to be the same as for Contention Utah K (*i.e.*, December 29, 2000; Responses by January 30, 2001; Board decision by March 1, 2001). PFS requests that the parties adhere to the current schedule for Contention Utah L. The State notes, with respect to summary disposition, there is no impediment under the proposed schedule to PFS filing its motion by the current deadline of October 10, 2000.

The State and the Staff see no logical reason to pre-filing testimony by January 15, 2001 as would be the case under the current schedule, when the hearings are not scheduled until six months later. Filing testimony so far in advance of the hearing defeats the whole efficiency of pre-filed testimony. It is obvious that the parties will either have to amend pre-filed testimony immediately prior to the hearing or take time during the hearing during direct testimony to correct written testimony. The State and the Staff suggest that Contention Utah L, for purpose of summary disposition and pre-filed testimony, be on the same schedule as Contention Utah K. Thus, pre-filed testimony would be due on June 11, 2001.

The State requests the Board approve the proposed schedule changes.

DATED this 24th day of August, 2000.

Respectfully submitted,

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

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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S REQUEST FOR A CHANGE IN THE SCHEDULE WITH RESPECT TO CONTENTIONS UTAH K AND L was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 24th day of August, 2000:

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