

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-ISFSI
)
(Independent Spent)
Fuel Storage Installation))

NRC STAFF'S REPLY FINDINGS OF FACT
AND CONCLUSIONS OF LAW CONCERNING
CONTENTION UTAH R (EMERGENCY PLANNING)

Sherwin E. Turk */RA/*
Counsel for NRC Staff

August 28, 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-ISFSI
)	
(Independent Spent)	
Fuel Storage Installation))	

NRC STAFF'S REPLY FINDINGS OF FACT
 AND CONCLUSIONS OF LAW CONCERNING
CONTENTION UTAH R (EMERGENCY PLANNING)

I. BACKGROUND AND INTRODUCTION

1.1.1. In accordance with the Licensing Board's "Order (General Schedule Revision and Other Matters)" dated February 2, 2000, and its "Order (Ruling on Extension Motion)" dated July 24, 2000, proposed findings of fact and conclusions of law concerning Contention Utah R (Emergency Plan/Onsite Fire Fighting), were timely filed by Private Fuel Storage, L.L.C. ("PFS" or "Applicant"), the State of Utah ("State"), and the NRC Staff ("Staff").¹ Pursuant to the Licensing Board's Orders, the Staff herewith files its reply to the proposed findings of fact and conclusions of law that were filed by PFS and the State concerning Contention Utah R.²

¹ See (1) "Applicant's Proposed Findings of Fact and Conclusions of Law on Contention Utah R" ("Applicant's Proposed Findings"), dated August 7, 2000; (2) "State of Utah's Proposed Findings of Fact and Conclusions of Law Regarding Contention Utah R, Private Fuel Storage, LLC's Capability to Fight Fires On Site" ("State's Proposed Findings"), dated August 7, 2000; and (3) "NRC Staff's Proposed Findings of Fact and Conclusions of Law Concerning Contentions Utah R (Emergency Planning) and Utah S (Decommissioning Funding)" ("Staff's Proposed Findings").

² In a separate proprietary filing submitted herewith, the Staff is filing its proposed reply findings of fact and conclusions of law concerning Contention Utah E/Confederated Tribes F (Financial Assurance), and Contention Utah S (decommissioning funding).

II. FINDINGS OF FACT³

2.1.9.1. The State cites both Reg. Guide 3.67 and ISG-16 in its proposed findings, based on its apparent belief that both documents establish applicable criteria for review of an emergency plan submitted under 10 C.F.R. Part 72. See, e.g., State's Proposed Findings 9. However, as indicated in the Staff's Proposed Findings, at 7 n.14, ISG-16 revised the March 2000 final version of NUREG-1567, and deleted the reference to Reg. Guide 3.67 that had been contained in § 10.4.5 of NUREG-1567. Accordingly, we find ISG-16, rather than Reg. Guide 3.67, to be the appropriate regulatory guidance document for reference here. As stated previously (see Staff's Proposed Findings, at 7 n.14), the Licensing Board takes official notice of ISG-16 pursuant to 10 C.F.R. § 2.743(i).⁴

* * * *

2.1.64.1. The State asserts that PFS has not complied with either Reg. Guide 3.67 § 4.2, or ISG-16 § 3.8.2, because during off-normal hours it has no onsite fire fighting organization, and 90 minutes would be required for trained fire fighters to arrive at the site. State's Proposed Findings 16-17. This is an incorrect reading of the cited regulatory

³ The paragraph numbering utilized in these reply findings of fact and conclusions of law generally follows the numbering utilized in the Staff's Proposed Findings (e.g., Staff Reply Finding 2.1.9.1 should be read following the Staff's initial Proposed Finding 2.1.9).

⁴ See *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'"); *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 taken 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 taken of NUREG-0654).

guidance documents. For example, while ISG-16 § 3.8.2 indicates that an emergency plan should describe the “onsite emergency response organization” that is provided during off-normal hours, it does not indicate that such an organization is required during off-hours where a particular facility has no need for its services during such hours; indeed, to the contrary, ISG-16 indicates that the plan should “state the minimum level of staffing needed to effectively implement the plan for each period or phase described.” Here, PFS has indicated that no firefighting response is required during off-hours in order to prevent a radiological release; accordingly, it has satisfied this ISG-16 provision.

2.1.64.2. Similarly, contrary to the State’s assertion (State’s Proposed Finding 17), the guidance documents do not suggest that offsite responders must be capable of arriving in time to be effective if a facility does not rely on them to fight fires that could result in a radiological release. Here, PFS has acknowledged that it must be self-sufficient in its response to fires, but demonstrated that it does not need a fire fighting response to prevent a radiological release during off-hours; further, it has placed no reliance on an offsite fire response, either during off-hours or normal hours of operation. Accordingly, its emergency plan does not contravene the regulatory guidance.

2.1.64.3. In the same vein, the State is incorrect in its assertion that the Commission’s regulations and regulatory guidance documents “assume that off-site assistance will be available to the Applicant to fight fires onsite.” State’s Proposed Finding 21; emphasis added. Neither 10 C.F.R. § 72.32, nor the cited regulatory guidance documents (Reg. Guide 3.67 and ISG-16) suggest that offsite assistance must be used at a facility; rather, they establish criteria to be utilized in assessing the adequacy of an emergency plan that relies on such assistance. Here, as stated above, PFS places no reliance on an offsite fire response, having acknowledged that it must be self-sufficient in

its firefighting capabilities. PFS, therefore, is not required to demonstrate the effectiveness of an offsite fire response at its facility.

2.1.64.4. The State asserts that it lacks jurisdiction to perform its traditional fire safety functions at this facility, located on an Indian reservation, and that the Commission must therefore assume the responsibility to regulate “all aspects of PFS’s onsite fire fighting capability, including its ability to protect the non-radiological health and safety of the public and on-site workers.” State’s Proposed Finding 19; emphasis added. In this regard, the State points to the fact that it will be unable to perform its usual role of issuing occupancy permits and building approvals, and conducting fire [safety] inspections. *Id.* Further, the State asserts that the Commission must evaluate “the adequacy of PFS’s staffing, training, and equipment to effectively fight any and all fires onsite, whether or not they result in a radiological release.” State’s Proposed Finding 20; emphasis added.

2.1.64.5. The State’s assertion that the Commission should assume the State’s traditional fire safety role is without merit. The Commission’s emergency planning regulations in 10 C.F.R. Part 72 do not require that a facility’s emergency plan address all fires, regardless of their potential for radiological consequences. Moreover, the Commission has previously stated that this agency “is not a general fire safety or occupational health agency. With regard to fire safety, the Commission’s role is limited. Our responsibility is directed to the hazards associated with nuclear materials rather than to all questions of fire safety at licensed facilities.” *Curators of the University of Missouri* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 159 (1995). As the Commission further stated, this is consistent with the Commission’s “statutory charter to protect against radiation hazards.” *Curators of the University of Missouri* (TRUMP-S Project), CLI-95-08, 41 NRC

386, 393 (1995). Accordingly, only fires that may result in a radiological release need to be addressed in a facility's emergency plan. *See id.*

Respectfully submitted,

Sherwin E. Turk */RA/*
Counsel for NRC Staff

Dated at Rockville, Maryland
this 28th day of August, 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-ISFSI
)
(Independent Spent)
Fuel Storage Installation))

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S REPLY FINDINGS OF FACT AND CONCLUSIONS OF LAW CONCERNING CONTENTION UTAH R (EMERGENCY PLANNING)" 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 Nuclear Regulatory Commission's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the United States mail, first class, as indicated by double asterisk, with copies by electronic mail as indicated, this 28th day of August, 2000.

G. Paul Bollwerk, III, Chairman*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to GPB@NRC.GOV)

Office of the Secretary*
ATTN: Rulemakings and Adjudications
Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to
HEARINGDOCKET@NRC.GOV)

Dr. Jerry R. Kline*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to kjerry@erols.com)

Office of the Commission Appellate
Adjudication
Mail Stop: 16-C-1 OWFN
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Peter S. Lam*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to PSL@NRC.GOV)

James M. Cutchin, V*
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail to JMC3@NRC.GOV)

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Jay E. Silberg, Esq.**
Ernest Blake, Esq.
Paul A. Gaukler, Esq.
SHAW, PITTMAN, POTTS &
TROWBRIDGE
2300 N Street, N.W.
Washington, DC 20037-8007
(E-mail copies to jay_silberg,
paul_gaukler, and ernest_blake
@shawpittman.com)

Denise Chancellor, Esq.**
Fred G. Nelson, Esq.
Laura Lockhart, Esq.
Ms. Jean Braxton
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, UT 84114-0873
(E-mail copy to dchancel@State.UT.US,
and jbraxton@email.usertrust.com)

Connie Nakahara, Esq.**
Utah Dept. of Environmental Quality
168 North 1950 West
P.O. Box 144810
Salt Lake City, UT 84114-4810
(E-mail copy to cnakahar@state.UT.US)

Diane Curran, Esq.**
Harmon, Curran, Spielberg & Eisenberg
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
(E-mail copy to
dcurran@harmoncurran.com)

Danny Quintana, Esq.**
Danny Quintana & Associates, P.C.
68 South Main Street, Suite 600
Salt Lake City, UT 84101
(E-mail copy to quintana@Xmission.com)

Joro Walker, Esq.**
Land and Water Fund of the Rockies
2056 East 3300 South, Suite 1
Salt Lake City, UT 84109
(E-mail copy to
joro61@inconnect.com)

John Paul Kennedy, Sr., Esq.**
1385 Yale Ave.
Salt Lake City, UT 84105
(E-mail copy to john@kennedys.org)

Land and Water Fund of the Rockies**
2260 Baseline Road, Suite 200
Boulder, CO 80302

William D. (Bill) Peterson**
Pigeon Spur Fuel Storage Facility
2127 Lincoln Lane
Holladay, UT 84124
(E-mail copy to
BillPeterson@OlympicHost.com)

Sherwin E. Turk */RA/*
Counsel for NRC Staff