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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ADJUDICATIVE

Before the Atomic Safety and Licensing Board

In the Matter of )  
 )  
PRIVATE FUEL STORAGE L.L.C. )  
 )  
(Private Fuel Storage Facility) )

Docket No. 72-22-ISFSI

**APPLICANT'S REPLY TO THE PROPOSED FINDINGS  
OF FACT AND CONCLUSIONS OF LAW OF THE  
STATE OF UTAH AND THE NRC STAFF ON CONTENTIONS  
UTAH E/CONFEDERATED TRIBES F, UTAH R, AND UTAH S**  
**[Non-Proprietary Version]**

Pursuant to 10 C.F.R. § 2.754 and the Orders of the Atomic Safety and Licensing Board ("Licensing Board" or "Board") dated February 2, 2000<sup>1</sup> and July 24, 2000,<sup>2</sup> Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") submits its reply to the proposed findings of fact and conclusions of law filed by the State of Utah ("State" or "Utah")<sup>3</sup> and the NRC Staff ("Staff")<sup>4</sup> concerning Contention Utah E/Confederated Tribes F (Financial Assurance) ("Utah E"), Contention Utah R (Emergency Plan) ("Utah R"), and Contention Utah S (Decommissioning Funding) ("Utah S"). PFS's reply is or-

<sup>1</sup> Order (General Schedule Revision and Other Matters) (February 2, 2000) at 4, Attachment A.

<sup>2</sup> Order (Ruling on Extension Motion) (July 24, 2000).

<sup>3</sup> State of Utah's Proposed Findings of Fact and Conclusions of Law Regarding Contention Utah E (July 31, 2000); 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 (Aug. 7, 2000); State of Utah's Proposed Findings of Fact and Conclusions of Law Regarding Contention Utah S, Private Fuel Storage, LLC's Capability to Fund Decommissioning (July 31, 2000).

<sup>4</sup> NRC Staff's Proposed Findings of Fact and Conclusions of Law Concerning Contention Utah E/Confederated Tribes F (Financial Qualifications) (July 31, 2000); NRC Staff's Proposed Findings of Fact and Conclusions of Law Concerning Contentions Utah R (Emergency Planning) and Utah S (Decommissioning Funding) (July 31, 2000).

Template = SECY-057

SECY-02

ganized by contention and follows the organization of, and responds to, the proposed findings of the State, in that the Staff's proposed findings are in general agreement with those filed by PFS.

Applicant does not attempt in this reply to respond in detail to each finding and conclusion of the State with which it disagrees. Nor is the Licensing Board required to expressly address each individual finding proposed by every party. See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 41 (1977) (citing cases). Where disagreements are plain, and the positions are accompanied by accurate citations to the record, for example, PFS has not repeated its position verbatim but has cited to its previously submitted proposed findings and conclusions.<sup>5</sup>

Citations to Applicant's numbered proposed findings and to the numbered proposed findings of the State and the Staff are in the format "PFS [contention] \_\_," "State [contention] \_\_," or "Staff [contention] \_\_," with the appropriate contention letter (E, R, or S) and paragraph number(s) supplied.<sup>6</sup> In citations to pre-filed direct testimony, Applicant employs the abbreviations established in its previously submitted proposed findings (Appendix A of which identifies the location in the transcript of each witness' direct testimony).

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<sup>5</sup> Applicant's Proposed Findings of Fact and Conclusions of Law on Contentions Utah E/Confederated Tribes F and Utah S (July 31, 2000); Applicant's Proposed Findings of Fact and Conclusions of Law on Contention Utah R (Aug. 7, 2000).

<sup>6</sup> PFS filed proposed findings on Utah E and Utah S in the same document, the NRC Staff filed proposed findings on Utah R and Utah S in the same document, and the State filed proposed findings for each contention in a separate document. The findings of each party within a single document consist of consecutively numbered paragraphs but the findings in each separately filed document begin with finding "1." Therefore, to avoid confusion, PFS will include the pertinent contention letter with each finding cited, even though the finding may come from a document containing findings on more than one contention.

**I. CONTENTION UTAH E (FINANCIAL ASSURANCE)**

{Utah E Reply Findings contain PFS confidential commercial and financial information from proprietary testimony and exhibits and is therefore not included in this non-proprietary version of Applicant's Reply.}

## II. CONTENTION UTAH R (EMERGENCY PLAN)

### A. Procedural Background and Witness Qualifications

While we recognize that State Fire Marshal Wise has 30 years of firefighting experience, we note that he has no experience with firefighting related to nuclear facilities or NRC fire protection requirements. Tr. 1624-26, 1628-29 (Wise). The State asserts that Mr. Wise “offered specific, detailed and credible factual evidence of PFS’s lack of training and personnel to fight fires onsite” and that his conclusions were “consistent with NRC’s own regulations.” State R 5. The record establishes, however, that Mr. Wise’s conclusion that NFPA 1500 is applicable to fire brigades at NRC-licensed facilities is not consistent with NRC requirements; rather, NFPA 600 is the appropriate standard to apply. PFS R 20-21; Staff R 2.1.93-97.

### B. Summary of the Argument

The State asserts that PFS will not have a sufficient number of on-site staff or adequately trained staff to fight fires onsite. State R 7. The record is to the contrary. PFS will have sufficient trained personnel on-site when operations are in progress to staff its fire brigade. PFS R 18; Staff R 2.1.85-89. The PFS fire brigade will also be adequately trained, in accordance with NFPA 600. PFS R 18, 20-21; Staff R 2.1.90-97.

### C. Relevant Legal Standard

The State asserts that Regulatory Guide 3.67 and Interim Staff Guidance 16 contain a number of “requirements” applicable to fire-related emergency planning at the PFSF. State R 10. As the State itself points out, however, regulatory guidance documents are not regulations—they only present one or more means of complying with NRC regulations. Curators of the University of Missouri, CLI-95-1, 41 NRC 71, 98, 150

(1995). As stated by the Commission, “[a]lthough conformance with regulatory guides will likely result in compliance with specific regulatory requirements, nonconformance with such guides does not equate to noncompliance with the regulations.” Id. at 98.<sup>35</sup>

In its discussion of the applicability of NFPA 1500 and NFPA 600, the State suggests that NFPA 1500 is applicable to the PFSF fire brigade. See State R 11. The record clearly demonstrates, however, that NFPA 600 is the proper standard to apply. PFS R 20-21; Staff R 2.1.93-97.

#### **D. Findings of Fact and Conclusions of Law**

##### **1. Off-Site Firefighting Assistance**

###### **a) Off-Site Firefighting Assistance from Tooele County**

The State criticizes PFS for planning to call on the Tooele County Fire Department for firefighting assistance because Tooele is located too far from the PFSF and it criticizes PFS for planning to rely on the fire department at Terra because the Terra department is probably all-volunteer and is probably too small. State R 13-14; see also State R 21-22. Contrary to the basis for the State’s criticism, and as the State concedes, State R 15, it is PFS’s position that the PFSF must be self-sufficient in its firefighting capabilities. PFS R 19; Staff R 2.1.84.<sup>36</sup> We note, however, that nowhere does the State assert, let alone show, that the fire protection at the PFSF will be inadequate because of any deficiency in PFS’s manual firefighting capabilities. Indeed, PFS takes credit for no

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<sup>35</sup> Furthermore, it is noteworthy that Reg. Guide 3.67 is generally applicable to materials facilities licensed under Part 70 and thus does not reflect the fact that under Part 72 emergency planning requirements for ISFSIs that do not repackage or handle spent fuel are less stringent than those for monitored retrievable storage (MRS) facilities that do. Compare 10 C.F.R. §§ 72.32(a) with 72.32(b).

<sup>36</sup> PFS has, nonetheless, coordinated with Tooele County regarding the potential use of off-site emergency response resources. PFS E 19.

manual or automatic fire suppression in demonstrating that fire at the PFSF would not cause a release of radioactive material. See PFS R 13.

**b) Off-Site Assistance During Off-Normal Hours**

The State asserts that PFS has not “complied” with Reg. Guide 3.67 and ISG-16, in that PFS has not provided a description of the on-site emergency response organization for the PFSF during off-normal hours. State R 16. The State asserts that PFS’s emergency plan is deficient because PFS will have only a security staff on site and will rely on call-back procedures to summon fire brigade members and the brigade members will take 90 minutes to arrive at the site. State R 16-17. In the State’s view, PFS falls short because it will not be able to effectively use its firefighters, in that such a response is not timely.

Id.

We disagree with the State’s assessment. First, Reg. Guide 3.67 and ISG-16 do not impose requirements on an applicant or a licensee. See Section III.C, supra. Second, PFS does not need to have a fire brigade on-site during off-normal hours because it is not credible that a fire that could cause a radioactive release would occur when operations were not taking place at the PFSF, such as during off-normal hours. PFS R 24; Staff R 2.1.61.

**2. NRC Authority and Responsibility in Emergency Planning**

**a) NRC’s Authority and Responsibility for Non-Radiological Releases**

The State argues that the NRC “has the authority and the responsibility under 10 CFR § 72.32(a)” to ensure that PFS’s emergency plan provides for the protection of the

public and on-site PFS personnel from all fire hazards, regardless of whether such hazard could result in a radioactive release. See State R 18-20. The State claims that its position is supported by Reg. Guide 3.67 and ISG-16 “requirements” that an emergency plan describe non-radiological hazardous material releases that could impact emergency response efforts. State R 18.<sup>37</sup> The State then argues that if the NRC does not review PFS’s on-site firefighting capability for the protection of the non-radiological health and safety of the public and on-site workers, no governmental entity will, in that the PFSF site is on an Indian reservation that assertedly performs no governmental functions. State R 19. Therefore, the State claims, “to fill the interstices in the regulations,” the NRC must review PFS’s firefighting capabilities with respect to non-radiological in addition to radiological hazards. State R 20.

The NRC’s emergency planning regulations are intended to protect the health and safety of the public and of on-site workers from radiological hazards. PFS R 3; Staff R 2.1.7-8, 33 n.22, 3.2. The scope of the regulations does not extend to “all questions of fire safety at licensed facilities.” The Curators of the University of Missouri, CLI-95-1, 41 NRC 71, 159 (1995); accord The Curators of the University of Missouri, CLI-95-8, 41 NRC 386, 393 (1995). Furthermore, while the issue is outside the scope of this proceeding, we note that generally applicable federal law, such as fire safety regulations under the Occupational Safety and Health Act, remain applicable on Indian reservations.<sup>38</sup>

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<sup>37</sup> The State does not claim, however, that the PFSF will contain any such quantities of hazardous materials.

<sup>38</sup> See FPC v. Tuscarora Indian Nation, 362 U.S. 99, 116 (1960).

Thus, the State's concern that fire safety on Indian reservations is wholly unregulated appears to be unfounded.

**b) Regulatory Presumption that Off-Site Assistance Will Be Available**

The State claims that NRC regulations “assume that off-site assistance will be available to [an ISFSI license] [a]pplicant to fight fires on-site.” State R 21 (citing 10 C.F.R. §§ 72.32(a)(8, 12, and 15)). The State is incorrect. ISFSI emergency planning regulations, 10 C.F.R. § 72.32(a), require coordination with off-site emergency response organizations in the following terms: providing for the notification of off-site organizations in the event of an accident (§ 72.32(a)(8)), communications checks and invitations to participate in exercises (§ 72.32(a)(12)), allowing for review of and comment on the emergency plan (§ 72.32(a)(14)), and making arrangements for requesting and potentially utilizing off-site assistance on site (§ 72.32(a)(15)). The actual use of off-site response organizations on-site in the event of an accident, however, is not mandatory. The Commission stated, in response to a comment when promulgating the rule, that references to “offsite response organizations” denoted “those offsite organizations that may be needed to respond to an emergency (medical, fire department, police, etc.)” Emergency Planning Licensing Requirements for [ISFSIs and MRSs], Final Rule, 60 Fed. Reg. 32,430, 32,436 (1995) (emphasis added); see also Staff R 2.1.84. Thus, there is no regulatory bar to an applicant, like PFS, proceeding on the basis that it will be self-sufficient in its emergency response capability, provided that the applicant complies with the explicit requirements of 10 C.F.R. § 72.32(a) pertaining to coordination with off-site organizations.

The State asserts again that PFS plans to rely on off-site assistance for firefighting from Tooele County and Terra. State R 22. As indicated above, however, and as the State admits elsewhere in its proposed findings, PFS has assessed its firefighting capability under the assumption that the PFSF would be self-sufficient in firefighting. Indeed, PFS took no credit for manual fire suppression when it demonstrated that fire would not cause a release of radioactive material at the PFSF. See Section III.D.1.a, supra.

### **3. NFPA Standards**

#### **a) NFPA 1500 Standard**

The State asserts that the PFSF fire brigade will be inadequate to fight fires at the PFSF in that PFS has committed to comply with NFPA 600 rather than NFPA 1500. State R 23-26. The State asserts NFPA 1500 is appropriate particularly because of 1) the distance from the PFSF to the nearest municipal fire department, 2) the potential need to fight interior structural fires, and 3) the potential need to perform rescue operations. State R 26.

As the Applicant and the Staff have shown, however, NFPA 600 is the appropriate standard to apply to the fire brigade at the PFSF. PFS R 20-21; Staff R 2.1.93-97; see Section III.C, supra. Regarding the State's specific complaints, first, the distance from the PFSF to the nearest municipal fire department is irrelevant, in that PFS will be self-sufficient in its firefighting capability. The State's insinuation that PFS's self-sufficiency will transform the PFS fire brigade into a municipal fire department that is subject to NFPA 1500 is meritless, in that unlike a fire department, the PFS brigade will only be responsible for fighting fires at the PFSF. PFS R 20. Second, fighting interior structural

fires is covered by NFPA 600. NFPA 600, Ch. 5 (Staff Exh. B). Third, “rescue . . . inside of buildings or enclosed structures that are involved in a fire” is also covered by NFPA 600. Id. §§ 1-5.15; A-1-5.15. Thus, the reasons advanced by the State do not support its conclusions that NFPA 1500 rather than NFPA 600 is the appropriate standard to apply to the PFSF fire brigade. PFS R 20-21.

**b) PFS Does Not Comply with NFPA Standards**

The State asserts that the PFSF fire brigade will not comply with NFPA 600 in that it requires two people for backup firefighting rescue operations, while PFS will only have one. State R 27. On the contrary, PFS has committed to complying with NFPA 600 in all respects. PFS R 18. The PFS fire brigade, which will have five members, will comply with the requirement that two brigade members remain outside a building to provide rescue while two other members fight a fire inside the building while wearing self-contained breathing apparatus. Id.<sup>39</sup>

The State asserts that PFS does not comply with NFPA 600 with respect to protective clothing and equipment in that protective equipment will be stored in the Security and Health Physics Building. State R 28. According to the State, this could pose a danger to firefighters fighting a fire in the Canister Transfer Building either by causing a delay in fighting the fire or having brigade members begin to fight a fire without their personal protective gear. Id.

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<sup>39</sup> While PFS witnesses Mr. Dungan had testified that only one brigade member would be available for rescue, upon being shown the relevant section of the current version of NFPA 600, he testified that the PFS brigade would in fact have enough members to allow two to be available for rescue. Tr. 1666 (Dungan).

Nevertheless, because PFS has taken no credit for the actions of the fire brigade in assessing the PFSF's fire protection, see PFS R 13, we conclude that any delay in beginning to fight a fire caused by the location of protective equipment in the Security and Health Physics Building would have an immaterial impact on PFS's firefighting capability.

Furthermore, we disagree that any such delay would pose an unacceptable risk to firefighter safety. NFPA 600 states that:

The incident management system shall ensure that the risk to members is evaluated prior to taking action. In situations where the risk is unacceptable, the emergency response activities shall be limited to defensive operations.

Regardless of the risk, actions shall not exceed the scope of the organizational statement and standard operating procedures.

NFPA 600 § 2-2.1.6. The standard also sets forth specific safety requirements governing when a firefighter can enter the warm or hot zones established for a fire emergency or otherwise engage in certain firefighting activities. Id. §§ 2-2.4, 4-3, 5-3. In NRC litigation there is a presumption that applicants will adhere to applicable regulations or standards. See General Public Utilities Corp. (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 164 (1996). Thus, we find that concerns over PFSF fire brigade members taking undue risk contrary to the instructions of NFPA 600, because of the location of personal gear or otherwise, do not invalidate the PFS Emergency Plan.

The State asserts that PFS does not comply with NFPA 600 with respect to an organizational statement or training because it has not provided sufficient detail regarding fire brigade training, the limits of brigade actions and responsibility, and the role of bri-

gade members in the workplace. State R 29. Such detail is not required in the PFS Emergency Plan. Those sorts of details are reserved for the implementing procedures PFS will establish after licensing.. Waterford, ALAB-732, 17 NRC at 1106-07; see Curators of the University of Missouri, CLI-95-1, 41 NRC at 130-31, 137, 140-43; PFS R 4, 23.

#### **4. PFS Staffing**

The State asserts that PFS's fire brigade is deficient because its five members will be drawn from 11 PFS personnel trained to participate on the brigade. State R 31-38. The State asserts that all personnel trained as brigade members could be involved in canister transfer operations when needed to fight a fire. State R 32. It asserts that one trained person would have to drive the fire truck at the PFSF site and, if needed, one would have to retrieve the fire truck from the Goshute village. State R 34. Once a fire truck was at the site of a fire, one person would be needed to hook up and operate the fire truck pump. Id. To operate a hose line would require two firefighters per hose, plus two back-up for rescue, plus an incident commander. Id. Thus, PFS is trying to do too many things with too few trained firefighters. Id.

The record shows that the State's conclusion is not supported by the record. PFS witness Lewis testified that 11 people would be sufficient to account for absences and still muster a five person brigade. Tr. 1499 (Lewis). Staff witness Sullivan concurred. Tr. 1567 (Sullivan). Mr. Wise could not say whether or not 11 people would be enough. Tr. 1595-96 (Wise). Furthermore, Mr. Lewis testified that even during a canister transfer operation, brigade members would be able to promptly and safely stop working and participate on the brigade. Tr. 1526-27 (Lewis); see also Tr. 1566 (Sullivan). Thus, with 11

personnel trained as fire brigade members, PFS will be able to muster a five-person brigade during operations.

A five-person brigade would be sufficient to fight fires at the PFSF. It is worth noting again that PFS did not rely on any manual firefighting when determining that the fire protection at the PFSF was adequate to prevent a release of radioactive material. PFS R 13. Moreover, five people would be sufficient to have two operating a hose plus two providing potential rescue, in accordance with the current requirements of NFPA 600 for fighting an interior structural fire, which is the most demanding case set forth in the standard. NFPA 600 § 5-3.5; Tr. 1634 (Wise). (One of the firefighters providing potential rescue could also serve as incident commander. Wise at 7.) If PFS were to use a fire truck (which would not be required to meet any regulatory requirement, PFS R 26), the fifth brigade member would be able to operate the truck, i.e., monitor the hose pressure while it was in use. Tr. 1501, 1504-05 (Dungan). PFS has testified that it does not need the fire truck at the Goshute village to comply with any regulatory requirements, Tr. 1534 (Lewis), but if PFS decided to use the truck, one brigade member could retrieve it from the village while the other four brigade members fought the fire.<sup>40</sup> Upon arriving with the truck at the scene of the fire, the driver could attach a hose and operate the truck, Tr. 1504-05 (Dungan), while two brigade members used the hose and two provided potential rescue. Thus, a five-member brigade would be large enough to fight fires at the PFSF.

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<sup>40</sup> In addition to personnel trained to participate on the fire brigade, PFS may have other staff members with licenses that would enable them to drive a fire truck. Tr. 1525-26 (Lewis).

## **5. Conclusions**

PFS's Emergency Plan satisfies NRC requirements with respect to fire protection and emergency planning. PFS will have a fire brigade with an adequate number of members who, in accordance with NFPA 600, will be adequately trained and equipped. There is no need for PFS to station fire brigade members at the PFSF while operations are not in progress (i.e., during off-normal hours) and no need to impose a requirement that brigade members be able to respond to a call from the PFSF within a specific period of time.

### **III. CONTENTION UTAH S (DECOMMISSIONING FUNDING)**

#### **A. Procedural Background and Witness Qualifications**

The State claims that Dr. Sheehan is qualified as an expert to testify as to whether PFS has provided reasonable assurance that funds will be available to decommission the PFSF. State S 3-7. While Dr. Sheehan has experience and expertise as an economist, as noted above, on cross-examination Dr. Sheehan admitted that he had no experience in estimating the probabilities or consequences of accidents. Tr. at 2492, 2405-08 (Sheehan); see Staff E 2.45, 2.46 n.8; PFS S 130. Thus Dr. Sheehan should not be found qualified to render an expert opinion concerning the potential effect of an accident on the costs of decommissioning the PFSF and hence his testimony on the subject deserves no weight. See note 8, supra.

#### **B. Summary of the State's Argument**

The State asserts that in order to provide reasonable assurance that PFS will have sufficient funds to decommission the PFSF, license conditions must be imposed requiring PFS to evaluate its decommissioning costs annually, using current year data and escalat-

ing the cost estimate using regional price indices, and to increase the amount of the letter of credit or the funds in the external sinking fund accordingly. State S 8. The State also asserts that PFS must be required to perform an accident consequences assessment to determine the cost of recovery from a large scale accident and be required to include the cost of recovery in its decommissioning cost estimate to the extent that the cost exceeds the amount of nuclear property insurance PFS will obtain for the PFSF. Id.

Contrary to the State's argument, no additional license conditions need to be imposed on PFS. As explained further below, PFS has committed to (and hence is bound to) adjusting its decommissioning cost estimate annually. PFS S 121. If PFS's adjustment shows an increase in cost, PFS has committed to increasing the amount in its external sinking fund and the amount of its Letter of Credit if necessary to account for increased site decommissioning costs. PFS S 122. PFS has also committed to obtaining from its customers any additional funds needed to decommission the casks in which the customers' spent fuel is stored. PFS S 124. These commitments are sufficient to provide reasonable assurance that PFS's decommissioning costs will be paid. As for potential accident recovery costs, the NRC does not consider them to be part of decommissioning. Rather, they are addressed as part of financial assurance and specifically here they are addressed through the use of on-site property insurance. PFS S 128-131; see also Section II.E.5, supra.

### **C. Relevant Legal Standard**

PFS does not disagree with the State's restatement of the regulations applicable to ISFSI decommissioning funding.

**D. Findings of Fact and Conclusions of Law**

**1. Vintage of the Data in Cost Estimate**

PFS agrees that the issue of the vintage of PFS's decommissioning data was resolved at the evidentiary hearing.

**2. Annual Adjustments to Decommissioning Estimate and Funding**

The State complains that, while PFS testified that it will annually review its decommissioning funding plan and adjust its cost estimates to account for real changes in costs and inflation, this is not reflected in PFS's decommissioning plan. State S 15. The State's assertion is incorrect. The PFS decommissioning plan states as follows:

Changes in the cost of decommissioning will be accounted for through an annual review of the decommissioning cost estimate to ensure that both the individual elements and the overall estimate either remain valid or are revised to account for any changes in the tasks, scope, or cost or schedule for decommissioning. Additionally, the decommissioning cost estimate will be adjusted annually to account for the effects of inflation, utilizing the conservatively high Consumer Price Index, published by the Bureau of Labor Statistics.

PFS License Application ("LA"), App. B at 5-2 to 5-3 (State Exh. 10). Thus, PFS's decommissioning plan is consistent with the testimony Mr. Parkyn gave at the hearing.

The State also complains that PFS relies on "undocumented service agreements" to show that PFS's customers will pay for any increases in estimated decommissioning costs.

State S 16. PFS has described the method by which it will cover any increases in decommissioning costs. PFS S 121-122, 124. The regulations do not require that PFS provide further detail. See 10 C.F.R. § 72.30(b).

The license conditions that the State requests that the Board impose on PFS to force compliance with its decommissioning plan, State S 18, are unnecessary in that NRC regulations require such compliance.

### **3. Large Scale Accidents**

The State asserts that PFS should be required to include the potential cost of accident recovery at the PFSF in its decommissioning cost estimate. State S 22. While 10 C.F.R. Part 50 addresses potential accident recovery costs for reactors through on-site nuclear property insurance, the State asserts that those potential costs should be treated as part of decommissioning for the PFSF in that 10 C.F.R. Part 72 does not require on-site property insurance. State S 22-23.

As discussed in detail above, PFS has committed to obtaining on-site property insurance to cover the potential costs of accident recovery at the PFSF. PFS E 108. We believe that on-site property insurance is a reasonable way to address the potential costs of accident recovery at an ISFSI. PFS E 93-95. If an applicant commits to obtaining on-site property insurance, then the applicant need not treat potential accident recovery costs as part of decommissioning. PFS S 128-129; Staff S 2.2.33.

The State goes on to assert that it is unclear that nuclear property damage insurance will be available over the life of the PFSF, since there is likely to be only one nuclear property damage insurance provider in the United States. State S 24-25. This argument is unconvincing, in that the surviving insurer, NEIL, would be providing nuclear property damage insurance for the entire U.S. nuclear industry and, in fact, is owned by the nuclear plant owners within the nuclear industry. See Tr. 1801-02 (Pickerl). Given

the requirement that nuclear reactor licensees carry such insurance, we cannot foresee that the U.S. nuclear property damage insurance market would disappear during the lifetime of the PFSF.

The State also claims that the amount of insurance PFS has committed to obtaining will be inadequate to cover potential accident recovery costs in that there are contentions that remain to be litigated that concern radiological releases resulting from accidents and/or earthquakes. State S 26. However, the contentions to which the State refers, Utah K and Utah L, do not concern the consequences of radiological releases at the PFSF. See LBP-98-7, 47 NRC at 253. Rather, those contentions concern the suitability of the PFSF site for the location of an ISFSI; hence they concern the likelihood of significant accidents or earthquakes at the site. Id. Furthermore, the record reflects the on-site property insurance requirements that the NRC imposes on shutdown reactors and shows that that level of coverage was appropriate for the PFSF because the risk of an accident involving a radiological release at the PFSF was equal to or less than the risk of such an accident at a shutdown reactor. PFS E 104-107; Staff E 2.40-43, 2.46. The State presented no probative evidence to the contrary. See PFS S 130; Staff S 2.2.35-36. Therefore, there is no basis for finding that the amount of nuclear property insurance that PFS has committed to obtaining for the PFSF would be inadequate.

Finally, the State would have the Board require that PFS maintain a fixed amount<sup>41</sup> of on-site property damage insurance coverage and, if that fixed amount of cov-

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<sup>41</sup> The exact amount is proprietary and is discussed in the section concerning on-site property insurance under Contention Utah E.

erage ceased to be commercially available, require PFS to perform a site-specific assessment to show the likelihood of and recovery costs associated with a serious accident at the PFSF and provide for accident recover costs in its decommissioning cost estimate. State S 28.

The State's proposed requirements are unnecessary. The amount of insurance PFS has committed to obtaining is sufficient to address potential accident recovery costs at the PFSF. See Section II.E.5, supra; PFS E 104-107. Furthermore, nuclear reactor licensees are required to maintain the lesser of the amount of nuclear property insurance reasonably available from commercial sources or \$1.06 billion. 10 C.F.R. § 50.54(w). Reactor licensees are also not required to include accident recovery costs in their decommissioning cost estimates. PFS S 128. Therefore, it would be inconsistent with those regulations to require PFS to include in its decommissioning cost estimates the difference between the fixed amount desired by the State and the amount of coverage that, in the future, is reasonably available from commercial sources (assuming it is less than the fixed amount).

#### **4. Conclusions**

PFS's decommissioning funding plan provides reasonable assurance that the decommissioning costs of the PFSF will be paid.

#### IV. CONCLUSION

The Applicant respectfully requests that the Board rule in favor of the Applicant on Contentions Utah E, Utah R, and Utah S.

Respectfully submitted,



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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  
 )  
(Private Fuel Storage Facility) ) ASLBP No. 97-732-02-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the "Applicant's Reply to the Proposed Findings of Fact and Conclusions of Law of the State of Utah and the NRC Staff on Contentions Utah E/Confederated Tribes F, Utah R, and Utah S [Proprietary Version]," containing PFS proprietary financial information on Utah E, was served on the persons listed below by e-mail with conforming copies by first class U.S. mail, postage prepaid, the 28th day of August 2000.

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I further certify that copies of the "Applicant's Reply to the Proposed Findings of Fact and Conclusions of Law of the State of Utah and the NRC Staff on Contentions Utah E/Confederated Tribes F, Utah R, and Utah S [Non-Proprietary Version]" 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 28th day of August 2000.

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