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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF THE
GENERAL COUNSEL
ADJUTANT GENERAL

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 28, 2000

STATE OF UTAH'S PROPOSED RESPONSE FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATING TO CONTENTION UTAH R

In accordance with the Licensing Board's Schedule accompanying its Order of February 2, 2000, and following the simultaneous filings of findings of fact and conclusions of law (hereafter "Findings") on July 31, 2000, the State of Utah hereby submits the following Proposed Response to the NRC Staff's and the Applicant's Findings of Fact and Conclusions of Law regarding Contention Utah R.¹

The Board requested the parties address the impact of the Commission's decision, CLI-00-13, on the findings and conclusions filed on July 31. The State has submitted a separate pleading addressing the impact of CLI-00-13, although it addresses the impact of CLI-00-13 in this document too as it relates to issues specific to Contention R.

¹ In this response, the State will be referring to the "NRC Staff's Proposed Findings of Fact and Conclusions of Law concerning Contention[] Utah R (Emergency Planning)...", dated July 31, 2000; the "Applicant's Proposed Findings of Fact and Conclusions of Law on Contention Utah R," dated August 7, 2000; and 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, dated August 7, 2000.

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RESPONSE FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PFS Fire Brigade or Department

1. PFS has committed to having at least eleven employees fully trained to participate on the PFS fire brigade. The PFS fire brigade will be trained and equipped as a structural fire brigade in accordance with all aspects of NFPA 600. Training will also include interior structural fires in accordance with NFPA 600, Chapter 5. PFS will respond to fire emergencies with a response team of a minimum of five employees trained to NFPA 600 standards. PFS Findings ¶ 18.

2. All parties agree that PFS must be self-sufficient in its fire fighting capabilities. What the parties do not agree upon, however, is the significance of PFS not being able to call upon any timely off-site assistance to add support to responding to on-site fires at the PFS ISFSI. PFS and the Staff argue that PFS's self-sufficiency does not make it a prime candidate for NFPA 1500 standards while the State takes the opposite view asserting that NFPA 1500, not NFPA 600, standards apply to PFS.

3. The Staff and PFS make a great deal out of the statement in the "scope" of NFPA 1500 standards wherein it is stated that NFPA 1500 standards do not apply to industrial fire brigades organized under NFPA 600. State's Ex. 8 at 1500-4, § 1-1.3. PFS Findings ¶ 21; Staff Findings ¶2.1.95. The label the Applicant places on its fire fighting unit, however, does not answer the question of which NFPA standard applies.

4. PFS and the Staff rely on the statement in § A-1-1 of NFPA 600, discussing the distinction between an industrial fire brigade and a municipal fire department to claim that PFS must comply with NFPA 600 because PFS will only be fighting fires at the PFS

facility. PFS Findings ¶ 20; Staff Findings ¶ 2.1.96. While at first blush the language quoted by PFS and the Staff from NFPA 600 § A-1-1 may lend some support to PFS and the Staff claim, the language must be viewed in context. The discussion in § A-1-1 does not distinguish between industrial fire brigades and industrial fire departments but, for purposes of the discussion in § A-1-1, conjoins industrial fire departments with industrial fire brigades. The sentence immediately preceding the language quoted by PFS and the Staff reads,

While every industrial fire brigade is unique, just as every municipal fire department is unique, industrial fire brigades, including those that can be referred to as industrial fire departments, have far different needs in many respects from those of municipal fire departments.

NFPA 600 (2000), § A-1-1 (*emphasis added*) (see Staff's Hearing Exhibit B). Therefore, the language in Section A-1-1 does not answer the question of whether PFS should comply with NFPA 1500.

The language of NFPA 1500, however, undercuts the Staff and PFS's position that NFPA 600 applies because PFS firefighters will not be expected to fight fires outside its facility and will respond only to on-site fires at PFS. The definition of "Industrial Fire Department" in NFPA 1500 refers to providing activities such as rescue, fire suppression, emergency medical services, hazardous material operations, etc. and includes the following pertinent language:

These activities can occur at a single facility or facilities under the same management.... The industrial fire department is generally trained and equipped for specialized operation based on site-specific hazards present at the facilities.

State's Hearing Exhibit 8, NFPA 1500 at 1500-6 (*emphasis added*).

The Board concludes that given the site-specific hazards present at PFS's spent

nuclear fuel storage facility and the inability of Tooele County to provide timely off-site assistance, the standard applicable to PFS is NFPA 1500.²

B. Adequacy of PFS's Staffing

5. Regardless of whether PFS complies with NFPA 600 or 1500, the Board finds that PFS does not have an adequately staffed fire response unit to fight fires on-site -- both during normal hours and during off-normal hours. See State's Findings, Section D (¶¶ 31-38).

The Staff's assertion that "in fact, 11 trained fire brigade members will be present during cask transfer operations" is not supported by the record. Staff Findings ¶ 2.1.87. Cf. PFS Findings ¶ 18 ("PFS will provide a response to fire emergencies with a minimum of 5 personnel" and 11 non-security personnel will be trained to participate on the PFS fire brigade). Furthermore, while PFS's witness Lewis stated that operations personnel could leave off their transfer operations and take on fire fight duties (Tr. at 1527), the record suggests that Mr. Lewis is not familiar with the number of personnel PFS will employ and the scope of their duties. See Tr. at 1496-1500, 1508-10.

As the record now stands, PFS will respond to fire with a minimum of five personnel during normal hours. PFS will not have the facility staffed with any fire brigade members during off-normal hours and, using a call back system, it will take at least 90

² We place no stock whatsoever on the Staff's position that the State's witness, State Fire Marshall Gary Wise, "has never served in a private or industrial fire brigade" or evaluated the adequacy of a private fire brigade. Staff Findings ¶ 2.1.94, n.46. As the Staff recognizes, Mr. Wise has over 32 years experience in the public fire service, and this certainly qualifies him to give an expert opinion on the needs and capability of an organization, whether private or public, to fight fires and to what NFPA standards it should be organized.

minutes for fire brigade members to return to the facility. The record does not support that PFS has adequate staffing to fight fires on site. Moreover, the Board questions what actions fire brigade members could render 90 minutes or more after a fire was detected.

C. Commitments Made by the Applicant

6. The Applicant has made the following commitments with respect to meeting NFPA standards for fire protection at the PFS ISFSI site:

<u>NFPA Standard</u>	<u>PFS Commitment</u>
NFPA 801	Adherence to the fire protection standards (national consensus standard for providing fire protection for nuclear materials facilities). PFS Findings ¶ 7.
NFPA 58	Design of propane systems (<i>i.e.</i> the propane tanks and related equipment). PFS Findings ¶ 15.
NFPA 54	Design of propane heaters for CTB. PFS Findings ¶ 15.
NFPA 600	Training and equipping of the fire brigade in accordance with all aspects of NFPA 600, including fighting interior structural fires in accordance with NFPA 600, ch. 5. PFS Findings ¶ 18.
NFPA 600	Organizational Statement (required under 600; PFS will comply). PFS Findings ¶ 23.
NFPA 16	Foam water sprinkler system in Canister Transfer Building (“CTB”) cask load/unload bay. PFS Findings ¶ 27.
NFPA 14	Design and location of hose stations inside on-site buildings. PFS Findings ¶ 27.
NFPA 24	Design and location of fire hydrants outside on-site buildings. PFS Findings ¶ 27.
NFPA 25	Maintenance of fire protection equipment, including CTB foam-water system, yard hydrants, fire pumps, waste storage tank, service mains, and all associated components. PFS Findings ¶ 28.

NFPA 72 Installation and maintenance of the fire detection system. PFS Findings ¶ 28.

NFPA 600 Maintenance of fire brigade equipment. PFS Findings ¶ 28.

The above referenced NFPA standards that PFS has committed to meet must be codified as license conditions in order for the Board to find that the Applicant complies, in part, with the Commission's decision, CLI-00-13, and 10 CFR §§ 72.32 and 72.122(c).

D. Water Supply

7. Both the Staff and the Applicant assume that there will be no impediment to PFS acquiring an adequate water supply to fill and replenish PFS's two water tanks each totaling 100,000 gallons. See Staff Findings ¶ 2.1.56 to -57. There is nothing in the record to establish that PFS may drill wells on site or obtain water from the tribe's existing water supply. Accordingly, the Board finds that the Applicant has not carried its burden of establishing whether it will be able to obtain an adequate water supply needed to fight on-site fires. See Tr. 1487.

E. Final Conclusions

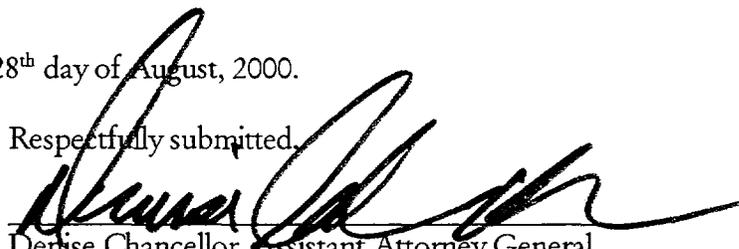
8. PFS does not provide reasonable assurance that the public health and safety will be adequately protected in the event of an emergency at the PFS ISFSI site because PFS has not demonstrated that it has the capability to fight fire on-site fires and mitigate the consequences of accidents, including protection of on-site workers, and therefore, the proposed PFS facility does not comply with 10 CFR §§ 72.32(a)(5) , 72.122(c) or 72.122(c). In particular, PFS has an inadequate number and improperly trained staff to fight fires on site.

9. PFS may partially rectify the deficiencies in its Emergency Plan if all of PFS's

commitments are rendered into license conditions. See State's Findings ¶ 39. Another license condition should be added stating that PFS must adhere to NFPA 1500 standards.

DATED this 28th day of August, 2000.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S PROPOSED RESPONSE FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATING TO 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 28th day of August, 2000:

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