

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL

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Solicitor General

REED RICHARDS
Chief Deputy Attorney General

September 14, 2000

William D. Travers
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: In the Matter of Private Fuel Storage, LLC, Docket 72-22

Dear Mr. Travers;

Pursuant to 10 CFR § 2.744(a), enclosed is the State of Utah's Eighth Set of Discovery Requests Directed to the NRC Staff, dated September 14, 2000.

Please contact me with any questions at (801) 366-0286. Thank you.

Sincerely,

Denise Chancellor
Assistant Attorney General

Enclosure: as stated
cc: PFS Docket 72-22-ISFSI Service List

Template = SECY-035

SECY-02

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, LLC)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel)	
Storage Installation))	September 14, 2000

**STATE OF UTAH'S EIGHTH SET OF DISCOVERY REQUESTS
DIRECTED TO THE NRC STAFF**

Pursuant to the Board's Orders dated April 22, 1998 (LBP-98-7), June 29, 1998 and August 20, 1998, and 10 CFR §§ 2.720, 2.740, 2.742, and 2.744, Intervenor, State of Utah, hereby requests that the Staff of the Nuclear Regulatory Commission ("Staff" or "NRC") answer the following Interrogatories and Requests for Admissions separately, fully, in writing, and under oath within 10 days after service of this discovery request.

As required by 10 CFR § 2.744(a), this discovery request is being served on the NRC Executive Director for Operations. In addition, pursuant to § 2.720(h), the State submits that this discovery is necessary to a proper decision in this proceeding and that requested documents are not reasonably obtainable through any other sources.

I. INSTRUCTIONS

A. Scope of Discovery. These interrogatories and requests for admissions are directed to NRC Staff and any of the Staff's contractors or agents (collectively "NRC" or "Staff"). The interrogatories cover all information in the possession, custody and control of NRC Staff, including information in the possession of officers, employees, agents, servants,

representatives, attorneys, or other persons directly or indirectly employed or retained by NRC Staff, or anyone else acting on their behalf or otherwise subject to NRC Staff's control.

B. Lack of Information. If you currently lack information to answer any Interrogatory completely, please state:

1. The responsive information currently available;
2. The responsive information currently unavailable;
3. Efforts which you intend to make to secure the information currently unavailable; and
4. When you anticipate receiving the information currently unavailable.

C. Supplemental Responses. Each of the following requests is a continuing one pursuant to 10 CFR § 2.740(e) and the State hereby demands that, in the event that at any later date NRC Staff obtains or discovers any additional information which is responsive to these interrogatories and request for admissions, NRC Staff shall supplement its responses to this request promptly and sufficiently in advance of the adjudicatory hearing.

Such supplementation shall include, but not be limited to:

1. The identity and location of persons having knowledge of discoverable matters;
2. The identity of each person expected to be called as an expert witness at any hearing, the subject matter on which she/he is expected to testify, and the substance of her/his testimony; and
3. New information which makes any response hereto incorrect.

D. Objections. If you object to or refuse to answer any interrogatory under a claim of privilege, immunity, or for any other reason, please indicate the basis for asserting the objection, privilege, immunity or other reason, the person on whose behalf the objection, privilege, immunity, or other reason is asserted, and describe the factual basis for asserting the objection, privilege, immunity, or other reason in sufficient detail so as to permit the administrative judges in this matter to ascertain the validity of such assertion.

E. Estimates. Interrogatories calling for numerical or chronological information shall be deemed, to the extent that precise figures or dates are not known, to call for estimates. In each instance that an estimate is given, it should be identified as such together with the source of information underlying the estimate.

II. DEFINITIONS

Each of the following definitions, unless otherwise indicated, applies to and shall be a part of each interrogatory and request for admission which follows:

A. "NRC," "Staff," "you" and "your" refers to the officers, employees, agents, servants, representatives, attorneys, or other persons directly or indirectly employed or retained by the Staff of the U.S. Nuclear Regulatory Commission, or anyone else acting on its behalf or otherwise subject to the Staff's control.

B. "PFS," or "Applicant," refers to Private Fuel Storage, LLC and the PFS members and their officers, employees, agents, servants, representatives, attorneys, or other persons directly or indirectly employed or retained by them, or anyone else acting on their behalf or otherwise subject to their control.

C. The term "documents" means the originals as well as copies of all written,

printed, typed, recorded, graphic, photographic, and sound reproduction matter however produced or reproduced and wherever located, over which you have custody or control or over which you have the ultimate right to custody or control. By way of illustration, but not limited thereto, said term includes: records, correspondence, diaries, notes, interoffice and intraoffice communications, minutes of meetings, instructions, reports, demands, memoranda, data, schedules, notices, recordings, analyses, sketches, manuals, brochures, telephone minutes, calendars, accounting ledgers, invoices, charts, spreadsheets, working papers, computer tapes, computer printout sheets, information stored in computers or other data storage or processing equipment, electronic mail, microfilm, microfiche, corporate minutes, blueprints, drawings, contracts and any other agreements, rough drafts, and all other writings and papers similar to any of the foregoing, however designated by you. If the document has been prepared and several copies or additional copies have been made that are not identical (or are no longer identical by reason of the subsequent addition of notations or other modifications), each non-identical copy is to be construed as a separate document.

D. "All documents referring or relating to" means all documents that in whole or in part constitute, contain, embody, reflect, identify, state, interpret, discuss, describe, explain, apply to, deal with, evidence, or are in any way pertinent to a given subject.

E. The words "describe" or "identify" shall have the following meanings:

1. In connection with a person, the words "describe" or "identify" mean to state the name, last known home and business address, last known home and business telephone number, and last known place of employment and job title;
2. In connection with a document, the words "describe" or "identify"

mean to give a description of each document sufficient to uniquely identify it among all of the documents related to this matter, including, but not limited to, the name of the author of the document, the date, title, caption, or other style by which the document is headed, the name of each person and entity which is a signatory to the document, the date on which the document was prepared, signed, and/or executed, any relevant bates numbers on the document, the person or persons having possession and/or copies thereof, the person or persons to whom the document was sent, all persons who reviewed the document, the substance and nature of the document, the present custodian of the document, and any other information necessary to adequately identify the document;

3. In connection with an entity other than a natural person (e.g., corporation, partnership, limited partnership, association, institution, etc.), the words “describe” or “identify” mean to state the full name, address and telephone number of the principal place of business of such entity.

4. In connection with any activity, occurrence, or communication, the words “describe” or “identify” mean to describe the activity, occurrence, or communication, the date of its occurrence, the identify of each person alleged to have had any involvement with or knowledge of the activity, occurrence, or communication, and the identity of any document recording or documenting such activity, occurrence, or communication.

F. “Date” shall mean the exact day, month, and year, if ascertainable, or if not, the best approximation thereof (including by relationship to other events), and the basis for

such approximation.

G. "ISFSI" shall mean the PFS proposed Independent Spent Fuel Storage Installation located in the northwest corner of the Skull Valley Goshute Indian reservation, Utah.

H. The word "discussion" shall mean communication of any kind, including but not limited to, any spoken, written, or signed form of communication.

I. The word "person" shall include any individual, association, corporation, partnership, joint venture, or any other business or legal entity.

J. Words herein of any gender include all other genders, and the singular form of words encompasses the plural.

K. The words "and" and "or" include the conjunctive "and" as well as the disjunctive "or" and the words "and/or."

L. The discovery sought by this request encompasses material contained in, or which might be derived or ascertained from, the personal files of NRC Staff employees, representatives, investigators, and agents.

III. DISCOVERY REQUESTS¹

This set of discovery against the Staff relates to specific representations made by the Staff in the DEIS.² As the Staff is responsible for the final EIS, relevant representations made in the DEIS are necessary for a proper decision of the State's NEPA contentions in this proceeding. Furthermore, the State is unaware of the Staff's basis or rationale for the representations in the DEIS and, therefore, is unaware of what documents support the Staff's representations. Accordingly, the documents requested are unavailable from another source. Also, instead of producing the actual document, the Staff may list documents by title and date if they are publicly available.

In addition, document requests that are relevant must be produced unless they are exempt from disclosure under 10 CFR § 2.790. Consumers Power Co. (Palisades Nuclear Power Facility), ALJ-80-1, 12 NRC 117, 119 (1980). The State reminds the Staff that the State has entered into confidentiality agreements with the Applicant that allows the State to have access to proprietary and confidential information supplied by the Applicant to the Staff in this proceeding. If the Staff determines that a requested document may be withheld under 10 CFR § 2.790, the State requests that the Staff discuss with the State whether the State is privy to that document under a confidentiality agreement. In any event, listing the

¹ The State is going to the burden now of making a legal argument why the Staff should respond to relevant discovery relating specifically the DEIS because of the lack of response the State received yesterday from the Staff to the State's 7th set of discovery to the Staff dated August 31, 2000, and relating specifically to the DEIS.

² NUREG -1714, *Draft Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah*, June 2000.

title and date of a document that may be withheld under section 2.790 should not destroy the confidentiality of the document.

While the State recognizes that some discovery against the Staff is on a different footing than against the Applicant or other parties, that is not the case with respect to requests for admissions where the Staff is on the same footing as any other party. Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), LBP-94-26, 40 NRC 93, 95-96 and n.4.

All of the Requests for Admission and Document Requests Nos. 1-6 are based on the following statement in the NRC's DEIS for the PFS facility.

The staff has reviewed some of the key cost assumptions in the business plan and noted that the assumed costs for canisters and overpacks utilized by the proposed PFSF are 30 percent lower than what was assumed for the canisters and overpacks used for at-reactor storage.

DEIS at 8-5, lines 37-40. All of these Requests for Admissions and Document Requests Nos. 1-6 are necessary to a proper decision in this proceeding. Furthermore, the State is unaware of the basis for the representations made by the Staff in the above quoted portion of the DEIS, and thus, the documents requested are unavailable from another source.

This discovery also relates to representations made by the Staff in the DEIS at pp. xli, 1-7, 8-1, 8-2, Tables 8-2 and 8-3 and related text, 8-9, 8-10, 9-9, and as otherwise specified in each document request. The State is attempting to ascertain the basis and rationale for the representations made by the Staff in the DEIS and, therefore, is unaware of what documents support the Staff's representations. Accordingly, the documents requested are unavailable from another source.

Finally, this discovery also relates to EIS Commitment Resolution Letter No. 7, question 5, dated February 25, 2000, relating to assumptions used in the ERI analysis. See also DEIS at section 8.1.1. The State has requested documents to assist it in understanding the Staff's analysis of the ERI report. Documents relating to such an analysis are necessary to a proper decision in this proceeding and they are not available from another source.

CONTENTION Z - No Action

A. Requests for Admissions - Utah Contention Z

All requests for admissions are based on the above quoted passage (*supra* at 8) from the DEIS, p. 8-5, lines 37-40.

REQUEST FOR ADMISSION NO. 1 - UTAH Z. Do you admit that the Staff relies on the canister and overpacks costs, to be used at the PFS site, from the 1997 PFS Business Plan?

REQUEST FOR ADMISSION NO. 2 - UTAH Z. Do you admit that the Staff relies on the canister and overpacks costs, to be used at the PFS site, from the 1998 PFS Business Plan?

REQUEST FOR ADMISSION NO. 3 - UTAH Z. Do you admit that the 1997 Business Plan does not contain key assumptions as to the cost of canisters and overpacks to be used at the PFS site?

REQUEST FOR ADMISSION NO. 4 - UTAH Z. Do you admit that the 1998 Business Plan does not contain key assumptions as to the cost of canisters and overpacks to be used at the PFS site?

REQUEST FOR ADMISSION NO. 5 - UTAH Z. Do you admit that the cost of

canisters and overpacks used for at-reactor storage will not be uniform for all at-reactor sites?

B. Document Requests - Utah Contention Z

To the extent that responsive documents are publicly available, instead of producing the documents to the State, the Staff may describe such documents by title and date.

Document Requests Nos. 1-6 are based on the above quoted paragraph, DEIS p. 8-5, lines 37-40, *supra* at 8.

DOCUMENT REQUEST NO. 1 - UTAH Z: All documents that relate to key cost assumptions for canisters and overpacks contained in the PFS business plan.

DOCUMENT REQUEST NO. 2 - UTAH Z: All documents that relate to the costs of canisters and overpacks that will be used at the PFS site.

DOCUMENT REQUEST NO. 3 - UTAH Z: All documents that relate to the cost of canisters and overpacks used for at-reactor storage.

DOCUMENT REQUEST NO. 4 - UTAH Z: All documents that relate to the statement in the DEIS “key cost assumptions in the business plan.” DEIS at 8-5.

DOCUMENT REQUEST NO. 5 - UTAH Z: All documents that relate to the statement in the DEIS “canisters and overpacks utilized by the proposed PFSF are 30 percent lower than what was assumed for the canisters and overpacks used for at-reactor storage.” Id.

DOCUMENT REQUEST NO. 6 - UTAH Z: All documents that relate to the characteristics of the canisters and overpacks that will be used for at-reactor storage, such as the name or model of the canister and/or overpack and the name of the manufacturer.

DOCUMENT REQUEST NO. 7 - UTAH Z: DEIS p.1-7 lines 43-45 refers to “15 ISFSIs operating in the U.S. . . . and approximately 15 to 20 additional ISFSIs are proposed for the near term.” Please provide documentary support for the assertion that “15 to 20 additional ISFSIs are proposed for the near term.”

DOCUMENT REQUEST NO. 8 - UTAH Z: DEIS p.1-7. Please provide (or at least list) all documents in the possession of the Staff that discuss the actual or proposed cost of constructing and/or operating (a) the 15 operating ISFSIs, and (b) the “15 to 20 additional ISFSIs . . . proposed for the near term.”

DOCUMENT REQUEST NO. 9 - UTAH Z: DEIS p. xli lines 43-46. Please provide a copy of (or at least list) each environmental assessment that reached a conclusion of “no significant impact.”

DOCUMENT REQUEST NO. 10 - UTAH Z: DEIS p.9-9 lines 31-34. Please provide the documents reflecting the Staff’s analysis of the economic benefits or costs of building onsite SNF storage facilities at reactors.

DOCUMENT REQUEST NO. 11 - UTAH Z: DEIS 8-1 lines 20-26. Please provide a copy of each manual, policy guidance, or other document relied on by the Staff showing or advising or mandating how the Staff is to conduct, research, write, or otherwise prepare EISs or DEISs for an ISFSI such as the one proposed by PFS.

DOCUMENT REQUEST NO. 12 - UTAH Z: EIS 8-1 lines 39-42. Please provide the document(s) which inform the Staff that it is a correct procedure not to “make a judgment about the comparative likelihood” of the scenarios considered by the Staff.

DOCUMENT REQUEST NO. 13 - UTAH Z: DEIS 8-2 lines 1-5. Please provide

the documentary support for the Staff's decision to eliminate from consideration the "small throughput" scenario.

DOCUMENT REQUEST NO. 14 - UTAH Z: DEIS 8-2 lines 1-5. Please provide all documents relating to the decision not to include an evaluation of the "small throughput" scenario in the DEIS.

DOCUMENT REQUEST NO. 15 - UTAH Z: DEIS 8-2 lines 1-5. Please provide all documents evaluating the "small throughput" scenario in terms of benefits and costs or as included in sensitivity analysis not used in the DEIS.

DOCUMENT REQUEST NO. 16 - UTAH Z: DEIS 8-2 lines 24-27. The analysis in the ERI Report ("Utility At-Reactor Spent Fuel Storage Costs For The Private Fuel Storage Facility Cost-Benefit Analysis Revision 2" ERI-2025-0001, April 2000 (referenced at DEIS 8-2, lines 13-19)) is based entirely on a 40 year operating life assumption for the PFS facility. Please provide all documents relating to costs and benefits assuming a 20 year operating life for the PFS facility.

DOCUMENT REQUEST NO. 17 - UTAH Z: DEIS Table 8-3 and related text. Please provide all documents describing or dealing in any way with sensitivity analyses for other sensitivity scenarios or variations considered by the Staff but not included in the DEIS.

DOCUMENT REQUEST NO. 18 - UTAH Z: Staff describes a "detailed chain of logic" (DEIS page 8-2, line 15) which leads from the ERI study ("Utility At-Reactor Spent Fuel Storage Costs For The Private Fuel Storage Facility Cost-Benefit Analysis Revision 2" ERI-2025-0001, April 2000) to calculations of benefits and costs described in Tables 8-2 and

8-3. Please provide all documents that Staff relied upon, utilized, consulted or which support the figures presented in Tables 8-2 and 8-3.

DOCUMENT REQUEST NO. 19 - UTAH Z: Please provide the data used to calculate each of the figures for Scenario I, II, III, and IV in DEIS, Table 8.2.

DOCUMENT REQUEST NO. 20 - UTAH Z: Please provide all documents that the Staff relied upon, utilized, consulted or which support the benefit and cost figures for the proposed PFSF, accepting SNF only from PFS member utilities (a facility capacity of 6,600 or 8,000 MTU with and SNF throughput of 12,565 MTU; see p. 8-1, lines 31-41). This is the scenario the Staff has labeled as the “small throughput” scenario.

DOCUMENT REQUEST NO. 21 - UTAH Z: Please provide all documents that the Staff relied on to conclude it can “make no judgment about the comparative likelihood of these scenarios” the Staff characterizes on page 8-1, lines 31-41, as “small throughput,” “medium throughput,” and “maximum throughput.”

DOCUMENT REQUEST NO. 22 - UTAH Z: Please provide all documents that Staff relied on in evaluating the analysis by ERI in PFS's February 25, 2000 EIS Commitment Resolution Letter # 7 (question 5), which assumes that a reactor will choose pool storage over dry storage for post-shutdown spent fuel storage.

DOCUMENT REQUEST NO. 23 - UTAH Z: Please provide any analysis which compares costs for dry cask storage and pool storage for the following:

- 1) A reactor that has closed more than ten years before 2002;
- 2) A reactor that has closed less than ten years before 2002;
- 3) A reactor where loss of full core discharge capability is imminent;

4) A reactor that is assumed to require no additional SNF storage capacity until far into the future.

DOCUMENT REQUEST NO. 24 - UTAH Z: Please provide all documents that analyze a delay in the assumed completion of the PFS facility.

DOCUMENT REQUEST NO. 25 - UTAH Z: DEIS 8-9 lines 1-17. Please provide a list of the documents reviewed by the Staff to prepare this paragraph.

DOCUMENT REQUEST NO. 26 - UTAH Z: DEIS 8-9 lines 47-48, and 8-10 line 1: "From an economic perspective, the net benefit of the proposed PFSF is directly proportional to the quantity of SNF shipped to the facility. The scenarios evaluated by the staff indicate the potential for a net positive benefit." Please provide a list of documents reviewed by the Staff to support these sentences.

DOCUMENT REQUEST NO. 27 - UTAH Z: DEIS 8-10 lines 19-23. Please provide all documents supporting the statement that if PFS is not licensed, "it could lead to cessation of the power generating activities . . . at one or more nuclear power plants."

DOCUMENT REQUEST NO. 28 - UTAH Z: DEIS 8-10 lines 19-23. Please provide all documents that show or indicate that were a power reactor to close before the expiration of its license term that this would inevitably have a net adverse impact from "a societal perspective." See DEIS at 8-1 lines 22-23.

DOCUMENT REQUEST NO. 29 - UTAH Z: In 64 FR 68005, 68006 (*Waste Confidence Decision Review Status*) (December 6, 1999), the NRC said, "the NRC is reviewing an application for an away-from-reactor Independent Spent Fuel Storage Installation

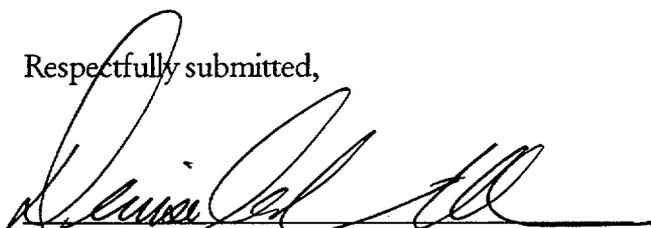
(ISFSI), *and a second application is expected in fiscal year 2000.*" (Emphasis added). Please provide all documents that identify or discuss this second off-site ISFSI.

DOCUMENT REQUEST NO. 30 - UTAH Z: Refer to Document Request No. 29. Please provide all documents relating in any way to the impact of a second off-site ISFSI on the benefits and costs associated with the PFS facility, especially in light of the Staff's statement that the net benefits of the PFS facility are "directly proportional" to the quantity of SNF shipped to the facility." DEIS 8-9 lines 47-48.

DOCUMENT REQUEST NO. 31 - UTAH Z: DEIS Chapter 8 generally. Please provide all documents relating in any way to the Staff's presentation, assumptions and conclusions in chapters 8 and 9 if the geologic repository were to be built other than at Yucca Mountain.

DATED this 14th day of September, 2000.

Respectfully submitted,



Denise Chancellor, Assistant Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S EIGHTH SET OF DISCOVERY REQUESTS DIRECTED TO THE NRC STAFF was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 14th day of September, 2000:

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

Denise Chancellor
Assistant Attorney General
State of Utah