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September 27, 2000

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via email (set@nrc.gov) and First Class Mail

re: Staff's Response to State of Utah's Eighth Set of Discovery to the Staff, Contention Z
Private Fuel Storage ISFSI, Docket No. 72-22

Dear ~~Mr. Turk~~ Sherwin:

This letter addresses the inadequacies in the Staff's September 25, 2000 response to State's Eight Set of discovery relating to Contention Utah Z.

The Eighth Set of Discovery consisted of five requests for admission and 31 documents requests. The Staff's response consisted of objections to all requests for admission and 28 of the 31 document requests.

The State takes issue at the narrowness of the Staff's reading of the scope of Contention Z for purpose of discovery. The Staff has analyzed Contention Z as if it were being admitted for hearing rather than addressing discovery in terms of relevance. *See* Commonwealth Edison Co (Zion Station, Units 1 & 2), ALAB-185, 7 AEC 240 (1974) (The test as to whether particular matters are discoverable is one of "general relevancy." This test will be easily satisfied unless it is clear that the evidence sought can have no possible bearing on the issues.). The State has cited to portions of the DEIS which have a bearing on Contention Z, the no action alternative. Furthermore, the Board's decision not to admit certain Utah contentions does not in an of itself limit the scope of discovery on an admitted contention. The test is "relevance" and "possible bearing" on the issues of the admitted contention. In addition, merely because a request mentions the word "cost" does not mean that the issue should be relegated to Contention CC which was not admitted by the Board.

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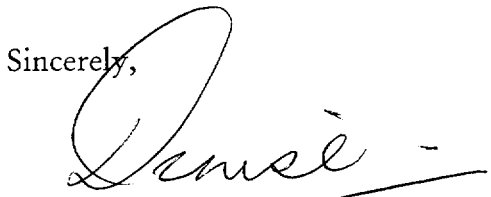
The discussion in my September 18, 2000 letter to you regarding the deficiencies in the Staff's response to the State's seventh set of discovery, is also relevant here.

It is obvious that the State and the Staff have a fundamental disagreement on what constitutes legitimate discovery on Contention Z. The State will pursue a Motion to Compel the Staff to respond to the five requests for admission and Documents Requests 1-7, 8, 10, and 12-31.

I am always willing to discuss the issues with you, particularly if you think we can reach resolution on any of unanswered discovery requests.

Sincerely,



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