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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE COMMISSIONERS

In the Matter of:)	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, LLC)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel)	November 10, 2000
Storage Installation))	

STATE OF UTAH'S PARTIAL INTERLOCUTORY APPEAL OF LBP-00-28

The State of Utah hereby submits this partial interlocutory appeal of LBP-00-28, Memorandum and Order (Denying Request to Admit Late-Filed Contentions Utah LL Through Utah OO) (October 30, 2000). The State requests the Commission to take up consideration of the issues raised in the attached Motion for Partial Reconsideration of LBP-00-28 (November 10, 2000), in the event that the motion is denied by the Licensing Board.

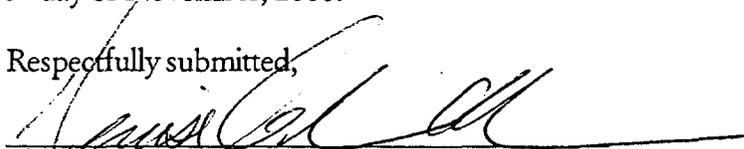
The Board has completely dismissed three significant environmental contentions, on the ground that the State was six days late in meeting a Board-imposed thirty day deadline for late-filed contentions. In short, the Board imposed the harshest possible sanction for the State's error in missing the deadline, despite the facts that (a) the delay had no adverse effect on the already-established schedule for environmental issues, (b) the State demonstrated extenuating circumstances, (c) the State had no history of chronic dilatory behavior, and (d) 10 C.F.R. § 51.73 affords a 45 day comment period on draft Environmental Impact Statements. In making this ruling, the Board disregarded statements of Commission policy and representations to the U.S. Court of Appeals, that the late-filing standard will be interpreted generously, with regard to whether the lateness causes any actual harm, the

circumstances if the case, and whether there has been a pattern of dilatory behavior that warrants the imposition of such sanctions. The State submits that in its zeal to conform to the Commission's guidance in CLI-98-12, 48 NRC 18 (1998), regarding the need for speed and efficiency in NRC proceedings, the Board has overstepped the bounds of its discretion.

The Board's ruling should be reviewed now because it will have a pervasive and unusual effect on the proceeding in three respects. First, it completely denies the State the right to litigate any of its concerns regarding the adequacy of the crucial environmental decision-making document in this case, the draft EIS for the Private Fuel Storage (PFS) facility. It thereby severely injures the State's right to participate in this proceeding under the National Environmental Policy Act. Second, LBP-00-28 erroneously interprets CLI-98-12 to require it to impose the strongest possible sanctions for missed deadlines, without regard to the harm caused by the infraction, the offending party's conduct in the past, or the context of the situation. This unduly restrictive interpretation of Commission policy could have a pervasive and highly adverse effect on the State during the course of the PFS proceeding. Third, without any record support, LBP-00-28 casts the State as a party that scoffs at or cavalierly ignores Board deadlines and therefore deserves the sternest punishment as a corrective. This unfounded and unfair ruling should be corrected lest it become a precedent that justifies further, even harsher procedural rulings against the State.

DATED this 10th day of November, 2000.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S PARTIAL INTERLOCUTORY APPEAL OF LBP-00-28 was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 10th day of November, 2000:

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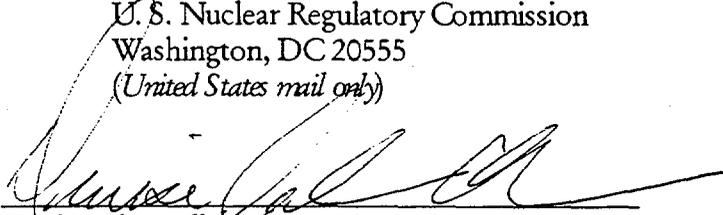
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