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USNRC

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September 27, 2001

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

The Commissioners  
U.S. Nuclear Regulatory Commission  
Mail Stop O-16 G15  
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11555 Rockville Pike  
Rockville, MD 20852-2738

Re: SECY-98-126 and the Private Fuel Service Licensing Proceeding, Docket No. 72-22

Dear Commissioners:

The State has just learned that the NRC Staff has sent, or is about to send, to the Commissioners a proposed change to the Rulemaking Plan, SECY-98-126, Geological and Seismological Characteristics for Siting and Design of Dry Cask ISFSIs, 10 CFR Part 72.

The State has not seen the changes to the Rulemaking Plan but suspects that the Staff is asking the Commissioners to approve a change to the Rulemaking Plan that would sustain the position which the Staff has taken in its recommendation to approve an exemption from 10 CFR § 72.102(f)(1) requested by Private Fuel Storage ("PFS"). The State has severely criticized the technical bases underlying the Staff's rationale supporting the exemption.

The purpose of this letter is to put the Commissioners on notice that proposed changes to the Rulemaking Plan are issues that have been committed to adjudication in a properly noticed formal adjudicatory hearing before the Atomic Safety and Licensing Board. The State is concerned that the Staff is attempting to inappropriately, and possibly illegally, gain support for its position through rulemaking and undermine the on-going adjudicatory process.

The State requests the Commissioners, in their deliberations and considerations regarding change the Rulemaking Plan, SECY-98-126, take into account the site-specific issues being litigated before the Licensing Board and the State's vested right to a full and fair hearing on this issue.

Best regards,

Dianne R. Nielson, Ph.D.  
Executive Director

cc: PFS Service List (attached)

Template = SECY-043

SECY-02

September 27, 2001

Page 2

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September 27, 2001

Page 3

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