

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
PRIVATE FUEL STORAGE, LLC)	Docket No. 72-22-ISFSI
)	
(Independent Spent)	
Fuel Storage Installation))	

NRC STAFF'S OBJECTIONS AND RESPONSES
TO THE "STATE OF UTAH'S TWELFTH SET OF
DISCOVERY REQUESTS DIRECTED TO THE NRC STAFF"

INTRODUCTION

On September 18, 2001, the State of Utah ("State") filed the "State of Utah's Twelfth Set of Discovery Requests Directed to the NRC Staff" ("Twelfth Request"), concerning the application for an Independent Spent Fuel Storage Installation ("ISFSI") filed by Private Fuel Storage, L.L.C. ("PFS" or "Applicant"). In its Request, the State filed (a) 29 requests for admission, and (b) 19 document requests concerning Contention Utah L, Part B (seismic exemption). Pursuant to an extension of time for responses agreed to by the State, the NRC Staff ("Staff") hereby files its objections and responses to the State's Twelfth Request, as follows.¹

GENERAL OBJECTIONS

Objection 1. The Staff objects to each of the State's discovery requests, in that the State has not complied with the Commission's regulations that govern discovery from the Staff. In this regard, it is well established that discovery against the Staff rests on a different footing than discovery in general. *Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-634, 13 NRC

¹ The Staff's answers to the State's requests for admissions are supported by the Affidavits of Michael D. Waters and Allen G. Howe, attached hereto; objections are stated by Counsel. Documents will be produced or identified on October 5, 2001, as agreed by the State.

96, 97-98 (1981). While discovery from parties in an NRC adjudicatory proceeding is generally governed by the provisions of 10 C.F.R. § 2.740 *et seq.*, interrogatory and document discovery against the Staff is governed by the provisions of 10 C.F.R. §§ 2.720(h)(ii)-(iii), 2.744 and 2.790.² These regulations establish certain limits to the Staff's obligation to respond to discovery requests. In particular, with regard to requests for the production of documents, the Commission's rules provide:

(a) A request for the production of an NRC record or document not available pursuant to 10 C.F.R. § 2.790 . . . shall set forth the records or documents requested, either by individual item or by category, and shall describe each item or category with reasonable particularity and shall state why that record or document is relevant to the proceeding.

(b) If the Executive Director for Operations objects to producing a requested record or document on the ground that (1) it is not relevant or (2) it is exempted from disclosure under § 2.790 and the disclosure is not necessary to a proper decision in the proceeding or the document or the information therein is reasonably obtainable from another source, he shall so advise the requesting party.

10 C.F.R. § 2.744(b).³

Moreover, it is an adequate response to *any* discovery request for a party to state that the information or document requested is available in the public domain and to provide information to locate the material requested. 10 C.F.R. § 2.740(b)(1); *accord*, *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No. 1), CLI-79-8, 10 NRC 141, 147-148 (1979).

² See also 10 C.F.R. §§ 2.740(f)(3), 2.740a(j), 2.740b(a), and 2.741(e) (excluding discovery from the Staff from the general provisions of those regulations).

³ The rule further provides for application by the requesting party to the presiding officer to compel production of the documents, where the movant shows that the document is relevant to the issues in the proceeding; and the document is not exempt from disclosure under 10 C.F.R. § 2.790 -- or, if exempt, that the document or information is necessary to a proper decision in the proceeding and is not reasonably obtainable from another source. 10 C.F.R. §§ 2.744(c)-(d). Additionally, 10 C.F.R. § 2.744(e) provides a framework for limited disclosure (under a protective order) of documents exempt from disclosure under 10 C.F.R. § 2.790, upon a finding by the presiding officer that such disclosure is necessary to a proper decision in the proceeding. *Cf.* 10 C.F.R. § 2.740(c).

Here, the State has not complied with the Commission's requirements governing discovery against the Staff. First, the State has not indicated that the requested documents and information are not available in the public domain. Indeed, some of the documents requested by the State are available to the public in the Commission's Public Document Room (PDR), or have previously been provided to the State. Further, the State has not indicated that the requested information and documents are exempt from disclosure under 10 C.F.R. § 2.790 or that it can not obtain the documents from public sources. Similarly, to the extent that any documents may be exempt from disclosure, such as the documents requested by the State concerning the NRC's rulemaking process and the development of a rulemaking approach, the State has not explained why any such exempt items are necessary to a proper decision in the proceeding.⁴

Objection 2. The Staff objects to each of the State's discovery requests, insofar as they request information that is not relevant to the issues in this proceeding and/or that exceeds the scope of admitted contention Utah L, Part B (seismic stability) in this proceeding.

Objection 3. The Staff objects to the State's discovery requests insofar as they relate to matters which are outside the jurisdiction of the NRC and/or are beyond the proper scope of this proceeding.

Objection 4. The Staff objects to each of the State's discovery requests, insofar as they seek to impose an obligation to respond that is different from or greater than the obligations imposed by Commission requirements in 10 C.F.R. Part 2. See, e.g., "Instruction B" ("Supplemental Responses") (Request at 2).

Objection 5. The Staff objects to each of the State's discovery requests, insofar as they may request information or documents from the "Nuclear Regulatory Commission," "NRC," or other

⁴ In addition, to the extent that the instant discovery requests seek information that has been withheld from public disclosure as PFS' proprietary information, the State has been afforded access to that material by the Applicant under a confidentiality agreement, and the State has shown no reason why it could not obtain the requested information from the Applicant.

persons or entities who are not NRC Staff members or consultants in this proceeding. See, e.g., “Definition A” (Request at 3). The NRC and persons other than Staff members (e.g., Commissioners, Commissioners’ Assistants, Licensing Board members, ACRS members, etc.) are not parties to this proceeding and are not properly subject to the State’s requests for discovery in this proceeding.

Objection 6. The Staff objects to each of the State’s discovery requests, insofar as they request personal information such as the home address and telephone numbers of persons employed by or affiliated with the Staff, and which may be protected from disclosure under 10 C.F.R. § 2.790(a). See, e.g., “Definition E.1” (“describe or “identify”) (Request at 5).

Objection 7. The Staff objects to each of the State’s discovery requests, insofar as they may request intra-agency memoranda, notes and other pre-decisional materials; or information or documents protected under the attorney-client privilege, the doctrines governing the disclosure of attorney work product and trial preparation materials, and/or any other privilege or exemption that warrants or permits the non-disclosure of documents under the Freedom of Information Act, as set forth in 10 C.F.R. § 2.790(a). Notwithstanding this objection, the Staff states that it will prepare a privilege log to identify documents that are sought to be withheld from discovery as privileged or exempt from disclosure, and will produce that log to the State.

Objection 8. The Staff objects to each of the State’s discovery requests, insofar as they request information concerning the NRC’s internal rulemaking process and the development of a generic Part 72 seismic rulemaking approach, which matters are not relevant to the issues in this proceeding and/or exceed the scope of admitted contention Utah L, Part B (seismic stability); further, the State has not explained why any such exempt items are necessary to a proper decision in the proceeding.

Objection 9. The Staff objects to each of the State’s discovery requests, insofar as they may pertain to Contention Utah L, Part A (geotechnical), which is an issue that has previously been

the subject of discovery and is not currently subject to discovery under the Licensing Board's scheduling orders in this proceeding. See, e.g., "Attachment A" to "Order (General Schedule Revisions)," dated September 20, 2001 (discovery against the Staff on Contention Utah L, Part A, has been completed, except as to new matters for which discovery commences January 2, 2002).

RESPONSES TO DISCOVERY REQUESTS

Notwithstanding the above objections to the State's Twelfth Request, and without waiving these objections or its right to interpose these or other objections in the future, the Staff hereby states the following additional objections and responses to the State's Request.

CONTENTION UTAH L, PART B - Geotechnical

A. Requests for Admissions

REQUEST FOR ADMISSION NO. 1. Do you admit that NRC is conducting a case study of the exemption to the design earthquake requirements in 10 CFR § 72.102(f)(1) for the Three Mile Island Unit 2 Independent Spent Fuel Storage Installation (ISFSI) at INEEL ("INEEL exemption case study")?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (1) is vague and ambiguous in its use of the phrase, "a case study of the exemption . . .," and (2) is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Notwithstanding these objections, the Staff states as follows: Yes.

REQUEST FOR ADMISSION NO. 2. Do you admit that the INEEL exemption case study commenced in 2001?

STAFF RESPONSE. See Response to Request for Admission No. 1, *supra*.

REQUEST FOR ADMISSION NO. 3. Do you admit that NRC held a public meeting, in Rockville, Maryland, relating to the INEEL exemption case study on or about July 31, 2001?

STAFF RESPONSE. See Response to Request for Admission No. 1, *supra*.

REQUEST FOR ADMISSION NO. 4. Do you admit that NRC granted the ISFSI at INEEL an exemption from 10 CFR § 72.102(f)(1), in part, because without the exemption, the INEEL ISFSI would have had to meet a higher design basis standard than the one used for an existing higher-risk nuclear facility at the ISFSI host site?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (1) is vague and ambiguous in its failure to identify either the standard, the facility, or the risk referred to in the phrase “the one used for an existing higher-risk nuclear facility at the ISFSI host site,” (2) is improperly argumentative, (3) constitutes an improper compound and confusing question, and (4) is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding.

REQUEST FOR ADMISSION NO. 5. Do you admit that the Staff is continuing to pursue rulemaking on the Rulemaking Plan: Geological and Seismological Characteristics for Siting and Design of Dry Cask Independent Spent Fuel Storage Installations, SECY-98-126?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (1) is vague and ambiguous insofar as it uses the phrase “is continuing to pursue rulemaking on the Rulemaking Plan: . . . SECY-98-126,” (2) is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding, and (3) seeks to discover draft, predecisional or privileged information that is exempt from disclosure under 10 C.F.R. § 2.790. Notwithstanding these objections, the Staff notes that it has submitted to the Commission a proposed modification of the approved Rulemaking Plan in SECY-98-126.

REQUEST FOR ADMISSION NO. 6. Do you admit that the Staff is not continuing to pursue rulemaking on the Rulemaking Plan: Geological and Seismological Characteristics for Siting and Design of Dry Cask Independent Spent Fuel Storage Installations?

STAFF RESPONSE. See Response to Request for Admission No. 5, *supra*.

REQUEST FOR ADMISSION NO. 7. Do you admit that the Staff is now proposing to amend any section of 10 CFR Part 72 relating to geological and seismological characteristics for siting and design of dry cask ISFSIs in a way that would differ substantively from SECY-98-126?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (1) is vague and ambiguous insofar as it uses the phrase “is now proposing to amend any section of 10 CFR Part 72 . . . ,” and the phrase “differ substantively,” (2) is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding, and (3) seeks to discover draft, predecisional or privileged information that is exempt from disclosure under 10 C.F.R. § 2.790. Notwithstanding these objections, the Staff notes that it has submitted to the Commission a proposed modification of the approved Rulemaking Plan in SECY-98-126.

REQUEST FOR ADMISSION NO. 8. Do you admit that the Staff has produced in draft form during 2001 or 2000 new geological and/or seismological standards for the siting and/or design of dry cask ISFSIs?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (1) is vague and ambiguous insofar as it uses the phrase “new geological and/or seismological standards . . . ,” (2) is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, (3) constitutes an improper compound question, and (4) seeks to discover draft, predecisional or privileged information that is exempt from disclosure under 10 C.F.R. § 2.790.

REQUEST FOR ADMISSION NO. 9. Do you admit that the Staff intends to revise any section of 10 CFR Part 72 relating to geological and seismological characteristics for siting and design of dry cask ISFSIs in order to allow use of a probabilistic seismic hazard analysis (PSHA) and a 10,000 year return period for design-basis ground motions?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (1) is vague and confusing insofar as it seeks to discover whether “the Staff intends to revise . . . ,” in that any

intent to revise an NRC regulation is within the province of the Commission, (2) seeks to discover information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and (3) seeks to discover draft, predecisional or privileged information that is exempt from disclosure under 10 C.F.R. § 2.790.

REQUEST FOR ADMISSION NO. 10. Do you admit that the Staff intends to revise any section of 10 CFR Part 72 relating to geological and seismological characteristics for siting and design of dry cask ISFSIs in order to allow use of a PSHA and a 2,000 year return period for design-basis ground motions?

STAFF RESPONSE. See Response to Request for Admission No. 9, *supra*.

REQUEST FOR ADMISSION NO. 11. Do you admit that the Staff intends to revise any section of 10 CFR Part 72 relating to geological and seismological characteristics for siting and design of dry cask ISFSIs located west of the Rocky Mountain Front (west of approximately 104° west longitude) in order to allow use of a PSHA and a 10,000 year return period for design-basis ground motions?

STAFF RESPONSE. See Response to Request for Admission No. 9, *supra*.

REQUEST FOR ADMISSION NO. 12. Do you admit that the Staff intends to revise any section of 10 CFR Part 72 relating to geological and seismological characteristics for siting and design of dry cask ISFSIs located west of the Rocky Mountain Front (west of approximately 104° west longitude) in order allow use of a PSHA and a 2,000 year return period for design-basis ground motions?

STAFF RESPONSE. See Response to Request for Admission No. 9, *supra*.

REQUEST FOR ADMISSION NO. 13. Do you admit that NRC is expediting rulemaking to amend any section of 10 CFR Part 72 relating to geological and seismological characteristics for siting and design of dry cask ISFSIs?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (1) is vague and ambiguous insofar as it uses the phrase “expediting rulemaking,” (2) is unduly broad and burdensome, in that it is not limited in time or any other specific parameters, (3) seeks to discover

draft, predecisional or privileged information that is exempt from disclosure under 10 C.F.R. § 2.790, and (4) seeks to discover information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding.

REQUEST FOR ADMISSION NO. 14. Do you admit that the Advisory Committee on Nuclear Waste will provide technical assistance to the Staff in revising any section of 10 CFR Part 72 relating to geological and seismological characteristics for siting and design of dry cask ISFSIs?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (1) is vague and ambiguous in its use of the phrase “technical assistance,” and (2) seeks to discover information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Notwithstanding these objections, the Staff states as follows: No.

REQUEST FOR ADMISSION NO. 15. Do you admit that the Staff has sent to experts in the field for their review, during 2001 or 2000, a copy of new draft standards relating to geological and seismological characteristics for siting and design of dry cask ISFSIs?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (1) is vague and ambiguous insofar as it uses the phrase “experts in the field” and the phrase “new draft standards relating to geological and seismological characteristics for siting and design . . .,” (2) constitutes an improper compound question, (3) seeks to discover draft, predecisional or privileged information that is exempt from disclosure under 10 C.F.R. § 2.790, and (4) seeks to discover information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding.

REQUEST FOR ADMISSION NO. 16. Do you admit that the Staff has sent to any PFS-named expert for Contention Utah L, during 2001 or 2000, a copy of new draft standards relating to geological and seismological characteristics for siting and design of dry cask ISFSIs?

STAFF RESPONSE. See Response to Request for Admission No. 15, *supra*. Further, the Staff objects to this request on the grounds that it is vague and ambiguous insofar as it uses the phrase “any PFS-named expert for Contention Utah L.”

REQUEST FOR ADMISSION NO. 17. Do you admit that the Staff has received, during 2001 or 2000, review comments from experts about new draft standards relating to geological and seismological characteristics for siting and design of dry cask ISFSIs?

STAFF RESPONSE. See Response to Request for Admission No. 15, *supra*. Further, the Staff objects to this request on the grounds that it is vague and ambiguous insofar as it uses the phrases, “review comments,” “experts,” and/or “new draft standards relating to geological and seismological characteristics for siting and design”

REQUEST FOR ADMISSION NO. 18. Do you admit that the Staff intends to recommend on or before the end of 2001 that the Commission approve revisions to 10 CFR Part 72 relating to geological and seismological characteristics for siting and design of dry cask ISFSIs?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (1) seeks to discover draft, predecisional or privileged information that is exempt from disclosure under 10 C.F.R. § 2.790, and (2) seeks to discover information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Notwithstanding these objections, the Staff states as follows: No.

REQUEST FOR ADMISSION NO. 19. Do you admit that the Waste Handling Facility at the surface at Yucca Mountain will be designed to withstand return-period ground motions of 10,000 years?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (1) constitutes an impermissible compound question, in that an application containing the design for a Waste Handling Facility at Yucca Mountain has not yet been filed with the Commission, (2) seeks to

discover information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding, and (3) the State has not demonstrated that the information requested could not have been obtained from another source, including, without limitation, publicly available information at the U.S. Department of Energy pertaining to a proposed repository at Yucca Mountain.

REQUEST FOR ADMISSION NO. 20. Do you admit that the Waste Handling Facility at the surface at Yucca Mountain will have an expected life of 100 years?

STAFF RESPONSE. See Response to Request for Admission No. 19, *supra*.

REQUEST FOR ADMISSION NO. 21. Do you admit that PFS is applying for a license for a term of 20 years?

STAFF RESPONSE. The Staff objects to this request on the grounds that it seeks to discover information that is publicly available, and the State has not demonstrated that the requested information could not be obtained from another source, including, without limitation, PFS or documents filed in this proceeding. See 10 C.F.R. § 2.740(b)(1). Notwithstanding this objection, the Staff states as follows: Yes.

REQUEST FOR ADMISSION NO. 22. Do you admit that the planned life of the PFS facility is 40 years?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (1) is vague and ambiguous insofar as it uses the phrase “planned life,” and (2) the State has not demonstrated that the information requested could not be obtained from another source, including, without limitation, PFS or documents filed in this proceeding. See 10 C.F.R. § 2.740(b)(1).

REQUEST FOR ADMISSION NO. 23. Do you admit that PFS does not plan to have any strong-motion recorders at the proposed ISFSI site?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (1) seeks to discover information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding, and (2) the State has not demonstrated that the information requested could not have been obtained from another source, including, without limitation, PFS or documents filed in this proceeding. Notwithstanding these objections, the Staff states that it lacks sufficient information to admit or deny the statement contained in this request.

REQUEST FOR ADMISSION NO. 24. Do you admit that in the event of strong ground shaking PFS will be unable to determine whether design basis ground motions have been exceeded at the proposed ISFSI site?

STAFF RESPONSE. See Response to Request for Admission No. 23, *supra*.

REQUEST FOR ADMISSION NO. 25. Do you admit that the current NRC guidance governing probabilistic determination of design ground motions for nuclear power plants is, in part, contained in NRC Regulatory Guide 1.165?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (1) is vague and ambiguous, in its use of the phrase “the current NRC guidance” and the term “governing,” (2) seeks to discover information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding, and (3) the State has not demonstrated that the information requested could not have been obtained from another source,⁵ including, without limitation, documents located in the Commission’s PDR. Notwithstanding these objections, the Staff states as follows: Yes.

REQUEST FOR ADMISSION NO. 26. If a nuclear power plant were to be built at the proposed PFS site, and if the design ground motions for this plant were to be determined probabilistically, do you

⁵ See, e.g., 10 C.F.R. § 2.740(b)(1) (a party may respond to discovery by stating that the information is available in the public domain and by providing information to locate the material requested.)

admit that NRC Regulatory Guide 1.165 would require the design ground motions to be based on an equal hazard response spectrum with a MEDIAN annual probability of exceedance of 1.0E-5 or to an alternative reference probability developed from risk considerations?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (1) is vague and ambiguous, (2) constitutes an impermissible and confusing compound question, (3) constitutes an improper hypothetical question which has no factual basis and calls for a speculative answer, (4) is improperly argumentative, (5) improperly suggests that an NRC regulatory guide establishes “requirements,” (6) seeks to discover information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding, and (7) the State has not demonstrated that the information requested could not have been obtained from another source, including, without limitation, Regulatory Guide 1.165.

REQUEST FOR ADMISSION NO. 27. If a nuclear power plant were to be built at the proposed PFS site, and if the design ground motions for this plant were to be determined probabilistically, do you admit that NRC Regulatory Guide 1.165 would require the design ground motions to be based on an equal hazard response spectrum with a MEAN annual probability of exceedance of 1.0E-5 or to an alternative reference probability developed from risk considerations?

STAFF RESPONSE. See Response to Request for Admission No. 26, *supra*.

REQUEST FOR ADMISSION NO. 28. Do you admit that PFS has not submitted to NRC an analysis of whether PFS can meet the radiological requirement of 10 CFR § 72.104(a) under a PSHA using a 2,000 year return period?

STAFF RESPONSE. The Staff objects to this request on the grounds that it (1) is vague and confusing, insofar as it uses the term “NRC,” (2) constitutes an impermissible compound question, insofar as it is incorrectly predicated upon an assertion that 10 C.F.R. § 72.104(a) contains requirements pertaining to a design earthquake, (3) is improperly argumentative, (4) seeks to discover information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding, and (5) the State has not demonstrated that

the information requested could not have been obtained from another source, including, without limitation, PFS or documents filed in this proceeding. See 10 C.F.R. § 2.740(b)(1).

REQUEST FOR ADMISSION NO. 29. Do you admit that NRC has not conducted an independent study of whether PFS can meet the radiological requirement of 10 CFR § 72.104(a) under a PSHA using a 2,000 year return period?

STAFF RESPONSE. See Response to Request for Admission No. 28, *supra*.

B. Document Requests

DOCUMENT REQUEST NO. 1. Please provide all documents relating to Requests for Admission 1-29.

STAFF RESPONSE. The Staff objects to this request, to the extent and for the reasons set forth in response to Requests for Admission 1-29 above, which objections are hereby incorporated by reference in response to this request. Further, the Staff objects to this Request on the grounds that it (1) is vague and ambiguous and/or unduly broad and irrelevant, and (2) seeks to discover draft, predecisional or privileged information that is exempt from disclosure under 10 C.F.R. § 2.790. Notwithstanding these objections, documents will be produced to the extent that such documents (a) are not objected to, (b) are not otherwise available from other sources, and (c) are not draft, predecisional and/or privileged documents that are exempt from disclosure under 10 C.F.R. § 2.790, in which case they will be identified in a privilege log.

DOCUMENT REQUEST NO. 2. Please provide all documents used to respond to Requests for Admission 1-29.

STAFF RESPONSE. See Response to Document Request No. 1, *supra*.

DOCUMENT REQUEST NO. 3. Please provide all documents relating to the INEEL exemption case study. See Request for Admission No. 1.

STAFF RESPONSE. The Staff objects to this request, to the extent and for the reasons set forth in response to Requests for Admission 1-4 above, which objections are hereby incorporated by reference in response to this request. Further, the Staff objects to this Request on the grounds that it is vague and ambiguous and/or unduly broad and irrelevant. Notwithstanding these objections, documents will be produced to the extent that such documents (a) are not objected to herein, (b) are not otherwise available from other sources, and (c) are not draft, predecisional and/or privileged documents that are exempt from disclosure under 10 C.F.R. § 2.790, in which case they will be identified in a privilege log.

DOCUMENT REQUEST NO. 4. Please provide all documents, including meeting reports, meeting write-ups, transcripts, or the like, for the NRC meeting relating to the INEEL exemption case study held on or about July 31, 2001.

STAFF RESPONSE. See Response to Document Request No. 3, *supra*.

DOCUMENT REQUEST NO. 5. Please provide all documents relating to the development of the Rulemaking Plan SECY 98-126.

STAFF RESPONSE. The Staff objects to this Request on the grounds that it (1) is vague and ambiguous, (2) is unduly broad and burdensome, in that this request could include any documents that refer or relate to SECY-98-126 or the subjects addressed therein, including documents relating to the administrative or procedural steps followed in developing SECY-98-126, (3) seeks to discover draft, predecisional or privileged information that is exempt from disclosure under 10 C.F.R. § 2.790, (4) seeks to discover information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding, and (5) the State has not demonstrated that the documents requested could not have been obtained from another source, including, without limitation, files located in the Commission's PDR. See 10 C.F.R. § 2.740(b)(1).

DOCUMENT REQUEST NO. 6. Please provide all documents relating to the development of revisions to the Rulemaking Plan SECY 98-126.

STAFF RESPONSE. See Response to Document Request No. 5, *supra*.

DOCUMENT REQUEST NO. 7 Please provide all documents relating to proposed revisions to 10 CFR Part 72, other than the revisions proposed in SECY 98-126, relating to geological and seismological characteristics for siting and design of dry cask ISFSIs.

STAFF RESPONSE. See Response to Document Request No. 5, *supra*. In addition to the objections stated therein, the Staff objects to this request as being overly broad and burdensome, in that the request is altogether unbounded by any time or other specific parameters and could require the production of all documents pertaining to the seismological and/or geological characteristics of numerous independent spent fuel storage installations throughout the United States.

DOCUMENT REQUEST NO. 8. Please provide a copy of any document the Staff has produced during 2001 or 2000, either itself or under its direction in draft form, that proposes new geological and/or seismological standards for the siting and/or design of dry cask ISFSIs.

STAFF RESPONSE. The Staff objects to this Request on the grounds that it (1) is vague and ambiguous insofar as it uses the phrase, "new geological and/or seismological standards,"(2) seeks to discover draft, predecisional or privileged information that is exempt from disclosure under 10 C.F.R. § 2.790, (3) seeks to discover information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding, and (4) the State has not demonstrated that the documents requested could not have been obtained from another source, including, without limitation, files located in the Commission's PDR. See 10 C.F.R. § 2.740(b)(1).

DOCUMENT REQUEST NO. 9. Please provide all documents relating to expediting rulemaking to revise any section of 10 CFR Part 72 relating to geological and seismological characteristics for siting and design of dry cask ISFSIs.

STAFF RESPONSE. The Staff objects to this Request on the grounds that it (1) is vague and ambiguous insofar as it uses the phrase, “expediting rulemaking,” (2) is unduly broad and burdensome, in that it is not limited in time or any other specific parameters, (3) seeks to discover draft, predecisional or privileged information that is exempt from disclosure under 10 C.F.R. § 2.790, (4) seeks to discover information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding, and (5) the State has not demonstrated that the documents requested could not have been obtained from another source, including, without limitation, files located in the Commission’s PDR. See 10 C.F.R. § 2.740(b)(1).

DOCUMENT REQUEST NO. 10. Please provide a list of the name and affiliation of all recipients who were sent, during 2001 or 2000, NRC’s new draft seismic standards for dry cask ISFSIs.

STAFF RESPONSE. The Staff objects to this Request on the grounds that (1) it is vague and ambiguous insofar as it uses the phrase, “NRC’s new draft seismic standards”; (2) constitutes an improper compound question, insofar as it is predicated upon an assertion that the Staff had developed “new draft seismic standards,” (3) is overly broad and unduly burdensome insofar as it seeks to discover the names of any recipients of unidentified documents, regardless of whether the person who provided the copies was or was not employed by the NRC Staff, (4) seeks to discover draft, predecisional or privileged information that is exempt from disclosure under 10 C.F.R. § 2.790, (5) seeks to discover information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding, and (6) the State has not demonstrated that the information requested could not have been obtained from another source, including, without limitation, files located in the Commission’s PDR. See 10 C.F.R. § 2.790(b)(1).

DOCUMENT REQUEST NO. 11. Please provide a mailing list of all persons to whom NRC distributed during 2001 or 2000 its new draft seismic standards for dry cask ISFSIs.

STAFF RESPONSE. See Response to Document Request No. 10, *supra*.

DOCUMENT REQUEST NO. 12. Please provide a copy of all correspondence between the NRC Staff and the Advisory Committee on Nuclear Waste relating to proposed changes to the seismic requirements of Part 72, other than the revisions proposed in SECY 98-126.

STAFF RESPONSE. The Staff objects to this Request on the grounds that it (1) is vague and ambiguous, in that it does not identify the “proposed changes to the seismic requirements of Part 72” that are referred to in the request, (2) constitutes an improper compound question, insofar as it is predicated upon an assertion that any such proposed changes exist, (3) is overly broad and burdensome, in that it lacks any limitation on the time period or other specific parameters, (4) seeks to discover draft, predecisional or privileged information that is exempt from disclosure under 10 C.F.R. § 2.790, (5) seeks to discover information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence in this proceeding, and (6) the State has not demonstrated that the information requested could not be obtained from another source, including, without limitation, files located in the Commission’s PDR. See 10 C.F.R. § 2.740(b)(1).

DOCUMENT REQUEST NO. 13. Please provide all documents relating to comments received during 2001 or 2000 on NRC’s new draft seismic standards for dry cask ISFSIs.

STAFF RESPONSE. See Response to Document Request No. 10, *supra*.

DOCUMENT REQUEST NO. 14. Please provide all documents relating to NRC’s approval of PFS’s use of a PSHA with a return period of 2,000 years.

STAFF RESPONSE. The Staff objects to this request on the grounds that it is vague and ambiguous in its use of the terms “NRC” and “approval,” (2) constitutes an impermissible

compound question, insofar as it is predicated upon an assertion that the “NRC” has approved PFS’s use of a PSHA with a return period of 2,000 years, (3) seeks to discover draft, predecisional or privileged information that is exempt from disclosure under 10 C.F.R. § 2.790, (4) seeks to discover information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding, and (5) the State has not demonstrated that the information requested could not have been obtained from another source, including, without limitation, PFS or documents filed in the PFS proceeding. Notwithstanding these objections, documents concerning the Staff’s approval of the PFS seismic exemption request, documented in the Safety Evaluation Report for the PFS facility, will be produced to the extent that such documents (a) are not otherwise available from other sources or have not been produced to the State previously, or (b) are not draft, predecisional and/or privileged documents that are exempt from disclosure under 10 C.F.R. § 2.790, in which case they will be identified in a privilege log.

DOCUMENT REQUEST NO. 15. Please provide all documents relating to any analysis of whether PFS can meet the radiological standards in 10 CFR § 72.104(a) under a PSHA using a 2,000 year return period.

STAFF RESPONSE. The Staff objects to this request on the grounds that it (1) constitutes an improper compound question insofar as it asserts that 10 C.F.R. § 72.104(a) establishes requirements that pertain to a design earthquake, (2) is improperly argumentative, (3) seeks to discover draft, predecisional or privileged information that is exempt from disclosure under 10 C.F.R. § 2.790, and (4) seeks to discover information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding.

DOCUMENT REQUEST NO. 16. Please provide all Staff documents relating to the issue of strong-motion recorders at the PFS site.

STAFF RESPONSE. The Staff objects to this request on the grounds that it (1) seeks to discover information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding, and (2) the State has not demonstrated that the information requested could not have been obtained from another source, including, without limitation, PFS or documents filed in the PFS proceeding.

Respectfully submitted,

/RA/

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 3rd day of October 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PRIVATE FUEL STORAGE L.L.C.) Docket No. 72-22-ISFSI
)
(Independent Spent)
Fuel Storage Installation))

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S OBJECTIONS AND RESPONSES TO THE 'STATE OF UTAH'S TWELFTH SET OF DISCOVERY REQUESTS DIRECTED TO THE NRC STAFF'" in the above captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 3rd day of October, 2001:

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Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to GPB@NRC.GOV)

Office of the Secretary*
ATTN: Rulemakings and Adjudications
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Dr. Jerry R. Kline*
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Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
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/RA/

Sherwin E. Turk
Counsel for NRC Staff

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PRIVATE FUEL STORAGE, L.L.C.) Docket No. 72-22-ISFSI
)
(Independent Spent Fuel)
Storage Installation))

AFFIDAVIT OF MICHAEL D. WATERS

COUNTY OF MONTGOMERY)
) SS:
STATE OF MARYLAND)

Michael D. Waters, having first been duly sworn, does hereby state as follows:

1. I am employed as a Project Engineer in the Spent Fuel Project Office (SFPO), Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), in Washington, D.C.
2. I have reviewed the foregoing answers of the NRC Staff to Requests for Admission Nos. 1, 2, 3, 21, 23, 24 and 25, in the "State of Utah's Twelfth Set of Discovery Requests Directed to the NRC Staff," and verify that they are true and correct to the best of my knowledge, information and belief.

/RA/

Michael D. Waters

Sworn to before me this
3rd day of October, 2001

/RA/
Circe E. Martin

Notary Public

03/01/03

My commission expires: _____

Michael D. Waters

EDUCATION

M.S. Nuclear Engineering Sciences, University of Florida, 1995

B.S. Nuclear Engineering, University of Florida, 1993

WORK EXPERIENCE

U.S. NUCLEAR REGULATORY COMMISSION

May 1996 to Present Project Engineer, NMSS, Spent Fuel Project Office (SFPO)

Project Manager (PM): Schedule, coordinate, and prepare licenses, amendments, and approval certificates for several spent fuel storage installations, spent fuel storage and transportation cask designs, and transportation package designs. Coordinate multi-disciplined technical review teams to make regulatory findings on the adequacy of proposed designs. Develop NRC policy on assigned technical and licensing issues.

Technical Reviewer: Reviewed the adequacy of several spent fuel storage cask, storage facility, and transportation package designs primarily in the major technical disciplines of shielding, criticality, containment, radiological protection, and operating and maintenance procedures. Performed detailed technical reviews and conducted independent confirmatory analyses with state-of-the-art methods to determine compliance of proposed designs with 10 federal safety requirements in 10 CFR Parts 20, 71, and/or 72. Prepared written safety evaluations reports, federal rulemakings, and environmental assessments for assigned projects.

Major NRC Casework and Publications:

SFPO Project Manager (backup) for the Private Fuel Storage Facility (PFSF) license application review. Review team member for the PFSF environmental impact review.

SFPO Project Manager for the Fort St. Vrain independent spent fuel storage installation (ISFSI), Three Mile Island Unit 2 ISFSI, SPEC-300 transportation package, and MOX fresh fuel package.

Primary shielding and radiological safety reviewer of the HI-STAR 100 transportation cask design (Part 71), HI-STAR 100 storage cask design (Part 72), and HI-STORM 100 storage cask design (Part 72). Primary shielding, radiological safety, criticality, and/or containment reviewer of multiple other storage and transportation cask designs (Part 71 and 72).

Co-author of NUREG-1571, *"Information Handbook on Independent Spent Fuel Storage Installations,"* December 1996. Primary author of *"Reconsideration of Dose Assessments for Future Independent Spent Fuel Storage Installation Multi-Row Cask Arrays,"* Sixth International Conference on Nuclear Engineering.

UNIVERSITY OF FLORIDA

Jan 1993 - April 1996 Research Assistant/Graduate Student, Department of Nuclear Engineering Sciences

Responsibilities: Developed computer codes to analyze and evaluate the characteristics of industrial fuel designs and performed cost-benefit analyses to determine optimum fuel designs. Investigated the University's hazardous mixed waste problem, interviewed research laboratory personnel, identified root causes of waste generation, and determined inexpensive methods to mitigate waste.

OAK RIDGE INSTITUTE FOR SCIENCE AND EDUCATION

May 1993 - August 1993 Professional Intern, Oak Ridge National Laboratory
May 1992 - August 1992

Responsibilities: Performed various studies with the RELAP-5 thermal hydraulic code and commercial plotting software. Developed experiments and standard procedures, as part of a program to confirm criticality design features of the reactor spent fuel storage racks.

NRC AWARDS

NRC Special Act Award - August 5, 2001
NRC Performance Award - July 18, 2000
NRC Performance Award - March 18, 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PRIVATE FUEL STORAGE, L.L.C.) Docket No. 72-22-ISFSI
)
(Independent Spent Fuel)
Storage Installation))

AFFIDAVIT OF ALLEN G. HOWE

COUNTY OF MONTGOMERY)
) SS:
STATE OF MARYLAND)

Allen G. Howe, having first been duly sworn, does hereby state as follows:

1. I am employed as a Section Chief in the Rulemaking and Guidance Branch (RGB), Division of Industrial and Medical Nuclear Safety (IMNS), Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), in Washington, D.C.

2. I have reviewed the foregoing answers of the NRC Staff to Requests for Admission Nos. 5, 6, 7, 14 and 18, in the "State of Utah's Twelfth Set of Discovery Requests Directed to the NRC Staff," and verify that they are true and correct to the best of my knowledge, information and belief.

/RA/

Allen G. Howe

Sworn to before me this
3rd day of October 2001

/RA/

Circe E. Martin

Notary Public

03/01/03

My commission expires: _____

ALLEN G. HOWE

WORK EXPERIENCE:

- **U.S. NUCLEAR REGULATORY COMMISSION, WASHINGTON, D.C.**

7/00 to present Section Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards (NMSS)

12/98 to 6/00 Senior Nuclear Engineer, Spent Fuel Project Office (SFPO), NMSS

9/95 to 11/98 Nuclear Engineer, SFPO, NMSS

12/92 to 9/95 Reactor Operations Engineer, Inspection Policy Branch, Office of Nuclear Reactor Regulation (NRR)

- **U.S. NUCLEAR REGULATORY COMMISSION, REGION I, KING OF PRUSSIA, PA**

2/90 to 12/92 Resident Inspector, Division of Reactor Projects, NRC Region I

10/91 to 1/92 Senior Resident Inspector (Temporary), Division of Reactor Projects, NRC Region I

9/87 to 2/90 Senior Operations Engineer (Examiner), Division of Reactor Safety, NRC Region I

5/85 to 9/87 Operator Licensing Examiner, Division of Reactor Safety, NRC Region I

- **NORFOLK NAVAL SHIPYARD, PORTSMOUTH, VA**

8/80 to 5/85 Nuclear Shift Test Engineer, Test Engineering Division, Nuclear Engineering Department

EDUCATION:

May 1980 B.S. Nuclear Engineering, North Carolina State University, Raleigh, N.C.

OTHER QUALIFICATIONS:

- Professional Certifications:
 - 1) EIT, June 1980
 - 2) Nuclear Test Engineer for Naval S5W (PWR) Reactor Systems, Norfolk Naval Shipyard, April 1982
 - 3) Nuclear Test Engineer for Naval D2G (PWR) Reactor Systems, Norfolk Naval Shipyard, June 1982
 - 4) Boiling Water Reactor (BWR) Operator Licensing Examiner, USNRC, December 1985
 - 5) Non-Power Reactor Operator Licensing Examiner, USNRC, February 1986
 - 6) Region Based Inspector, USNRC, November 1988
 - 7) Resident Inspector, USNRC, December 1990