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USNRC

October 3, 2001

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OFFICE OF SECRETARY
RULEMAKINGS AND
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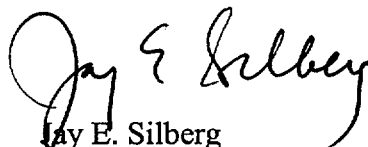
The Commissioners
U.S. Nuclear Regulatory Commission
Mail Stop O-16 G15
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Re: September 27, 2001 Letter from State of Utah Regarding SECY-98-126 and the Private Fuel Service Licensing Proceeding, Docket No. 72-22

Dear Commissioners:

This letter addresses the September 27, 2001, letter from Dianne R. Nielson, Executive Director for the State of Utah Department of Environmental Quality, to the Commission regarding the Rulemaking Plan for the Geological and Seismological Characteristics for Siting and Design of Dry Cask ISFSIs under 10 C.F.R. Part 72. In that letter, Ms. Neilson expressed concern that a change in the rulemaking plan about to be proposed by the Staff might undermine adjudication of the same issue (the appropriate seismic design standard for ISFSIs) in the Private Fuel Storage licensing proceeding. It is well established, however, under both judicial and NRC precedent, that the Commission may lawfully choose to resolve such generic issues either through rulemaking or adjudication. The Commission's discretion is not affected by an intervenor's attempt to raise those issues in an on-going licensing hearing. See, e.g., Baltimore Gas & Electric Co. v. Natural Resources Def. Council, 462 U.S. 87 (1983); Union of Concerned Scientists v. AEC, 499 F.2d 1069 (D.C. Cir. 1974). Moreover the State would always have the right to file comments on any rule proposed by the Commission. Accordingly, the concern expressed in Ms. Nielson's letter is misplaced.

Sincerely,


Jay E. Silberg

JES/pst
cc: PFS Service List

Template = SECY-043

SECY-02

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