

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

INTRODUCTION

In accordance with the Licensing Board's "Memorandum and Order (Ruling on Motion to Compel)," dated November 27, 2001, the NRC Staff ("Staff") hereby provides the following supplemental responses to the "State of Utah's Twelfth Set of Discovery Requests Directed to the NRC Staff" ("Twelfth Request"), dated September 18, 2001, concerning Contention Utah L, Part B; that contention concerns the seismic exemption request filed by Private Fuel Storage, L.L.C. ("PFS" or "Applicant") in connection with its application to construct and operate an Independent Spent Fuel Storage Installation ("ISFSI") on the Reservation of the Skull Valley Band of Goshute Indians. These responses supplement the "NRC Staff's Objections and Responses to the 'State of Utah's Twelfth Set of Discovery Requests Directed to the NRC Staff" ("Twelfth Response") dated October 3, 2001.¹

¹ The Staff's supplemental responses to the State's requests for admissions are supported by the Affidavits of John Stamatakos and Keith McDaniel, attached hereto; objections are stated by Counsel.

GENERAL OBJECTIONS

The Staff incorporates by reference and restates General Objections 1 through 9 as stated in the Staff's Twelfth Response, except insofar as the Licensing Board has ruled upon those objections in its Order of November 27, 2001, with respect to General Objections Nos. 7 and 8.

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 specified discovery requests in the State's Twelfth Request, as directed in the Licensing Board's Order of November 27, 2001.

CONTENTION UTAH L, PART B - Geotechnical

A. Requests for Admissions

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.

SUPPLEMENTAL RESPONSE. Notwithstanding the objections stated above, the Staff states as follows: No.

* * *

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.

SUPPLEMENTAL RESPONSE. Notwithstanding the objections stated above, the Staff states as follows: No. Any determination to revise the regulations in 10 C.F.R. Part 72 will be made following the publication of a proposed rule and the receipt of public comments in accordance with 10 C.F.R. § 2.804 *et seq.*

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*.

SUPPLEMENTAL RESPONSE. No. See Supplemental 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*.

SUPPLEMENTAL RESPONSE. No. See Supplemental 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*.

SUPPLEMENTAL RESPONSE. No. See Supplemental 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.

SUPPLEMENTAL RESPONSE. Notwithstanding the objections stated above, the Staff states as follows: No. However, in SECY-01-0178, issued approximately three years after the initial Rulemaking Plan was published in SECY-98-126, the Staff proposed “expedited” treatment of the rulemaking proceeding, to which the Commission did not object in its Staff Requirements Memorandum of November 19, 2001. It should be noted that the rulemaking proceeding will include publication of a proposed rule and an opportunity for public comments, in accordance with Commission practice and procedural requirements.

* * * *

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.

SUPPLEMENTAL RESPONSE. Notwithstanding the objections stated above, the Staff states as follows: No. The Staff admits, however, that its contractor ICF Incorporated (“ICF”) has sent draft regulatory standards and guidance relating to geological and seismic characteristics for dry cask ISFSIs to members of its expert panel for their review and comment.

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.”

SUPPLEMENTAL RESPONSE. Notwithstanding the objections stated above, the Staff states as follows: No. The Staff admits, however, that one member of ICF’s expert panel, to whom ICF appears to have sent such materials, was Dr. C. Allin Cornell, whom PFS has named as an expert witness in this license proceeding.

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”

SUPPLEMENTAL RESPONSE. Notwithstanding the objections stated above, the Staff states as follows: No. The Staff admits, however, that comments were received from one or more of the members of the expert panel assembled by ICF Incorporated, concerning one or more draft documents developed during the generic rulemaking effort.

* * * *

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 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.

SUPPLEMENTAL RESPONSE. Notwithstanding the objections stated above, the Staff states as follows: No.

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*.

SUPPLEMENTAL RESPONSE. Notwithstanding the objections stated above, the Staff states as follows: No.

B. Document Requests

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).

SUPPLEMENTAL RESPONSE. Notwithstanding the objections stated above, in accordance with the Licensing Board's Order of November 27, 2001, the Staff will produce any documents or portions thereof which are responsive to this request, "that Dr. Cornell identifies as (a) having been revealed to PFS; or (b) forming/influencing the basis for his purported expert opinion regarding the appropriate design basis earthquake for the PFS facility . . . subject to any protective order agreement arrived at between the parties," except to the extent that any such materials may be withheld under a claim of privilege.

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*.

SUPPLEMENTAL RESPONSE. See Supplemental 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.

SUPPLEMENTAL RESPONSE. See Supplemental Response to Document Request No. 5,

supra.

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).

SUPPLEMENTAL RESPONSE. See Supplemental Response to Document Request

No. 5, *supra.*

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).

SUPPLEMENTAL RESPONSE. See Supplemental Response to Document Request No. 5,

supra.

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).

SUPPLEMENTAL RESPONSE. No further response is required. See “Memorandum and Order (Ruling on Motion to Compel),” dated November 27, 2001, at 5 n.5.

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.*

SUPPLEMENTAL RESPONSE. See Supplemental 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).

SUPPLEMENTAL RESPONSE. See Supplemental Response to Document Request

No. 5, *supra*.

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*.

SUPPLEMENTAL RESPONSE. See Supplemental Response to Document Request No. 5,

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.

SUPPLEMENTAL RESPONSE. See Supplemental Response to Document Request No. 5,

supra.

Respectfully submitted,

/RA/

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 4th day of December 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 SUPPLEMENTAL 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 4th day of December, 2001:

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