

November 19, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board

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In the Matter of)
)
PRIVATE FUEL STORAGE L.L.C.) Docket No. 72-22
)
(Private Fuel Storage Facility)) ASLBP No. 97-732-02-ISFSI

OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

APPLICANT'S RESPONSE TO STATE OF UTAH'S MOTION FOR AN OPPORTUNITY TO SUPPLEMENT ITS RESPONSE TO APPLICANT'S MOTION FOR SUMMARY DISPOSITION OR IN THE ALTERNATIVE MOTION FOR EXTENSION OF TIME TO RESPOND TO SUMMARY DISPOSITION

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") hereby responds to the "State of Utah's Motion for an Opportunity to Supplement its Response to Applicant's Motion for Summary Disposition or in the Alternative Motion for Extension of Time to Respond to Summary Disposition," dated November 13, 2001 ("State's Motion"). The State's Motion requests alternative relief should the Atomic Safety and Licensing Board ("Licensing Board" or "Board") grant the State's Amended Motion to Compel¹ the NRC Staff to respond to the State's Twelfth Set of Discovery requests directed to the NRC Staff and to compel Dr. C. Allin Cornell to answer certain deposition questions to which the NRC Staff objected during Dr. Cornell's deposition. Specifically, the State requests an extension of three working days after completing Dr. Cornell's deposition to supplement its summary disposition response should the Board rule in the

¹ State Of Utah's Amended Motion To Compel NRC Staff To Respond To State's Twelfth Set Of Discovery Requests And To Compel Dr. C. Allin Cornell To Answer Certain Deposition Questions (Contention L, Part B), dated November 8, 2001 ("Amended Motion to Compel").

State's favor on its Amended Motion to Compel prior to the filing of its summary disposition response (due November 29, 2001). Alternatively, the State requests an opportunity to supplement its summary disposition response (and its reply to the NRC Staff) after completing Dr. Cornell's deposition (and after the receipt of discovery responses from the NRC Staff) should the Board rule in the State's favor subsequent to the State's filing of its summary disposition response.

PFS opposes any extension of time for the State to file its summary disposition response. The schedule for litigating Utah L, Part B was established and agreed upon by the parties to allow sufficient time prior to hearing for resolving summary disposition on the contention. For the reasons set forth in Applicant's Response to the State's Amended Motion to Compel,² the State has provided no basis for compelling further deposition testimony from Dr. Cornell, or therefore for delaying its summary disposition response. The State's Motion claims broadly, without citation to Dr. Cornell's transcript, that Dr. Cornell testified that "his participation in the NRC's Modified Rulemaking Plan committee influenced his opinion" State's Motion at 2. However as set forth in Applicant's Response to the Amended Motion, Dr. Cornell never saw the NRC's Modified Rulemaking Plan; the technical committee on which Dr. Cornell participated met before the contractor had submitted its report to the NRC; and, most importantly, the information from his committee participation considered by Dr. Cornell in forming his opinion consisted of general technical information on fuel storage facilities of the type that is publicly available.³

² Applicant's Response to State of Utah's Amended Motion to Compel NRC Staff to Respond to State's Twelfth set of Discovery Requests and to Compel Dr. C. Allin Cornell to Answer Certain Deposition Questions (Contention L, Part B) (November 16, 2001) ("Applicant's Response to Amended Motion").

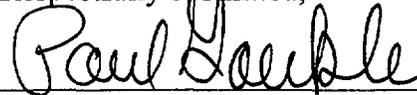
³ As noted in Applicant's Response to Amended Motion, no objections were raised to Dr. Cornell's answering questions on this subject, and the State could have sought to elicit further details, had it desired, as to the factual information Dr. Cornell gained from his participation in the committee.

Further, the bases of Dr. Cornell's opinion are clearly set forth in the declaration he filed in support of Applicant's Motion for Summary Disposition of Part B of Utah Contention L.⁴ The State has all the information necessary to respond to Applicant's Motion for Summary Disposition of Utah L, Part B.

Moreover, should the Licensing Board rule in the State's favor on its Amended Motion to Compel, the State could file a supplemental response to put forth before the Board any new relevant information that it believes was obtained from the additional discovery. Such a course of action would allow presentation to the Board of contested matters without undue delay with any supplementation as necessary or appropriate to be filed subsequently.

For the foregoing reasons, the State's Motion should be denied.

Respectfully submitted,



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Dated: November 19, 2001

⁴ See Declaration of C. Allin Cornell (November 9, 2001).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the Applicant's Response to State of Utah's Motion for an Opportunity to Supplement its Response to Applicant's Motion for Summary Disposition on in the Alternative Motion for Extension of time to Respond to Summary Disposition were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 19th day of November, 2001.

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