

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 04/23/02

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))	

NRC STAFF'S RESPONSE TO THE APPLICANT'S
MOTION TO STRIKE PORTIONS OF THE TESTIMONY OF
DR. MARVIN RESNIKOFF ON UNIFIED CONTENTION UTAH L/QQ

INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.730 and 2.743(c), and the Atomic Safety and Licensing Board's "Memorandum and Order (Revised General Schedule)," Attachment A, dated September 17, 2001, the NRC Staff ("Staff") submits this response to the Motion of Private Fuel Storage ("PFS" or "the Applicant")¹ to strike portions of the prefiled direct testimony of Dr. Marvin Resnikoff on Unified Contention Utah L/QQ.² Specifically, PFS has moved to strike portions of the Resnikoff Testimony related to his assertion that PFS has inappropriately calculated the radiological dose rate at the site boundary for normal operating conditions, on the grounds that this testimony is irrelevant and outside the scope of Unified Contention Utah L/QQ. As set forth below, the Staff supports the Applicant's Motion, on the grounds that the referenced portions of Dr. Resnikoff's testimony are outside the scope of the issues raised in this proceeding and are irrelevant.

¹ See "Applicant's Motion to Strike Portions of the Testimony of Dr. Marvin Resnikoff on Unified Contention Utah L/QQ," dated April 15, 2002 ("Applicant's Motion").

² See "State of Utah Testimony of Dr. Marvin Resnikoff Regarding Unified Contention Utah L/QQ (Seismic Exemption - Dose Exposure)," dated April 1, 2002 ("Resnikoff Testimony").

DISCUSSION

On April 1, 2002, the State of Utah ("State") submitted the prefiled testimony of Dr. Marvin Resnikoff concerning Unified Contention Utah L/QQ, Part E ("Seismic Exemption"). Dr. Resnikoff's testimony focuses on Part E, Basis 2, which states: "PFS has failed to show that its facility design will provide adequate protection against exceeding the section 72.104(a) dose limits." Unified Contention Utah L/QQ, at 6. On April 15, 2002, the Applicant filed its Motion, in which it seeks to strike a portion of Answer 8 and all of Answers 10 through 12. See Applicant's Motion, at 4-5.

In its Motion, the Applicant asserts that the specified answers contain testimony relating to the estimation of radiation doses during normal operations that is irrelevant and outside the scope of Unified Contention Utah L/QQ. See *id.*, at 1, 6-7. The Applicant further asserts that the underlying methodology for computing normal operation doses is not a subject of dispute in Unified Contention Utah L/QQ. *Id.*, at 1, 3. In this regard, it points to the context within which Basis 2 was initially raised by the State, and the fact that the State previously challenged PFS's calculation of normal operation doses, in Proposed Contention FF. See *id.*, at 2-3, and 6 n.9. The Staff supports the Applicant's Motion, for the reasons set forth below.

First, Part E of Unified Contention Utah L/QQ concerns the acceptability of the Applicant's seismic exemption request, based on the Applicant's use of a probabilistic seismic hazards analysis ("PSHA") and a 2,000-year return period earthquake as the design earthquake ("DE") for the proposed PFS Facility. Accordingly, any dose consequence concerns related to the exemption request must relate to the potential dose consequences that result from a design basis seismic event. Indeed, in describing the "purpose" of his testimony, Dr. Resnikoff states as follows:

My testimony relates to whether the PFS design basis for the Holtec International Inc. ("Holtec") HI-STORM 100 cask system provides reasonable assurance that the health and safety of the public and onsite workers will be protected if the casks are subjected to the peak ground accelerations from a 2,000-year mean annual return period earthquake at the PFS site.

Resnikoff Testimony, Answer 3, at 3. However, notwithstanding Dr. Resnikoff's stated focus on the potential dose consequences associated with the 2,000-year return period design basis earthquake, he proceeds to critique PFS's calculation of "the dose rate under normal operating conditions, absent a seismic event," and to calculate such a dose rate himself. See *id.*, at 5-6 (emphasis added). This testimony concerning the computation of normal operating doses, set forth in Answers 8 and 10-12, is clearly outside the scope of this contention as admitted, and is irrelevant.³

Second, as the Applicant notes, the State's reference to 10 C.F.R. § 72.104(a), in Part E, Basis 2, of this contention, "stems from the State's assertion . . . that the exemption allowing the use of a 2,000-year mean return period design basis earthquake for the PFSF fails to comply with the Rulemaking Plan in SECY-98-126."⁴ Applicant's Motion, at 2-3. However, the two-tiered approach proposed in SECY-98-126 is inapplicable here, in that (a) it was only a proposed regulatory approach which an applicant was not required to follow, and (b) it has been superseded

³ The Staff has filed its own motion to strike certain portions Dr. Resnikoff's prefiled testimony. See "NRC Staff's Motion in Limine to Exclude Certain Exhibits and Portions of the Prefiled Testimony of Dr. Marvin Resnikoff Concerning Unified Contention Utah L/QQ (Geotechnical)," dated April 15, 2002 ("Staff's Motion"). While the Staff's motion did not seek to strike the portions of Dr. Resnikoff's testimony identified in the Applicant's Motion, the Staff had filed its own testimony indicating its view that the dose limits in 10 C.F.R. § 72.104(a) pertain to normal operations and anticipated occurrences, and do not apply to design basis seismic events and therefore are irrelevant to consideration of the Applicant's seismic exemption request. See "NRC Staff Testimony of Michael D. Waters Concerning Radiological Dose Considerations Related to Unified Contention Utah L/QQ, Part E (Seismic Exemption)," dated April 1, 2002 ("Waters Testimony"), at 4-6.

⁴ See SECY-98-126, "Rulemaking Plan: Geological and Seismological Characteristics for Siting and Design of Dry Cask Independent Spent Fuel Storage Installations, 10 CFR Part 72," dated June 4, 1998. SECY-98-126 proposed the use of a "two-tiered" or "graded" approach, in which an applicant could use a design basis earthquake with a return period of 1,000 years ("SSC Category 1") for a safety-related structure, system or component ("SSC") if the applicant could demonstrate that an accident involving seismic failure of the SSC would result in radiation dose levels less than or equal to those specified in Section 72.104(a) – *i.e.*, normal operations dose levels; otherwise, the rulemaking plan proposed a requirement that an earthquake with a return period of 10,000 years ("SSC Category 2") be used in design of that SSC. *Id.* at 5.

by a single-tier approach proposed under the modified rulemaking plan in SECY-01-0178.⁵ As a result, the reference to the dose limits in 10 C.F.R. § 72.104(a), contained in the two-tiered approach proposed in SECY-98-126, is inapplicable here.

In sum, the dose limits in 10 C.F.R. § 72.104(a) apply only to “normal operations and anticipated occurrences,” rather than to design basis events, and are inapplicable to design basis seismic events. Accordingly, the specified portions of Dr. Resnikoff’s testimony dealing with the calculation of normal operating doses are irrelevant, and should be stricken as a matter of law.

CONCLUSION

For the foregoing reasons, the Staff respectfully submits that the portions of Dr. Resnikoff’s testimony pertaining to normal operating doses, as identified in the Applicant’s Motion, should be stricken as irrelevant and outside the scope of Unified Contention Utah L/QQ.

Respectfully submitted,

/RA/

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Martin J. O’Neill
Counsel for NRC Staff

Dated at Rockville, Maryland
this 22nd day of April, 2002

⁵ See SECY-01-0178, “Modified Rulemaking Plan: 10 CFR Part 72 -- “Geological and Seismological Characteristics for Siting and Design of Dry Cask Independent Spent Fuel Storage Installations,” dated September 26, 2001.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO THE APPLICANT'S MOTION TO STRIKE PORTIONS OF THE TESTIMONY OF DR. MARVIN RESNIKOFF ON UNIFIED CONTENTION UTAH L/QQ," 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 22nd day of April, 2002:

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