

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))	

NRC STAFF'S UNOPPOSED MOTION FOR
A THREE-PAGE EXTENSION OF THE PAGE LIMIT
FOR ITS RESPONSE TO APPLICANT'S MOTION FOR
SUMMARY DISPOSITION OF CONTENTION SECURITY-J

Pursuant to 10 C.F.R. § 2.730, the NRC Staff ("Staff") hereby requests a three-page extension of the 20-page limit for its response to the "Applicant's Motion for Summary Disposition of Utah Contention Security J -- Law Enforcement" ("Applicant's Motion"), filed on April 30, 2002. In support of this request, the Staff states as follows:

1. Utah Contention Security J concerns the Utah legislature's recent enactment of various statutory provisions in Utah Senate Bill 81 ("S.B. 81"), which would prohibit persons and entities within the State of Utah from cooperating with Private Fuel Storage, L.L.C. ("PFS" or "Applicant") in connection with its application for an NRC license to construct and operate an independent spent fuel storage installation ("ISFSI") in Skull Valley, Utah.¹ Such legislation, *inter alia*, would prohibit Tooele County from providing law enforcement services to PFS as a "local law enforcement authority ("LLEA"), as contemplated under the PFS Physical Security Plan.

¹ See "State of Utah's Request for Admission of Late-Filed Contention Utah Security J (Law Enforcement)," dated April 13, 2001.

2. The Licensing Board initially deferred ruling on the admissibility of Utah Contention Security J, pending developments in related federal district court litigation in which this issue was raised. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-20, 53 NRC 565 (2001). On February 22, 2002, however, the Board admitted the contention, recognizing that it would be the subject of motion(s) for summary disposition. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-02-07, 55 NRC 167, 168, 169 (2002).

3. On April 30, 2002, the Applicant filed its Motion seeking summary disposition of Contention Security-J, on the grounds, *inter alia*, that S.B. 81 is preempted by federal law, is invalid under the Commerce and Contracts Clauses of the U.S. Constitution, and is immaterial under the Commission's "realism" doctrine. On May 31, 2002, the State of Utah ("State") filed its response in opposition to the Applicant's Motion.² In accordance with the Licensing Board's scheduling Order of June 17, 2002, the Staff's response to the Applicant's Motion is due to be filed by July 22, 2002.

4. As set forth in the Licensing Board's Memorandum and Order admitting Contention Security-J, the Applicant's Motion and any responses thereto are not to exceed twenty pages in length, "absent permission of the Board." LBP-02-7, 55 NRC at 169. Consistent with that Order, the Applicant's Motion consists of 18 pages plus numerous attachments; and the State's Response consists of 20 pages plus attachments.

5. The Staff has prepared a draft response to the Applicant's Motion which addresses, as necessary, many of the arguments raised in the Applicant's Motion and in the State's Response thereto. However, while the Staff has attempted to prepare a response limited to 20 pages, the Staff has found that a proper response to the Applicant's Motion would require approximately 23 pages, thus requiring a three-page extension of the page limit established by the Board.

² See "Utah's Opposition to PFS's Motion for Summary Disposition of Utah Contention Security J -- Law Enforcement," dated May 31, 2002 ("State's Response").

6. The Staff submits that a three-page extension of the Board's page limit is reasonable, in that the Applicant's Motion raises numerous complex legal arguments, and the State's Response raises several additional arguments that require consideration, thus necessitating a somewhat longer Staff response. Moreover, no other party will be prejudiced by the requested extension, inasmuch as the State will have an opportunity to reply to the Staff's response to the extent that it supports the Applicant's Motion. See "Order (Summary Disposition Briefing Schedule for Contention Security-J)," dated March 8, 2002; "Order (Granting Summary Disposition Filings Extension Motion)," dated June 17, 2002.

7. Staff Counsel has contacted Counsel for the Applicant and Counsel for the State. Neither of those parties objects to the Staff's request for this extension of the page limit.

WHEREFORE, the Staff hereby requests a three-page extension of the 20-page limit for its response to the Applicant's motion for summary disposition of Contention Security-J.

Respectfully submitted,

/RA/

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 17th day of July 2002

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S UNOPPOSED MOTION FOR A THREE-PAGE EXTENSION OF THE PAGE LIMIT FOR ITS RESPONSE TO APPLICANT'S MOTION FOR SUMMARY DISPOSITION OF CONTENTION SECURITY-J," 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 17th day of July, 2002:

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