

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 RESPONSE TO  
"STATE OF UTAH'S NOTIFICATION THAT PFS MAY SUPPLEMENT  
THE HEARING RECORD FOR CONTENTION UTAH E (FINANCIAL ASSURANCE) OR  
IN THE ALTERNATIVE MOTION TO ORDER PFS TO SUPPLEMENT THE RECORD"

INTRODUCTION

On October 8, 2002, the State of Utah ("State") filed a "Notification That PFS May Supplement the Hearing Record for Contention Utah E (Financial Assurance) or in the Alternative Motion to Order PFS to Supplement the Record" ("Motion"). The NRC Staff ("Staff") herewith responds to the State's Motion. For the reasons set forth herein, the Staff submits that the State's Motion lacks substantial basis and should be denied.

BACKGROUND

Hearings on Utah Contention E ("Financial Assurance") were held in June 2000. The parties filed proposed findings of fact and conclusions of law based on the evidence presented in those hearings, on July 31, 2000; and they filed their reply findings of fact and conclusions of law on August 28, 2000. The Licensing Board is expected to issue a decision on that contention in the near future.

On October 8, 2002, the State filed the instant Motion, informing the Licensing Board that PFS might soon file supplemental information concerning matters adjudicated in July 2000 or, if PFS does not do so, requesting that the Board issue an Order directing PFS to supplement the

record. Attached to the State's Motion was a newspaper article that was published in The Salt Lake Tribune on September 29, 2002. The article described the terms of a draft lease between Private Fuel Storage, L.L.C. ("Applicant" or "PFS") and the Skull Valley Band of Goshute Indians (the "Band"), dated November 27, 1996, and listed the amounts of money which PFS would be obligated to pay to the Band under those draft lease provisions.

In its Motion, the State compared the financial terms of the draft lease with the terms of the "final" lease between PFS and the Band, and it provided its assessment as to how these terms compared (see Motion at 2). Further, the State informed the Board that it wrote a letter to PFS, dated September 30, 2002, in which it requested that PFS either supplement the hearing record on Contention Utah E with the current payments to the Band, or confirm that the payment terms set forth in the lease given to the State and placed in the hearing record are still accurate. *Id.*<sup>1</sup>

In addition, the State informed the Licensing Board that, in light of the events of September 11, 2001, it has requested that PFS "supplement the hearing record, as necessary," with respect to (a) whether PFS can still obtain on-site insurance coverage in the amount and for the premium cost reflected on the record, (b) whether PFS can obtain on-site insurance coverage in the fallback amount stated on the record for the stated premium cost, and (c) if PFS is unable to obtain on-site insurance as stated therein, whether it intends to conduct "a consequences assessment to determine maximum financial exposure." Motion at 2; see Utah Letter at 2.

Further, the State asserted that PFS has an obligation to supplement the hearing record with "any new information that is relevant and material to the matters being adjudicated." *Id.* at 3. The State then informed the Licensing Board that Counsel for PFS has committed to "either supplement the record or confirm that it is unnecessary to do so," by October 18, 2002. *Id.* However, the State requested, if PFS does not supplement the record before October 18, 2002,

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<sup>1</sup> Letter from Denise Chancellor, Esq. to Paul Gaukler, Esq., dated September 30, 2002 ("Utah Letter"), at 1.

that the Licensing Board “order PFS to supplement the adjudicatory record to ensure that the Board has all the relevant facts before it prior to rendering a decision.” *Id.*

### DISCUSSION

The Staff shares the State’s view that the Applicant -- like other parties in an NRC adjudicatory proceeding -- has an obligation to inform the Licensing Board of significant new information that is relevant and material to an issue pending before the Board. See, e.g., *Tennessee Valley Authority* (Browns Ferry Nuclear Plant, Units 1, 2 and 3), ALAB-677, 15 NRC 1387, 1394 ( 1982); *Duke Power Co.* (William B. McGuire Nuclear Station, Units 1 & 2), ALAB-143, 6 AEC 623, 625 (1973).

In light of this existing and well-established obligation, the Applicant is currently obliged to provide any significant new information that is relevant and material to an issue pending before the Board, without requiring the issuance of an additional Order directing it to comply with its existing obligations. Accordingly, the Staff perceives no basis for granting the State’s Motion.

Moreover, the Staff notes that the newspaper article proffered by the State does not support its request for the issuance of an order directing PFS to supplement the record. The newspaper article cited by the State includes the following account of statements made by former Bureau of Indian Affairs Superintendent David Allison (*Id.*):

David L. Allison, a now-retired Bureau of Indian Affairs superintendent who participated in many of the contract sessions, confirmed what others in the talks say now: Goshutes negotiators ultimately did not accept the terms of the drafts.

"What we wound up with," Allison says, "was way better than what we started with."

Based on this account, the State claims: “The article quotes former BIA superintendent David L. Allison’s statement that terms of the payments to the Band in the draft lease were ultimately not accepted by the Band.” Motion at 2; emphasis added.

This assertion mischaracterizes the statement attributed to Mr. Allison. Contrary to the State's (or Ms. Fahys') interpretation of Mr. Allison's remarks, he did not make any statement as to whether the Band did, or did not, accept the payment terms recited in the draft lease. Rather, his statement indicates only that the final terms of the lease were "way better than what we started with." The reader is unable reasonably to conclude from that remark whether he intended to signify that the final terms differed from the terms in the draft lease; rather, he stated only that the final terms differed from the terms that were initially proposed by PFS -- which may or may not differ from the terms set forth in the draft lease. Thus, the newspaper account of Mr. Allison's remarks does not support a concern as to whether the terms of the lease that PFS provided to the Licensing Board correctly represent the "final" financial terms agreed to by PFS and the Band.<sup>2</sup>

Further, with respect to the cost of insurance (a matter which is pending before the Board), PFS is obliged to inform the Board and parties of any significant new information that is material and relevant to that issue. Accordingly, at such time, if any, that PFS receives new information which would indicate that it will be unable to meet the commitments it made to the Licensing Board, the Staff would expect that PFS would provide that information to the Board and parties in a timely manner. Accordingly, no reason appears why an additional Order, directing a party to comply with its existing obligations, should be required in this instance.

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<sup>2</sup> As noted above, if the final terms of the lease differ significantly from the information provided by PFS to the Licensing Board and parties, we would expect PFS to provide that information to the Board and parties, without waiting for an Order directing it to do so.

CONCLUSION

For the reasons set forth above, the Staff respectfully submits that the State's Motion lacks substantial basis and should be denied.

Respectfully submitted,

**/RA/**

Sherwin E. Turk  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 18th day of October 2002

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO 'STATE OF UTAH'S NOTIFICATION THAT PFS MAY SUPPLEMENT THE HEARING RECORD FOR CONTENTION UTAH E (FINANCIAL ASSURANCE) OR IN THE ALTERNATIVE MOTION TO ORDER PFS TO SUPPLEMENT THE RECORD,'" 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 18th day of October, 2002:

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