

RAS 4950

October 18, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

October 23, 2002 (1:31PM)

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

**APPLICANT'S ANSWER 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"**

On October 8, 2002, the State of Utah ("State") filed its "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" ("Notification and Motion"). As indicated in the Notification and Motion, counsel for the State on September 30, 2002 had written to counsel for Applicant Private Fuel Storage, L.L.C. ("PFS") requesting that PFS "supplement the ASLB hearing record" with respect to payments by PFS under its lease with the Skull Valley Band (or confirm that information on lease payments previously provided to the State was still accurate). The State's September 30 letter also stated that the record "may also need to be supplemented given the events of September 11, 2001 [with respect to] the cost of premium[s] and amount of coverage of on-site insurance."

As reflected in the Notification and Motion, PFS' counsel immediately on receipt of the State's letter, informed the State that PFS would respond to the letter by October 18, after completion of the filing of reply findings for both contentions Utah K and Utah L/QQ. During

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that conversation, PFS counsel informed counsel for the State that to our knowledge there had been no change with respect to payments under the lease nor were we aware of any new information relating to the cost or coverage of on-site insurance. Notwithstanding that commitment to respond to the State's letter, the State filed the Notification and Motion on October 8.

With respect to the State's first request, PFS confirms that the provisions of the lease governing payments by PFS to the Skull Valley Band which were used in PFS' testimony during the evidentiary hearings on contention Utah E (financial assurance) have not changed since the hearings. PFS has no such new information and therefore there is no need to supplement the record.

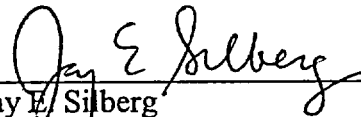
In any event, the State has misunderstood or misconstrued the Salt Lake Tribune article on which its request was based. The Notification and Motion (at 1) states that the article "quotes former [Bureau of Indian Affairs] superintendent David L. Allison's statement that terms of the payments to the Band in the draft lease were ultimately not accepted by the Band" (emphasis added). Regardless of what Mr. Allison may in fact have said, the newspaper article (which the State attached to its pleading) did not quote him as saying that the terms of the payments to the Band in the draft lease were not ultimately accepted by the Band. The article in fact stated that Mr. Allison "confirmed what others in the talks say now: Goshutes negotiators ultimately did not accept the terms of the drafts" (emphasis added). The drafts to which Mr. Allison was said to refer, and the lease itself, obviously have many terms in addition to terms relating to payments. So the State's underlying premise, that Mr. Allison stated that there was a change between the payment terms from the draft lease as described in the press and the final lease, is not borne out by the newspaper article on which the State relies.

With respect to the State's second request, that PFS "supplement the record, given the events of September 11, 2001, with any new information relating to the cost of premium[s] and amount of coverage of on-site insurance," Notification and Motion at 2, PFS is aware of no such new information. PFS has no such new information and therefore there is no need to supplement the record.

The Notification and Motion at 2-3 correctly cites to NRC decisions that establish that "parties must inform the presiding board and other parties of new information which is relevant and material to the matters being adjudicated." See, e.g., Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623, 625 (1973). PFS is fully aware of its obligation in this respect and, as set forth above, is aware of no such information regarding payments by PFS to the Band pursuant to the lease or on-site insurance coverage or costs. However, to the extent that the State is suggesting that the McGuire doctrine requires a party to affirmatively re-research any or all the evidence that it has presented at a hearing to determine whether or not it may have changed, we believe that the State has gone well beyond the scope of McGuire. All of the cases discussing the McGuire doctrine involve the disclosure to the board and parties of information that is already in the possession of, or known to, the party obligated to report. One will look in vain for a case that requires a party to re-validate every piece of evidence that it has presented over the course of the proceeding.

For the reasons set forth above, PFS respectfully requests that the Board deny the State's motion "in the alternative."

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the Applicant's Answer to "State of Utah's Notification That PFS May Supplement The Hearing Record For Contention Utah E (Financial Assurance) Or In The Alternative To Order PFS To Supplement The Record" 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 18th day of October, 2002.

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* Adjudicatory File
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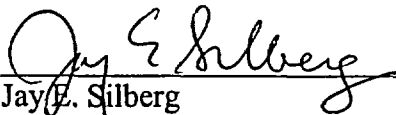
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