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May 20, 1999

Administrative Judge G. Paul Bollwerk, Chairman
Administrative Judge Jerry R. Kline
Administrative Judge Peter S. Lam
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Dear Chairman Bollwerk and Judges Kline and Lam:

I am writing to provide the Board with some background concerning footnote 2 which appeared in the Board's May 11, 1999 Order ruling on Applicant's April 22, 1999 Motion to Compel in which the Board stated:

> The Board notes that because the dispute over the interrogatory responses relative to Utah M appear to hinge on the emergency unavailability of a State employee, it is unclear why this matter could not have been handled by an agreement between the parties to extend the time for a response.

Counsel for PFS fully agrees with the Board that the parties should try to resolve procedural matters, such as the availability of key personnel, among themselves and to limit recourse to the Board to matters of substantive dispute. We wish to assure the Board in this regard that the issues raised in Applicant's April 22, 1999 Motion to Compel were matters of substantive dispute between the Applicant and the State that did not hinge on the emergency unavailability of State personnel, which I have reconfirmed with counsel for the State prior to sending this letter.

Specifically, on April 21, 1999, counsel for Applicant sent the State a letter identifying what PFS believed to be deficiencies in the State's response to Applicant's First Discovery Request. As noted in the State's letter of April 22, 1999 (attached to its response to the Motion to Compel), counsel for Applicant and the State had several telephone discussions on Wednesday and Thursday, April 21 and 22. The unavailability of David Cole

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was not a topic of discussion during those telephone conversations. Rather, our discussions focused on substantive disputes between the parties, and we were able to resolve certain issues which were referenced in the State's letter (and also identified in footnote 2 of the Motion to Compel). The parties reached the mutual conclusion at the end of these conversations that the other issues (which were the subject of Applicant's Motion) were substantive disputes not capable of being resolved, at least prior to the deadline for filing a motion to compel.

The following week, one or two days before the State's response was due, I received a call from Denise Chancellor advising me that the State would be filing an amended discovery response in conjunction with the State's response to the Motion to Compel. We did not, however, discuss the substance of the amended response, and my understanding was that the amended response would not satisfy Applicant's objections, at least not completely, since the State was still filing an opposition to the Motion. In that context, she advised me that the amended response with respect to Utah M would be filed later because of David Cole's emergency unavailability, and I advised her that that was no problem from PFS's perspective.

I hope that this additional background information allays the concerns expressed by the Board in footnote 2 of its May 11, 1999 Order.

Sincerely,

Paul Gaukler

Paul A. Gaukler

cc: Susan F. Shankman
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