

*DRAFT FOR DISCUSSION PURPOSES*

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

) Docket No. 72-22-ISFSI

) PRIVATE FUEL STORAGE, LLC  
) (Independent Spent Fuel  
) Storage Installation)

) ASLBP No. 97-732-02-ISFSI

) May 2, 2003

**JOINT REPORT ON HANDLING PROPRIETARY INFORMATION  
DURING ORAL ARGUMENT AND STATE'S REQUEST FOR  
PRESENTATIONS TO COMMENCE EARLIER IN THE DAY**

As requested in the Board's Order of April 29, 2003, the parties file this Joint Report setting out their positions on handling proprietary information during oral argument on the Applicant's Motion for Reconsideration, set for May 29 in Rockville, Maryland.

State's Position

A. Proprietary Information

To the extent that an open session does not compromise the State's presentation, the State will endeavor to structure its presentation such that it does not verbally refer to PFS-claimed proprietary information. The State notes that the scope of oral argument is not a hearing on the merits of the collateral matters but is intended, in part, to address the process by which the parties substantive views on collateral matters should be addressed.

The State's need to refer to proprietary information depends, in part, upon the substance of PFS's reply to the State's Response to PFS's Motion for Reconsideration (due May 2). Until the State has reviewed that document, it is not in a position to fully evaluate

the need to discuss proprietary information in its presentation to the Board. A further practical consideration on handling proprietary information is whether the State participates by video-conference or travels to Rockville.

The State may be able to avoid the need to verbally discuss proprietary information by handing out excerpts from or citing to relevant proprietary documents. That said, the State is concerned that its presentation may be cumbersome and limited by making indirect references to proprietary matters that squarely need to be raised. Therefore, should the State find the need to refer directly to proprietary information, it respectfully requests that the Board sit in closed session. If the State participates in Rockville, it will be easier to handle this aspect than by video-conference.

The State may have additional information on handling proprietary information when it notifies the Board (on or before May 9) whether it will participate in person or by video conference.

B. Logistics

As to the oral argument on May 29, the State wishes to explore the possibility of changing the time of oral argument to earlier in the day on May 29. To attend oral argument at 3 p.m. on May 29 will take three days of State lawyers' time (travel to Rockville on May 28 and return travel to Salt Lake City on May 30). Concluding oral argument by no later than 3 p.m. EDT would enable State lawyers to return to Salt Lake City on the evening of May 29. The Staff and PFS are supportive of commencing the presentation earlier in the day.

### PFS's Position

While PFS will endeavor to structure its presentation so as not to verbally identify proprietary information, PFS currently believes that the oral argument on satisfying License Condition LC 17-2 concerning financial assurance for operations could well involve verbal identification of proprietary information. Counsel for PFS will closely review and discuss with counsel for the State and the Staff whether such identification might be avoided, for example, by handouts for the Board and counsel to use during the argument. PFS will provide any additional information on the handling of proprietary information along with the State when the State notifies the Board whether it will participate in person or by video conference. Should it prove necessary to verbally identify proprietary information, PFS agrees with the Staff that only a portion of the argument would need to be held in closed session during which all parties could make their presentation on the issue(s) involving proprietary information.

In terms of the time for starting the oral argument, PFS would support an earlier start for the oral argument, particularly if the Board were to adopt the parties' suggestion in the Second Joint Report on Consequences filed April 30, 2003 and discuss procedure and schedule for the consequences hearing at the same time.

### Staff's Position

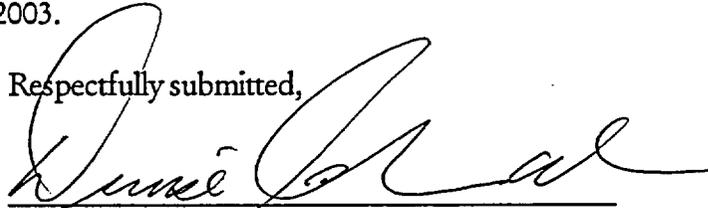
The NRC Staff believes that the parties and Licensing Board should be able to avoid discussion of any specific proprietary information during the oral argument on May 29, 2003 (e.g., by referring to the type of information rather than specific numeric values). However, if a need to discuss specific proprietary information arises, the oral argument should be

recessed and then reconvened in closed session (with a separate transcript to be prepared) to allow such discussions to proceed.

The Staff supports the State's suggestion that the oral argument commence and conclude earlier in the day on May 29. In order to accommodate the State's and Applicant's travel needs, and recognizing the need for their representatives to pass through NRC security, the Staff suggests that the argument commence at 10:00 a.m. EDT, and that it be adjourned no later than 3:00 p.m. EDT.

DATED this 2<sup>nd</sup> day of May, 2003.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of JOINT REPORT ON HANDLING PROPRIETARY INFORMATION DURING ORAL ARGUMENT AND STATE'S REQUEST FOR PRESENTATIONS TO COMMENCE EARLIER IN THE DAY was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 2<sup>nd</sup> day of May, 2003:

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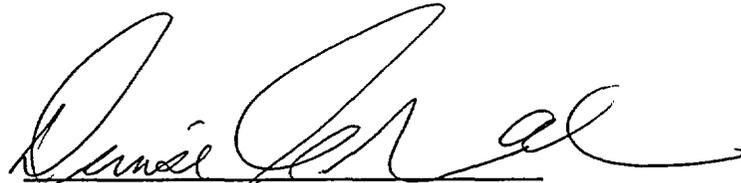
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A handwritten signature in cursive script, appearing to read "Denise Chancellor", written over a horizontal line.

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