

June 24, 2003

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

Before the Atomic Safety and Licensing Board

July 1, 2003 (2:22PM)

In the Matter of )  
 )  
PRIVATE FUEL STORAGE L.L.C. )  
 )  
(Private Fuel Storage Facility) )

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

**APPLICANT'S REPLY TO STATE OF UTAH'S RESPONSE TO APPLICANT'S  
MOTION FOR CLARIFICATION AND/OR RECONSIDERATION  
[NON-PROPRIETARY VERSION]**

Pursuant to the Atomic Safety and Licensing Board's ("Board") Order of June 19, 2003, Applicant Private Fuel Storage, L.L.C. ("Applicant" or "PFS") hereby files a reply to the State of Utah's Response to Applicant's Motion for Clarification and/or Reconsideration of Memorandum and Order (Rulings on Summary Disposition Motion and Other Filings Related to Remand from CLI-00-13) and Partial Initial Decision (Contention Utah E/Confederated Tribes F) (June 16, 2003) ("Response").

**A. Rewording of License Conditions LC-1 and LC-2**

In its June 6, 2003 motion ("PFS Motion"), PFS requested clarification of license conditions LC-1 and LC-2 so that they would be worded and applied to PFS as they were stated by the Commission in CLI-00-13, 52 NRC 23 (2000). PFS Motion at 5-6. In its response, the State has requested additional changes to the wording of LC-1 and LC-2 to explicitly incorporate individual findings from the Utah E PID.<sup>1</sup> Response at 4, 10.

The State's response essentially constitutes its own motion for reconsideration. At the outset, it should be denied as unjustifiably late. "[T]he brief time allowed for motions for reconsideration on [final decisions] indicates an analogous period for application

<sup>1</sup> Partial Initial Decision (Contention Utah E/Confederated Tribes F, Financial Assurance) (May 27, 2003). ("Utah E PID").

to motions concerning the reconsideration of interim matters.” Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), LBP-82-110, 16 NRC 1895, 1896 (1982).<sup>2</sup> That time limit is 10 days. 10 C.F.R. § 2.771. “If motions for reconsideration may be filed at any time, then the work of the Board could be unduly hindered.” Perry, LBP-82-10, 16 NRC at 1896. Indeed, this Board has similarly specified a 10-day limit for motions for reconsideration of decisions admitting contentions. See LBP-98-7, 47 NRC 142, 249 (1998). Therefore, because the State’s response was filed on June 16, i.e., 20 days after the Board’s decision, the State’s rewording request should be denied.

In addition, the Board should reject the State’s rewording as a matter of substance. First, with respect to both LC-1 and LC-2 the State is asking the Board to change language approved by the Commission in CLI-00-13. See PFS Motion at 4-6. Second, rewording is unnecessary, in that the license conditions as specified by the Commission are clear enough to allow the Staff to determine PFS’s compliance with them at the times PFS seeks to build and operate its facility. Further, the State’s rewording of LC-1 and LC-2 would inject proprietary information into the conditions such that they could not be published in the PFS public license. Third, with respect to LC-2, the State’s wording should be rejected because it would unreasonably require PFS to have in place, prior to operating, contracts with prices covering O&M costs for a full-sized, 4,000 cask facility, even if the actual facility was smaller. See also PFS Motion at 9-10. Fourth, the State’s attack on the O&M dollar amount specified pursuant to LC-2 is unsupported. When the Board specified the O&M dollar amount pertinent to LC-2, it spread the total lifetime O&M costs for the facility over two license terms. See Utah E PID at 86, 95; PFS Motion at 3. The State would rewrite the Board’s ruling by applying all of the facility’s spent fuel cask and canister costs to the first license term. See Response at 8-10. How-

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<sup>2</sup> See also Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), LBP-94-31, 40 NRC 137, 139 (1994).

ever, neither LC-2 nor 10 C.F.R. § 72.22(e) require PFS to provide estimated O&M costs at the time they are expected to be incurred or to break down O&M cost estimates by year. Utah E PID at 87-88. “In this regard, we likewise reject the State’s argument that PFS must take into account when costs associated with the shipment of SNF to and from the facility and the costs of canisters and storage casks will be incurred.” *Id.* at 88 (citations omitted). Therefore, the State’s rewording of LC-2, which is simply a reiteration of that argument, should be rejected.

**B. The Effect of [redacted]**

The Utah E PID stated that PFS may not commence operations before service agreements with prices of a specific dollar amount, based on estimated lifetime O&M and decommissioning costs for a full-capacity facility, were in place. Utah E PID at 95; *see id.* at 86. PFS requested reconsideration and/or clarification because of the [redacted] mechanism established in PFS’s Model Service Agreement (“MSA”) to recover O&M costs and [redacted].<sup>3</sup> PFS Motion at 6-8. The State, however, claimed that PFS’s request was improper because PFS had never before raised the issue [redacted], i.e., the State claimed that PFS’s [redacted] argument is an “entirely new thesis” barred by NRC case law on motions for reconsideration. Response at 4-6.

The State’s claim is wrong. In fact, PFS raised the [redacted] issue on at least two occasions, in its Utah E reply findings and its motion for summary disposition regarding the MSA. Indeed the Board recognized the [redacted] in the Utah E PID itself. First, in its reply findings, PFS stated: [redacted]<sup>4</sup> PFS explained further:

[redacted]

[redacted]

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<sup>3</sup> [redacted]

<sup>4</sup> Applicant’s Reply to the Proposed Findings of Fact and Conclusions of Law of the State of Utah and the NRC Staff on Contentions Utah E/Confederated Tribes F, Utah R, and Utah S [Proprietary Version] (Aug. 28, 2000) at 6 [redacted]

[redacted]

PFS Reply Findings at 14-15 (emphasis added, footnotes omitted).

Second, in its motion for summary disposition on MSA issues, [redacted].<sup>5</sup>

Third, consistent with PFS's arguments, the Board stated in the Utah E PID that, [redacted] Utah E PID at 67. Therefore, PFS's thesis simply is not new at all; the State's claim has no merit.

**C. The MSA as the Funding Mechanism for the PFS Facility**

The State seeks to challenge the Board's reasonable assurance finding by mischaracterizing statements made by PFS counsel. The State claimed that in oral argument concerning a PFS motion before Judge Farrar's licensing board concerning a limited size facility, PFS "argued that the MSA was not the only funding mechanism to finance construction and O&M." Response at 7 n.12 (emphasis added). The State's claim is erroneous concerning O&M. In response to a Board question about where PFS would obtain funds for a smaller facility, PFS stated that with respect to construction, it could rely on other committed sources of equity, customer debt, or revenue, in addition to the construction funding provided for by the MSA, to satisfy license condition LC-1. Tr. at 13839-40, 13852 (Gaukler); see also id. at 13847 (Gaukler), 13848 (Turk). No suggestion was made that some provision other than the MSA's [redacted] provisions would be used to fund O&M costs. Rather, PFS would continue to rely on the MSA to obtain the funding to cover the actual costs of the facility [redacted]. See id. at 13841, 13847 (Gaukler). See also MSA Motion at 5 ([redacted]).

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<sup>5</sup> Applicant's Motion for Summary Disposition on Issues Remanded by CLI-00-13 on Utah Contention E and Confederated Tribes Contention F and Response to State of Utah's Objections to the Adequacy of Applicant's Model Service Agreement to Meet Part 72 Financial Assurance Requirements (Dec. 4, 2000) at 5 ("MSA Motion").

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jay E. Silberg", written over a horizontal line.

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the Applicant's Reply to State of Utah's Response to Applicant's Motion For Clarification and/or Reconsideration [*Non-Proprietary Version*] 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 24<sup>th</sup> day of June, 2003.

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