

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	Docket No. 72-22-ISFSI
)	
PRIVATE FUEL STORAGE, LLC)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel)	
Storage Installation))	August 2, 2004

**STATE OF UTAH'S MOTION TO STRIKE TESTIMONY OF APPLICANT'S NEW
WITNESS FOR THE CASK BREACH PROBABILITY HEARING
ON CONTENTION UTAH K/CONFEDERATED TRIBES B**

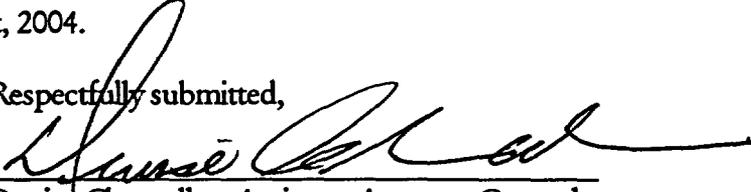
In recently filed rebuttal testimony, the Applicant Private Fuel Storage, LLC ("PFS") introduces a new witness, Charles J. McMahon, Jr. The new witness testifies with PFS's witness Alan Soler in "Rebuttal Testimony of Alan I. Soler and Charles J. McMahon, Jr., on the Structural Effects of a Potential F-16 Impact on a Spent Fuel Cask - Contention Utah K/Confederated Tribes B," dated July 29, 2004. Dr. McMahon joins Dr. Soler in Part II of the joint testimony, titled "Response to Claims Regarding Potential Failure of the MPC," in which Dr. McMahon primarily contributes to how strain demand and strain capacity are determined. PFS has not previously identified Dr. McMahon as a witness and the State has had no opportunity to depose Dr. McMahon, to evaluate the basis for his assertions, or otherwise investigate his qualifications. The first notice the State received that PFS was offering testimony by Dr. McMahon was when it received a hard copy of PFS's rebuttal testimony in the mail on July 30. The rebuttal testimony offered by this new witness is testimony PFS could and should have been presented in direct testimony.

Although styled as a response to a specific answer by Dr. Sozen in the State's direct

structural testimony, the joint rebuttal testimony in fact addresses the issue which has continually been the focus of the proceeding in this cask breach probability phase of Contention Utah K, *i.e.*, the material properties and failure rates of stainless (austenitic) steel.¹ First, the issue was addressed in expert reports filed by all parties earlier this year. Second, during three days of depositions of the State's structural expert witnesses, Dr. Sozen answered numerous questions directed to him on the failure rates of stainless steel, ductility ratios, and the like.² Third, all parties addressed the issue in their direct testimony. Now, one week before trial PFS produces a new witness on this longstanding and contentious issue. By doing so at this late hour, it unfairly prejudices that State, and has the potential to extend the scheduled hearing. The State, therefore, requests that the rebuttal testimony of Dr. McMahon filed July 29, 2004 be stricken from this proceeding.

DATED this 2nd day of August, 2004.

Respectfully submitted,



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¹Part II.B of the joint rebuttal testimony, "The State's Improper Use of Ductility Ratios for Judging Failure of the MPC" is addressed almost exclusively by Dr. Soler.

²*See e.g.*, June 23-25, 2004 Deposition Tr. at 92-93, 112-27, 128-168, 262-64, 476-77, 556-58, 571-74 (Sozen).

CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S MOTION TO STRIKE
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PROBABILITY HEARING ON CONTENTION UTAH K/CONFEDERATED TRIBES

B was served on the persons listed below by express mail, this 2nd day of August, 2004:

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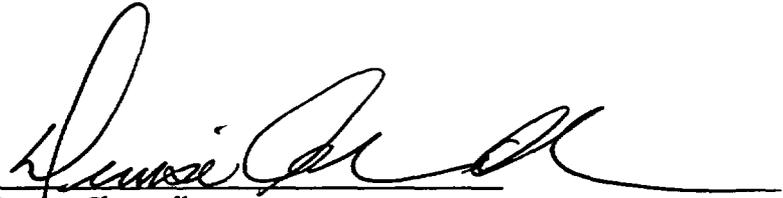
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