

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE COMMISSIONERS

In the Matter of:)	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, LLC)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel)	
Storage Installation))	May 24, 2005

**STATE OF UTAH'S MOTION FOR ENLARGEMENT OF THE PAGE
LIMITATION FOR PETITION FOR REVIEW OF CONTENTION UTAH K**

The Board today rendered its ruling, LBP-05-12, on Utah's Motion for Reconsideration on aircraft crashes in favor of the Applicant, Private Fuel Storage, LLC ("PFS"). Consequently, petitions for review on any issue relating to Contention Utah K are due to be filed by June 13, 2005. Commission Order (March 11, 2005) at 1; LBP-05-12 slip op. at 30. Two recent Commission scheduling orders first set the petition for review page limitation at 25 pages, then at 20 pages. Orders dated Feb. 28, 2005 and March 11, 2005, respectively. The State requests the page limit be enlarged to 30 pages.

The State has good cause for requesting an enlargement of pages. First, in order to exhaust administrative remedies and preserve any issue for further judicial appeal, the State must include all those issues in its petition for review. 10 C.F.R. § 2.786(b)(1). Furthermore, the petition must contain concise statements where the matters of fact or law were raised below (and if not, why not); why the decision or action below is considered to be erroneous; and why the Commission should exercise review. 10 C.F.R. § 2.786(b)(2). Second, the Commission has ordered that the time to ask for its review of any claim that could have affected the outcome of the partial initial decision, including interlocutory rulings, is

immediately after the partial initial decision (PID) is issued. See CLI-00-24, 52 NRC 351, 353 (2000). As Utah was the prevailing party in LBP-03-04 – the first PID rendered in the Contention Utah K proceeding – it was unnecessary and inappropriate for Utah to appeal that PID whose ultimate result was in Utah’s favor.¹ Therefore, the upcoming petition for review is the first opportunity in which all rulings relating to Utah K may be appealed to the Commission.²

The adjudication of Contention Utah K has been long and arduous and has given rise to numerous substantive rulings along the way. In 1997, when the contention was first admitted, some of the bases put forth by Utah were rejected. LBP-97-7, 47 NRC 142, 190-191 (1998). The contention was narrowed again when the Board granted, in part, the Applicant’s first motion for partial summary disposition, LBP-99-35, 50 NRC 180 (1999), and further narrowed in a second partial summary disposition decision. LBP-01-19, 53 NRC 416 (2001).³ A three week hearing was held in 2002 on the probability of site impact. The

¹See Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-459, 7 NRC 179, 202 (1978); accord South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-694, 16 NRC 958, 959-60 (1982); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-252, 8 AEA 1175, 1177, *affirmed* CLI-75-1, 1 NRC 1 (1975).

²In ordering early review of interlocutory rulings, the Commission made it clear that there would be no appeal of Utah K issues until after the completion of a hearing on the cask breach consequences stage of the proceeding:

The aircraft consequences hearing is currently stalled while the applicant, PFS, conducts further technical analyses at the NRC staff’s request. Our decision today does not apply to the Board’s upcoming decisions in these pending matters.

CLI-03-16, 58 NRC 360, 361 (2003). The other two pending matters at the time were financial assurance and rail spur alignment. *Id.*

³As part of the summary disposition decision, the Board certified whether the aircraft crash standard should be 10⁻⁶ or 10⁻⁷; the Commission accepted briefing and decided that

Board ruled that PFS had not met the 1×10^{-6} standard. LBP-03-04, 57 NRC 69 (2003).

The consequences portion of the Utah K proceeding was well underway when, at the urging of PFS and the Staff, the Board narrowed the scope of the second hearing to the probability of cask breach. Tr. 14659-14664 (Apr. 8, 2004 pre-hearing teleconference). The final partial initial decision (Feb. 24, 2005) was in favor of PFS, and the Board rejected Utah's Motion for Reconsideration of that decision (LBP-05-12).

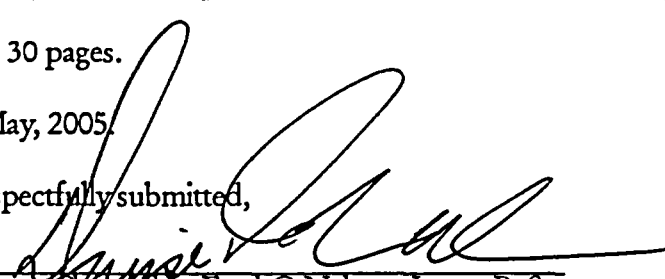
The foregoing brief overview of the major decisions since the contention was filed in 1997 illustrates the breadth of issues that the State may raise for review. To limit the petition to 20 pages would deprive the State of its obligation to establish a record for further judicial review. The State understands that the Commission expects a "concise" statement of issues but given that litigation has taken place steadily over the past seven and a half years, the State's request is reasonable.

The State has contacted counsel for the Applicant and the Staff, both of whom oppose this motion.

WHEREFORE, the State requests that its petition for review of all issue relating to Contention Utah K be enlarged to 30 pages.

DATED this 24th day of May, 2005.

Respectfully submitted,



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10^{-6} is the design basis accident standard for ISFSIs. CLI-01-22, 54 NRC 225 (2001).

CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S MOTION FOR ENLARGEMENT OF THE PAGE LIMITATION FOR PETITION FOR REVIEW OF CONTENTION UTAH K was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 24th day of May, 2005:

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