

May 31, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
PRIVATE FUEL STORAGE, L.L.C.) Docket No. 72-22-ISFSI
)
(Independent Spent)
Fuel Storage Installation))

NRC STAFF'S RESPONSE TO "STATE OF UTAH'S MOTION
FOR ENLARGEMENT OF THE PAGE LIMITATION FOR
PETITION FOR REVIEW OF CONTENTION UTAH K"

Pursuant to 10 C.F.R. § 2.730(c), the NRC Staff ("Staff") hereby responds to the "State of Utah's Motion for Enlargement of the Page Limitation for Petition for Review of Contention Utah K" ("Motion"), dated May 24, 2005. In its Motion, the State of Utah ("State") requests that the Commission expand the page limit for its petition for review of the Atomic Safety and Licensing Board's rulings on Contention Utah K (Credible Accidents), to allow it to file a petition up to 30 pages in length. For the reasons set forth below, the Staff opposes the State's Motion.

On February 24, 2005, the Licensing Board issued its Final Partial Initial Decision on aircraft crash issues in this proceeding,¹ and on May 24, 2005, it issued its ruling denying the State's motion for reconsideration thereof, thus resolving all remaining issues concerning Contention Utah K in favor of Applicant Private Fuel Storage, L.L.C. ("Applicant" or "PFS"). In accordance with the Commission's Order of March 11, 2005, the State's petition for review of the Licensing Board's decisions on this contention is due to be filed by June 13, 2005, and is required to be no more than 20 pages in length. Order of March 11, 2005, at 1 (superseding the 25-page limit which the Commission had established by Order of February 28, 2005).

¹ See *Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), "Final Partial Initial Decision (Regarding F-16 Aircraft Accident Consequences),"* dated February 24, 2005.

The Commission's Order of March 11, 2005, establishing a 20-page limit for the State's petition, effectively doubled the 10-page limit established in 10 C.F.R. § 2.786(b)(2).² While the State contends that it seeks to file a 30-page petition in order to address the Licensing Board's various rulings on Contention Utah K, Motion at 2-3, it fails to indicate which of the Board's rulings it believes are in error, nor does it explain why its petition must be substantially longer than other petitions filed in Commission proceedings,³ or why a limit of 20 pages would deprive it of a fair opportunity to challenge the Board's rulings.⁴ Thus, the State has not shown that the existing 20-page limit is insufficient or that it would prejudice the State's ability to seek review.

CONCLUSION

For the reasons set forth above, the Staff opposes the State's Motion and recommends that it be denied.

Respectfully submitted,

/RA/

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 31st day of May, 2005

² This limit was modified in 10 C.F.R. § 2.341(b)(2), to permit the filing of petitions for review of up to 25 pages in proceedings adjudicated under new Subpart C of 10 C.F.R. Part 2. That rule is inapplicable in this proceeding.

³ The page limit established in the Commission's regulations for petitions for review is "intended to encourage parties to make their strongest arguments clearly and concisely, and to hold all parties to the same number of pages of argument." *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-04-4, 53 NRC 31, 46 (2004). The State's request for a 30-page limit for its petition for review would vitiate this principle.

⁴ Further, the State fails to recognize that a petition is not required to set forth a party's full argument on an issue, but only to identify the rulings which the petitioner believes require review; and the grounds supporting its assertion that review is warranted; in the event that the Commission determines to undertake review, it may afford the parties an opportunity to file more complete briefs on the issues for which review is undertaken.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO 'STATE OF UTAH'S MOTION FOR ENLARGEMENT OF THE PAGE LIMITATION FOR PETITION FOR REVIEW OF CONTENTION UTAH K,'" in the above captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 31st day of May, 2005:

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/RA/

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