

Private Fuel Storage, LLC

P.O. Box C4010, La Crosse, WI 54602-4010

John D. Parkyn, Chairman of the Board

(608) 787-1236

February 17, 2006

Stewart W. Brown
Senior Project Manager, Licensing Section
United States Nuclear Regulatory Commission
Washington, D.C. 20555

RE: State of Utah Comments on Draft License and Technical Specifications for Private Fuel Storage Facility

Dear Mr. Brown:

I am responding to the State of Utah's letter to you of February 15, 2006 commenting on the draft license and technical specifications attached to your letter of February 10, 2006. PFS believes that the State's substantive comments are not well-taken and should not delay in any manner whatsoever the issuance of the PFS license.

As an initial matter, the State asserts that no license can be issued for the PFS facility until the Licensing Board dismisses three contentions (Utah O, Utah DD, and Utah TT) that were resolved by settlement between the parties. This claim is clearly without merit. It is directly contrary to the Commission's express authorization to the Staff in its September 9 Memorandum and Order "to issue PFS a license to construct and operate its proposed ISFSI." CLI-05-09, 62 NRC 403, 424(2005). Moreover, in issuing its Final Partial Initial Decision, the Licensing Board made clear that it considered these three contentions to be fully resolved with no further action required on its part. See, e.g., Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), LBP-05-29, 62 N.R.C. 635, 642, 698, 708, 710 n.12 (2005) (referring to resolution of Utah Contention O, Utah Contention DD, and Utah Contention TT by settlement among the parties). Further, in its "Conclusions of Law and Conclusion of the Proceeding" the Board declared that "[a]ll the interveners' contentions admitted into the proceeding have now been resolved whether by voluntary withdrawal, summary disposition, negotiated settlement, Board decision following an evidentiary hearing or other means." 62 N.R.C. at 695-96 (emphasis added). Thus, the Board clearly recognized that Utah O, DD, and TT had been resolved by settlement and were no longer before the Board for further action. To the extent that State believed otherwise, it was paramount upon the State to bring this matter promptly at the time to the Board's attention and not to await raising it

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at this late date – virtually a year after issuance of the Final Initial Decision and after affirmation by the Commission – when the Board no longer has any jurisdiction.

The State also seeks to modify without basis two of the conditions in the draft PFS license. With respect to Condition 18 concerning plant security, the State claims that the PFS License should incorporate and impose on PFS the requirements of the Commission's interim ISFSI security orders of October 16, 2002, and August 18, 2004. By their terms, however, both orders apply only to ISFSI "licensees who currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI." 67 Fed. Reg. 65,152, 65,153 (2002); 69 Fed. Reg. 52,314 (2004) (emphasis added). As observed by the Licensing Board in rejecting analogous State arguments in March 2003, "even assuming [PFS] were to be granted a license in relatively short order, there is every indication that the storage of spent nuclear fuel at the PFS facility cannot logistically be a matter of 'near term plans.'" Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), LBP-03-5, 57 N.R.C. 233, 235-36 (2003) (emphasis added). Similarly, now upon issuance of the PFS license, the storage of spent fuel at the PFS facility cannot logistically be said to be a matter of "near terms plans," for PFS will first need to obtain contracts and funding for the construction of the PFS facility and then undertake construction of the facility, which itself would take on the order of 18 months. Therefore, the interim security orders whose requirements may be modified by the ongoing Commission rulemaking should not be incorporated into License Condition 18. Needless, to say, however, PFS is committed to implementing the applicable Commission security requirements for the storage of spent fuel at ISFSIs upon undertaking such storage at the PFS site.

Finally, the State claims that Paragraph 8 of the PFS License concerning 40,000 MTU maximum amount of spent fuel that PFS may possess on the site at any time needs to be changed to state that the lifetime amount of spent fuel that PFS may accept for storage at the site is limited to 40,000 MTU (such that if PFS ships some fuel off-site prior to receipt of other fuel, there may never be 40,000 MTU stored at the site at one time). The State claims that this change is necessary in order for the license to be consistent with language in the Final Environmental Impact Statement (FEIS) concerning the economic cost-benefit analysis performed in the FEIS. PFS believes that this change is not warranted, for Paragraph 8 of the License as currently written is not inconsistent with the FEIS. Moreover, as reflected by the PFS License Application, the 40,000 MTU is not intended to be a throughput limit, but the maximum amount of fuel that can be stored at the site at any one time, as currently specified in the license. See PFS License

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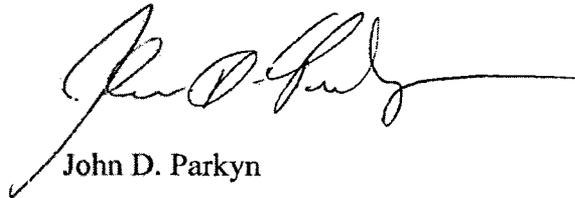
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Application at Appendix A, page TS-26. While the PFS cost-benefit analysis supplied as part of its application which was adopted in the FEIS showed throughput never exceeding 40,000 MTU, that was merely to be conservative, for greater throughput would simply increase the economic benefit of the site. It was never intended to be a limit on the amount of fuel that PFS could accept at the site so long as storage capability was available.

It is, however, imperative for PFS to obtain its license without delay so it can begin to undertake the effort for the funding and construction of the PFS facility to provide an alternative to storage at 72 sites located throughout the country. Accordingly, if necessary to ensure issuance of the License without further delay, PFS will not object to the 40,000 MTU throughput limitation sought by the State.

If you have any questions concerning PFS' response to the State's comments, please contact me at 608-787-3787 or Paul Gaukler at 202-663-8304.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Parkyn", with a long horizontal flourish extending to the right.

John D. Parkyn

cc: PFS Service List