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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'99 DEC -2 P2:59

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
REGULATORY AFFAIRS  
ADJUDICATION STAFF

In the Matter of:	)	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, LLC	)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel Storage Installation)	)	November 23, 1999

**STATE OF UTAH'S MOTION TO ADD A WITNESS TO THE  
SAFEGUARDS PROTECTIVE ORDER**

Pursuant to the Board's Memorandum and Order (Protective Order and Schedule for Filing Security Plan Contentions) dated December 17, 1997 ("Protective Order"), the State seeks to add Lieutenant Roy A. Mackay to the list of persons who may have access to protected safeguards information on a "need to know" basis.

The State has named Lieutenant Roy A. Mackay as the State's witness for the March 14, 2000 scheduled hearing on Utah Contention Security C. See State of Utah's Supplemental Answers to Applicant's General Interrogatories (Contention Utah Security-C) dated October 25, 1999 ("State's Supplemental Discovery Answers"). Lt. Mackay has more than 30 years experience with the Utah Highway Patrol ("UHP") and is currently the UHP Field Commander for all of Tooele County. A copy of Lt. Mackay's resume is attached to the State's October 25, 1999 Supplemental Discovery Answers. As a witness, Lt. Mackay may need access to those portions of the security

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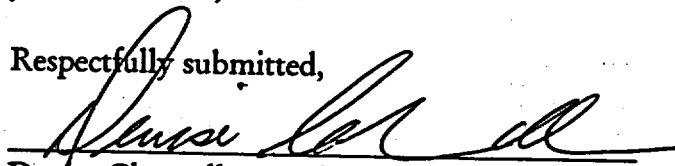
plan relevant to this issue set for hearing.<sup>1</sup> Moreover, during the hearing Lt. Mackay may be exposed to safeguards information. Lt. Mackay's executed nondisclosure affidavit, in the form attached to the Board's Protective Order, is attached as Exhibit 1.

The State also requests the Board to delete Rebecca Waldron from the list of State persons under sub-paragraph I.B.1 of the Protective Order who may have access to protected information.

The Applicant does not oppose the State request's to add Lt. Mackay to the State persons who may be afforded access to protected information on a need to know basis. The Staff advised the State that it will file a separate response.

DATED this 23rd day of November, 1999.

Respectfully submitted,



Denise Chancellor, Assistant Attorney General  
Fred G Nelson, Assistant Attorney General  
Connie Nakahara, Special Assistant Attorney General  
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<sup>1</sup> The issue remaining for hearing is whether a local law enforcement agency will provide timely response to any unauthorized activities at the PFS facility. See Memorandum and Order (Granting Motion for Summary Disposition Regarding Contentions Security-A and Security-B and Partial Summary Disposition Regarding Contention Security-C) at 4.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S MOTION TO ADD A

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WITNESS TO THE SAFEGUARDS PROTECTIVE ORDER was served on the  
persons listed below by electronic mail (unless otherwise noted) with conforming

OFFICE OF SECRETARY  
RULEMAKING AND  
ADJUDICATION STAFF

copies by United States mail first class, this 23rd day of November, 1999:

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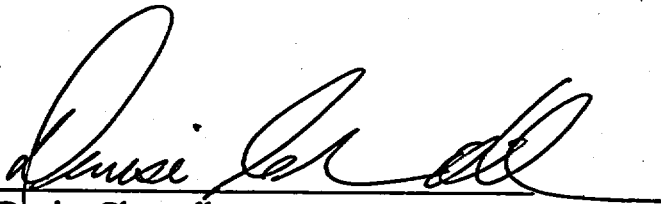
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A handwritten signature in black ink, appearing to read "Denise Chancellor", written over a horizontal line.

Denise Chancellor  
Assistant Attorney General  
State of Utah

# **EXHIBIT 1**

NONDISCLOSURE AFFIDAVIT

I, Roy H. Mackay, being duly sworn, state:

1. As used in this nondisclosure affidavit,

(a) Protected information is (i) any form of the security plan, including the safeguards contingency plan, and any amendments thereto (Security Plan), or portions thereof, for the Private Fuel Storage Facility proposed by Private Fuel Storage L.L.C. (Applicant), or (ii) any information obtained by virtue of these proceedings which is not otherwise a matter of public record and which deals with or describes details of the Security Plan.

(b) An authorized person is (i) an employee, consultant or contractor of the U.S. Nuclear Regulatory Commission (NRC or Commission) entitled to access to protected information; (ii) a person who, at the invitation of the Atomic Safety and Licensing Board (Licensing Board), has executed a copy of this affidavit; or (iii) a person employed by or on behalf of the Applicant and authorized by it in accordance with NRC regulations to have access to protected information.

(c) A document means any audio or video tape recording or written matter of any kind, whether produced, reproduced, or stored on paper, cards, tapes, ribbons, disks, belts, charts, film, computer files, computer disks or diskettes, computer storage devices or any other medium, and includes, without limitation, books, reports, studies, statements, speeches, notebooks, calendars, working papers, manuals, memoranda, notes, instructions, directions, records, correspondence, diaries, diagrams, drawings, lists, telephone logs, minutes, and photographs, and also includes, without limitation, originals, copies

(with or without notes or changes thereon), and drafts.

2. I have read the December 17, 1997 Licensing Board memorandum and order issued in this proceeding and will comply in all respects with its terms and conditions regarding the protected information produced in connection therewith. I will safeguard protected information in accordance with the terms of this affidavit.

3. I will not disclose protected information to anyone except an authorized person, unless that information has previously been disclosed in the public record of this proceeding. I will safeguard documents containing protected information in written or recorded form (including any portions of transcripts of in camera hearings, filed testimony or any other documents that contain such information), so that the protected information contained therein remains at all times under the control of an authorized person and is not disclosed to anyone else.

4. I will not reproduce or copy any protected information by any means without the express approval or direction of the Licensing Board or the Commission, except to the extent necessary to make required service on the Licensing Board, the Office of the Secretary, or other party authorized under the protective order to receive such service. I understand that I may take notes concerning such protected information, subject, however, to the terms of this affidavit and the Licensing Board's December 17, 1997 memorandum and order. So long as I possess protected information, I will continue to take these precautions until further order of the Licensing Board or the Commission.

5. I will safeguard and hold in confidence any data, notes, or copies of protected information and all other papers that contain any protected information by means of the following:

(a) my use of the protected information will be made only at a facility provided for use by designated counsel, experts, or staff in (i) a designated office of the Utah Department of Environmental Quality in Salt Lake City, Utah; (ii) an office of the NRC Staff in Rockville, Maryland; or (iii) an office to be provided by the Applicant in Washington, D.C. Any such facility is to be located in a controlled access building that is either attended around the clock or locked at night.

(b) When not under my direct control or the direct control of another individual authorized to have access thereto, I will keep and safeguard all documents containing protected information (including, without limitation, any notes that I may take) in a safe or other locked security storage container to be obtained by the provider of the facility referred to in paragraph 5(a) above and to be located at all times at the above designated location. Access to the safe or other security storage container will be positively controlled by use of keys or other comparable means. Keys and/or knowledge of lock combinations protecting safeguards information shall be limited to authorized persons.

(c) Any secretarial or administrative work performed at my request or under my supervision will be performed only at the above location by personnel who have executed a nondisclosure affidavit pursuant to the Licensing Board's December 17, 1997 memorandum and order.

(d) If requested, necessary typing and reproduction equipment will be furnished by the provider of a facility referred to in paragraph 5(a) above (it being understood that a nominal photocopying or equipment usage charge may be assessed). In addition, if requested, the facility



provider will make available a telephone, and a facsimile machine for the receipt of nonprotected information only, it being understood that protected information shall not be discussed by telephone or communicated by facsimile transmission.

(e) If protected information is processed on or with automated data processing, computerized word processing equipment, or a personal or laptop computer, access to such equipment shall require the use of an entry code for access to stored protected information. If use of an entry code is not feasible, protected information may be processed on, but shall not be stored in, such equipment. Additionally, any such word processing equipment, data processing equipment, or computer that is used to process or store protected information shall be operated as stand-alone or free-standing equipment, not connected to any other such equipment by means of a Local Area Network (LAN) or Wide Area Network (WAN) or other data-sharing system. Further, if any protected information is backed up or stored on a computer hard drive or other device, that drive or device shall be capable of being removed and shall be stored in the safe or locked security storage container referred to in paragraph 5(b) above, when not in use.

(f) All mailings by me or on my behalf involving protected information shall be made from a facility referred to in paragraph 5(a) above.

(g) Each document that contains Safeguards Information, as defined in 10 C.F.R. § 73.2, shall be marked Safeguards Information in a conspicuous manner to indicate the presence of protected information, as set forth in 10 C.F.R. § 73.21(e).

6. If I prepare documents containing protected information to

participate in further proceedings in this case, I will assure that any secretary or other individual who must receive protected information to help me prepare those documents has been approved by the Licensing Board and has executed an affidavit like this one and has agreed to abide by its terms. Copies of any such affidavit will be filed with the Licensing Board before I reveal any protected information to any such person.

7. I shall use protected information only for the purpose of preparation for any proceedings in this case dealing with Security Plan issues, and for no other purpose.

8. I shall keep a record of all documents containing protected information in my possession, including any copies of those documents or portions thereof made by me or on my behalf. At the conclusion of this proceeding, I shall account to the Licensing Board or the Commission, or to a Commission employee designated by the Board or the Commission, for all the documents or other materials containing protected information in my possession and deliver them as provided herein. When I have finished using the protected information they contain, but in no event later than the conclusion of this proceeding (including any related Commission or judicial appeals), I shall deliver those documents and materials for disposal or safekeeping, as may be determined to be appropriate by the Licensing Board or the Commission, to the Licensing Board or the Commission, to a Commission employee designated by the Board or the Commission, or to a person authorized to receive protected information on behalf of the Applicant.

9. I make this agreement with the following understandings:

(a) I do not waive any objections that any other person may have to executing an affidavit such as this one;

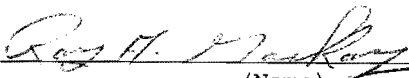
(b) I do not waive any objections that I may have or raise at a

subsequent time in this proceeding, concerning an expert's qualifications to testify concerning Security Plan issues; and

(c) I will not publicly discuss or disclose any protected information that I receive by virtue of this proceeding, and will not corroborate the accuracy or inaccuracy of information obtained outside this proceeding by using protected information, or my knowledge thereof, gained through the hearing process.

10. I acknowledge that any violation of the terms of this affidavit or the Licensing Board's December 17, 1997 memorandum and order, which incorporates the terms of this affidavit, may result in the imposition of sanctions as the Licensing Board or the Commission may deem to be appropriate, including, but not limited to, referral of the violation to appropriate bar associations and other disciplinary authorities. I further acknowledge that any unauthorized disclosure of protected information or breach of the protective order issued in this proceeding may be grounds for the imposition of civil and/or criminal penalties, as set forth in 10 C.F.R. § 2.744(e) and sections 223 and 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2273, 2282.

WHEREFORE, I do solemnly agree to safeguard such protected information as may be disclosed to me in this proceeding, in accordance with the terms of this affidavit.

  
\_\_\_\_\_  
(Name)

Subscribed to and sworn before me  
this 15 day of Nov., 1999

Christine A. Holland

Notary Public

My commission expires: April 16, 2000