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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'99 DEC 20 P3:17

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF THE
GENERAL COUNSEL
ADJUTANT GENERAL
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) |) | December 14, 1999 |

**STATE OF UTAH'S MOTION TO COMPEL APPLICANT TO RESPOND TO
STATE'S FOURTH SET OF DISCOVERY REQUESTS**

Pursuant to 10 C.F.R. § 2.742, the State of Utah hereby moves the Board to compel the Applicant, Private Fuel Storage, LLC ("PFS") to answer certain requests for admissions and documents propounded in State of Utah's Fourth Set of Discovery Requests Directed to the Applicant (November 19, 1999) ("State's Discovery Requests"). This Motion to Compel relates to Utah Contention E (Financial Assurance) and is supported by the Declaration of Dr. Michael Sheehan,¹ attached hereto as Exhibit 1.

FACTUAL BACKGROUND

The State has propounded three sets of discovery requests on the Applicant with respect to Utah Contention E; two during the formal discovery

¹ Dr. Sheehan's curriculum vitae, publications and prior testimony were attached as Exhibit 2 to State's Objections and Response to Applicant's Second Set of Discovery Requests with respect to Groups II and III Contentions, submitted June 28, 1999.

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period² and one on November 19, 1999, during the current discovery window. The Applicant has refused to answer the State's discovery relating to what PFS considers to be marketability.³ The State and PFS tried unsuccessfully to resolve PFS's refusal to answer discovery during the formal discovery period; however, at that time the State did not file a Motion to Compel. *See* Letter from Denise Chancellor to Paul Gaulker, dated July 20, 1998, attached hereto as Exhibit 2.

On November 19, 1999, the State propounded on the Applicant the discovery that is the subject of this motion. The Applicant and the State have agreed that either party may have eight working days to respond to discovery. Thus, PFS's discovery response was due December 2, 1999. The State granted PFS's request for an extension of time to respond to discovery until December 6, 1999. PFS served its proprietary discovery response on the State to arrive the next business day, December 7, 1999.

The Applicant's Motion for Partial Summary Disposition of Contention E, dated December 3, 1999, was served on the State on December 6, 1999. The Summary Disposition Motion elaborates, in part, on PFS's discovery objections that PFS is not legally required to answer marketability-related discovery requests. The State's response to the Summary Disposition Motion is due December 27, 1999.

²See State of Utah's Second and Third Sets of Discovery Requests directed to the Applicant dated, respectively, May 13, 1999 and May 18, 1999.

³ See Applicant's Objections and Proprietary Responses to the State's (a) Second Set and (b) Third Set of Requests for Discovery, both dated June 28, 1999, and (c) Fourth Set of Requests for Discovery dated December 6, 1999.

The State contacted counsel for the Applicant by phone on Friday, December 6, and followed up by letter dated Monday, December 13, explaining the principle grounds for the State's anticipated Motion to Compel. *See* Letter from Denise Chancellor to Paul Gaukler dated December 13, 1999, attached hereto as Exhibit 3. Given the Applicant's pending Summary Disposition Motion on nine of the ten admitted bases for Contention E, there is no possibility of the State and PFS resolving their dispute at the current time.

ARGUMENT

I. THE COMMISSION'S STANDARD FOR DISCOVERY IS ONE OF BROAD RELEVANCE TO ADMITTED CONTENTIONS.

The scope of allowable discovery is set forth in 10 C.F.R. § 2.740(b)(1). Unless otherwise determined by the Presiding Officer, discovery extends to "any matter, not privileged, which is relevant to the subject matter involved in the proceeding." *Id.* The Commission gives its discovery rules the same "broad, liberal interpretation" that is given to the discovery rules of the U.S. Federal Courts. *Commonwealth Edison Co.* (Zion Station, Units 1 and 2), ALAB-196, 7 AEC 457, 461-62 (1974). Discovery is considered relevant unless it is "palpable that the evidence sought can have no possible bearing upon the issues." *Id.*, 7 AEC at 462, quoting *Hercules Powder Co. v. Rohn & Haas Co.*, 3 F.R.D. 302, 304 (D. Del. 1943). A motion to compel need not seek information which would be admissible *per se* in an adjudicatory proceeding, and need only request information which "reasonably could lead to admissible evidence." *Safety Light Corp.* (Bloomsburg Site Decontamination), LBP-92-3A, 35 NRC 110, 111-12 (1992);

Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-102, 16 NRC 1597, 1601 (1982); *Commonwealth Edison, supra*, 7 AEC at 462.

II. THE DISCOVERY SOUGHT BY THE STATE IS RELEVANT TO THE ADMITTED BASES OF CONTENTION E

In this Motion to Compel, the State need not prove its case that the Applicant must demonstrate financial assurance by certain specified means. For purpose of discovery, the State need only show that its discovery requests are relevant to an issue admitted for hearing or reasonably could lead to admissible evidence. *See* Section I.

Contention E, as admitted, charges that,

Contrary to the requirements of 10 C.F.R. §§ 72.22(e) and 72.40(a)(6), the Applicant has failed to demonstrate that it is financially qualified to engage in the Part 72 activities for which it seeks a license it that:

1. The information in the application about the legal and financial relationship among the owners of the limited liability company (i.e., the license applicant PFS) is deficient because the owners are not explicitly identified, nor are their relationships discussed. *See* 10 C.F.R. §§ 50.33(c)(2) and 50.33(f) and Appendix C, § II of 10 C.F.R. Part 50.
2. PFS is a limited liability company with no known assets; because PFS is a limited liability company, absent express agreements to the contrary, PFS's members are not individually liable for the costs of the proposed PFSF, and PFS's members are not required to advance equity contributions. PFS has not produced any documents evidencing its members' obligations, and thus, has failed to show that it has a sufficient financial base to assume all obligations, known and unknown, incident to ownership and operation of the PFSF; also, PFS may be subject to termination prior to expiration of the license.
3. The application fails to provide enough detail concerning the limited liability company agreement between PFS's members, the business plans of PFS, and the other documents relevant to assessing the financial

strength of PFS. The applicant must submit a copy of each member's Subscription Agreement, see 10 C.F.R. Part 50, App. C., § II, and must document its funding sources.

4. To demonstrate its financial qualifications, the applicant must submit as part of the license application a current statement of assets, liabilities and capital structure, see 10 C.F.R. Part 50, Appendix C, § II.
5. The applicant does not take into account the difficulty of allocating financial responsibility and liability among the owners of the spent fuel nor does it address its financial responsibility as the "possessor" of the spent fuel casks. The applicant must address these issues. See 10 C.F.R. § 72.22(e).
6. The applicant has failed to show that it has the necessary funds to cover the estimated costs of construction and operation of the proposed ISFSI because its cost estimates are vague, generalized, and understated. See 10 C.F.R. Part 50, App. C, § II.
7. The applicant must document an existing market for the storage of spent nuclear fuel and the commitment of sufficient number of Service Agreements to fully fund construction of the proposed ISFSI. The applicant has not shown that the commitment of 15,000 MTUs is sufficient to fund the Facility including operation, decommissioning and contingencies.
8. Debt financing is not a viable option for showing PFS has reasonable assurance of obtaining the necessary funds to finance construction costs until a minimum value of service agreements is committed and supporting documentation, including service agreements, are provided.
9. The application does not address funding contingencies to cover on-going operations and maintenance costs in the event an entity storing spent fuel at the proposed ISFSI breaches the service agreement, becomes insolvent, or otherwise does not continue making payments to the proposed PFSF.
10. The Application does not provide assurance that PFS will have sufficient resources to cover non-routine expenses, including without limitation the costs of a worst case accident in transportation, storage, or disposal of the spent fuel.

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP 98-7, App. A, 47 NRC 142, 251-252 (1998).

There is no legal basis for the Applicant's refusal, at this stage, to respond to Requests for Admission No. 3 through 8 and Document Requests No. 5 through 8, and 13 and 14. Instead, the Applicant has simply ignored the admitted bases of Contention E.

1. Requests for Admission

Private Fuel Storage, LLC, has no independent assets and must rely on Service Agreements, debt financing or other means to raise funds to construct and operate its proposed facility. *See* Basis 2 above. In general, the State's Request for Admissions that PFS refused to answer relate to PFS's current and proposed efforts to market Service Agreement (Requests for Admission No. 3 and 4); PFS consortium-member Northern States Power's ("NSP") continued need to store fuel at the PFS facility (Requests for Admission No. 5 and 6); and whether and how PFS intends to use the Supko Study, entitled "Utility At-Reactor Spent Fuel Storage Costs for the Private Fuel Storage Facility Cost Benefit Analysis" (Requests for Admission No. 7 and 8).

In general, PFS responded to the above Requests for Admission as follows:

PFS objects to this request as not reasonably calculated to lead to the discovery of material relevant to Contention Utah E. Marketing efforts by PFS are irrelevant to the demonstration of PFS's financial qualifications required under 10 C.F.R. Part 72 and NRC case law. See Response to Request for Admission No. 3.

Applicant's Response to Admission No. 5 at pp 4-5. In its response to Admission No. 3,

at pp 3-4, PFS argues that it will demonstrate its financial assurance by committing not to commence construction or operation of the facility until certain events occur, citing as support the *LES* decision and PFS's Partial Motion for Summary Disposition of Utah Contention E.

Obviously, the State and PFS have a fundamental legal disagreement over how the Applicant is required to demonstrate it is financially qualified to carry out the activities for the Part 72 license PFS seeks to obtain from the NRC. The State will fully address PFS's position that it need only make a broad-based commitment, without anything more, to demonstrate that it meets the financial qualification of Part 72, when the State responds to the Summary Disposition Motion. In the meantime, the admitted bases of Contention E frame the relevance of the State's discovery requests. PFS's bare-faced assertion that the State's request is not relevant has no relationship to the Commission's directive in *Commonwealth Edison*, 7 AEC at 462, that discovery is relevant unless it is "palpable that the evidence sought can have no possible bearing upon the issues." To the contrary, not only is the discovery sought relevant but it is also essential to the State's preparation of its case for hearing. In order for the State to fully develop its position on Contention E, it is essential that the relevant information, in many instances in the exclusive domain of PFS, be disclosed to the State.

All of the admission responses at issue are relevant to Basis 7, which, in part, asserts that the Applicant must document an existing market for the storage of spent fuel

as well as the commitment of a sufficient number of Service Agreements to fund the PFS project. The State maintains that a start-up limited liability company, such as PFS, responsible for the movement of thousands of spent nuclear fuel casks across the country for storage in Utah, must demonstrate there is a likelihood that PFS will be able to finance the entire project prior to license issuance. This position is consistent with 10 CFR § 72.22(e), which requires PFS either "possesses the necessary funds" or has "reasonable assurance of obtaining the necessary funds." Furthermore, all of the disputed admission requests are also relevant to Basis 2, wherein the State claims PFS has failed to show that it has a sufficient financial base to assume all the obligations it may incur. In addition, Basis 8, which asserts that it is necessary for PFS to have a minimum value of committed service agreements before debt financing is a viable option, is also relevant. Finally, Requests for Admission No. 4 and 5 (relating to NSP) may lead to admissible evidence as to the relationship among PFS consortium members under Basis 1.

Accordingly, there is no legal basis for PFS to withhold answering the State's Requests for Admission No. 3 through 8.

2. Document Requests

The disputes Document Requests, that PFS has refused to answer on the same relevance grounds as the Requests for Admissions, are Requests. No. 5 through 8⁴ and 13 and 14. In general, Requests 5 through 8, request documents relating to PFS's marketing

⁴The State's objection to PFS's Response to Document Request No. 7 relates to the second sentence of the response.

efforts; the economics of the spent fuel storage market; and non-PFS members who may be interested in storing fuel at PFS.

The Document Requests are relevant to Bases 2, 7 and 8. Thus, the relevance of the State's document requests are the same as the relevance of the admission requests. Therefore, the arguments the State has raised with respect to PFS's deficient responses to requests for admissions also apply to the disputed document requests.

Finally, to the extent that Document Requests No. 13 and 14 relate to the Supko Study, the State and PFS may be able to reach agreement. The State has received part of the revised Supko report but is required to enter into a confidentiality agreement in order to have access to certain spreadsheets, which are essential to analyzing the report. To the extent that the State and PFS cannot timely resolve the issue, the State includes Requests 13 and 14 in this motion. Furthermore, to the extent that Document Requests No. 13 and 14 do not relate to the Supko study, the requests are nonetheless relevant to Bases 7 and 8 of contention E and PFS should be ordered to respond to the requests.

3. Relief Requested

The State requests that the Board rule on the State's Motion to Compel at the time it rules on the Applicant's Partial Motion for Summary Disposition, provided that the State be given sufficient time to complete discovery on all the issues remaining in Contention E. For example, the State requests that it not be constrained by the four interrogatory limitation in force after December 31, 1999 because all responses to the

Summary Judgment Motion will not be filed until January 2000. Furthermore, the State requests sufficient time after the Board's decision to send another round of written discovery followed by deposition of PFS experts expected to testify at trial. In the alternative, should the Board not be willing to allow any latitude in the current schedule, the State requests the Board rule on the State's Motion to Compel as expeditiously as possible.

CONCLUSION

For the foregoing reasons, the Applicant's legal argument for not responding to the State's fourth set of discovery requests on Contention E, as describe above, are without merit. Therefore, PFS should be ordered to answer the discovery.

DATED this 14th day of December, 1999.

Respectfully submitted,



Denise Chancellor, Assistant Attorney General
Fred G Nelson, Assistant Attorney General
Connie Nakahara, Special Assistant Attorney General
Diane Curran, Special Assistant Attorney General
Laura Lockhart, Assistant Attorney General
Attorneys for State of Utah
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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S MOTION TO COMPEL DEC 20 P3:17

APPLICANT TO RESPOND TO STATE'S FOURTH SET OF DISCOVERY

REQUESTS was served on the persons listed below by electronic mail (unless otherwise

noted) with conforming copies by United States mail first class, this 14th day of

December, 1999:

Rulemaking & Adjudication Staff
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington D.C. 20555
E-mail: hearingdocket@nrc.gov
(original and two copies)

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Office of the Commission Appellate
Adjudication
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Washington, DC 20555
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Denise Chancellor
Assistant Attorney General
State of Utah

EXHIBIT 1

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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) |) | December 14, 1999 |

DECLARATION OF MICHAEL F. SHEEHAN, Ph.D.

I, Michael F. Sheehan, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the statements contained in State of Utah's December 14, 1999 Motion to Compel Applicant to Respond to State's Fourth Set of Discovery Requests, relating to Utah Contention E, are true and correct to the best of my knowledge, information and belief.

Executed this 14th day of December 1999.
By: 
Michael F. Sheehan, Ph.D.

EXHIBIT 2

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



JAN GRAHAM
ATTORNEY GENERAL

CAROL CLAWSON
Solicitor General

REED RICHARDS
Chief Deputy Attorney General

PALMER DEPAULIS
Chief of Staff

July 20, 1999

Via Electronic and First Class Mail

Paul Gaukler, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington DC 20037-1128

re: Applicant's June 28, 1999 Responses to State's
Second and Third Set of Discovery Requests

Dear Paul:

The purpose of this letter is to confirm the State's concerns about PFS's above referenced discovery responses.

1. **Applicant's Objections and Proprietary Responses to State's Second Requests for Discovery (Groups II & III)**

The State requested PFS supplement its responses to Contention E, Requests for Admissions Nos 1 & 4 and Document Requests 1-3, 6-7, 15, 18, part of 19 (marketing), 20 and 22. In general, PFS objected to responding to the foregoing asserting that the issues were outside the scope of the admitted contention. The State argued that for purposes of discovery the question was not the scope of the contention but whether the requested information would lead to discovery of admissible evidence.

The State was particularly concerned about the Applicant's response to Document Request No. 7 wherein PFS objected to

providing correspondence concerning ongoing negotiations even under the confidentiality agreement it has with the State given the highly sensitive and confidential nature of such communications, particularly in view of the Governor's past practice of directly communicating with PFS member utilities to discourage their further participation in PFS.

First, this response is totally inappropriate. It has no basis in fact or under the rules of discovery. Second, the response was the first indication to the State that PFS had any

concerns about the State's use of information it receives under the State-PFS confidential agreement. The State has gone through the tedium of filing proprietary pleadings even though the State does not believe all the information is confidential. The State further agreed to file a proprietary pleading on the understanding that PFS would later justify to the NRC that the information is confidential. Further, I explained that the Governor has not received any PFS confidential information from the litigation proceeding.

Moreover, PFS's response raised additional concerns about the scope of the information the State can expect to receive under the Confidential Agreement. Given PFS's response to Document Request No. 7, the State is concerned that PFS may view the scope of a contention narrowly or withhold relevant information because of what PFS claims to be "sensitive" communications. If PFS has a problem with the State's use of PFS confidential information then we should confront the issue head on; it is not a legitimate basis for failing to respond to discovery.

PFS objected to responding to the above mentioned discovery because it asserted the requests were not relevant to Contention E in that the requests dealt with reprocessing and disposal of fuel at the end of PFS's operation (Admissions 1 & 4 and Documents Requests 1-3 and 18) or dealt with PFS ability to market the facility (Document Requests No 1-7, 15 and 19) or were transportation-related issues (Documents Requests No. 20, 22).

2. Applicant's Objections and Proprietary Responses to State's Third Requests for Discovery

In this response the State requested PFS to supplement its responses to Contention E, Document Requests No. 2-3, 5, 10, 12-15; Contentions S, Admission Requests 1, 5-6, 16-18 and Document Requests 3-5, 8, 11 and 16.

a. Contention E. PFS again objected to supplementing a response on the basis that marketing (Document Request No. 2) and reprocessing/disposal (Document Request No. 3) are not relevant to the contention; and that in Document Requests 5, 10, 12, 13 and 15 PFS maintained that it was making normal use of the work "relevant" and not trying to narrow the documents it would provide to the State. Finally, Document Request 14, PFS stated it has or will provide all documents that it has in its possession but it will not solicit utilities, including its member utilities, for the requested information (*i.e.* costs or estimated cost of construction and/or operation of other existing or proposed on-site or off-site ISFSIs)

b. Contention S. Admission Request No. 1, PFS stated that it did not understand the term "economic life" and even if it did, it is not relevant to the contention. PFS will respond to Admission Request No. 5 (basis of the \$17,000 cost), but will not respond to Admission Request No. 6 (basis for the 20% contamination estimate). I argued that the 20% contamination estimate was the underlying premise for the \$17,000 figure and should be answered. You were going to check whether PFS

would respond but I am unsure whether we reached a decision. You advised me that PFS won't answer Admission Requests 16-18 because the requests deal with non-radiological costs. PFS will answer Document Requests No. 3 and 5 but not Request No. 4 because it is based on the 20% contamination issue. PFS will also answer Documents Request No. 8 part (d) and (e) and may or may not answer part (a-c). You mentioned you would get back to me on Document Request No. 11. Finally, PFS will not answer Document Request 16 (documentation showing what the potential is for contamination of casks when "normal conditions" do not obtain) because you claim it is beyond the scope of the contention.

3. Applicant's Objections and Non-Proprietary Responses to State's Third Requests for Discovery

The only issue here was PFS use of the term "relevant" especially with respect to Contention Z. You informed me that it was the normal use of the term as it relates to documents "relevant" to a contention.

4. State's Response to PFS's Unwillingness to Supplement Responses

I informed you that the State would not be filing a motion to compel today on the responses PFS was unwilling to supplement. Instead, I requested that PFS not take a narrow view of "relevance" or the scope of a contention when determining what documents it will forward to its repository in Salt Lake City or otherwise make available to the State. I also requested that to the extent that PFS may believe it has a legal reason for objecting to document request that it, nonetheless, produce all requested documents. Finally, the State again requests PFS to review the redacted portions of produced documents, in particular the PFS Board Minutes, to determine whether any relevant information (as interpreted under discovery rules) should be released.

I understand that another set of documents will shortly be available for the State's review at Parsons, Behle & Latimer. For now the State is willing to forego a Motion to Compel. However, after review of the produced documents, and during the discovery window in January and February 2000, the State may take a different view of PFS's unwillingness to respond to the issues identified in this letter. If you have any questions, or if I have mischaracterized our discussion, please do not hesitate to contact me at (801) 366-0286.

Sincerely,


Denise Chancellor
Assistant Attorney General

EXHIBIT 3

STATE OF UTAH

OFFICE OF THE ATTORNEY GENERAL



JAN GRAHAM
ATTORNEY GENERAL

JAMES R. SOPER
Solicitor General

REED RICHARDS
Chief Deputy Attorney General

December 13, 1999

Paul Gaukler, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington DC 20037-1128

Via E-mail and First Class Mail

re: State's Proposed Motion to Compel PFS to Respond to
State's Fourth Set of Discovery Requests (Contention E)

Dear Paul:

This letter follows up on my telephone conversation with you on December 10, 1999. First, we both agreed that the State should consider that it was served with the Applicant's response to Discovery on December 7, 1999¹ and thus, the seven days for the State to file a Motion to Compel Discovery commenced on December 7.

Second, I advised you on Friday that the State intended to file a Motion to Compel discovery on PFS's failure to respond to those discovery requests in which PFS argued that it need not legally respond to marketability-related issues. It should be noted, however, that while Basis 7 of Contention E deals specifically with marketability, some of the State's discovery requests that PFS has objected to on marketability grounds relate to PFS's ability to assure whether there is a realistic probability that PFS will have sufficient funds to construct and operate the facility, and the terms under which such funds may be acquired for the project or withdrawn from the project. Thus, while PFS objects to responding to discovery on marketability grounds, the State believes that the issue is much broader than marketability. I further advised you if there were any other issues that the State intends to

¹ As permitted by the Board's procedural rulings on serving proprietary pleadings, the Applicant served its discovery responses on the State by fax at approximately 11 pm EST, December 6, 1999, such that the State received the document on the day after the response was due.

include in its Motion to Compel, I would advise you of them today. Accordingly, this letter discusses, specifically, those discovery requests (all of which relate to Contention E) that the State will request the Board to compel responses.

On December 7, 1999 the State was served with a copy of the Applicant's Motion for Summary Disposition for Utah Contention E, all bases for except basis 6 ("Summary Disposition Motion"). In general, PFS's marketability legal arguments for not responding to the State's discovery are mirrored in the arguments PFS raised in the Summary Disposition Motion (PFS also cited to the Motion in its discovery response). The State in its response to the Summary Disposition Motion will present its arguments about the continued relevance of marketability under admitted basis 7 of Contention E, as well as the relevance of all the bases under which Contention E was admitted by the Board. To protect the State's interests, however, the State intends to file a Motion to Compel PFS to answer the discovery requests PFS refused to answer if and when the Board denies PFS's Motion for Summary Disposition, in whole or in part.

The State also intends to request in its Motion to Compel that should the Board grant the State's motion, the State not be constrained by the limitation of using no more than four interrogatories after December 31, 1999 because the Summary Disposition Motion will not be decided until some time in January, 2000. Depending on the timing of the Board's Summary Disposition decision, the State may also request additional time for discovery on any and all issues that remain after the decision is issued. The State feels that it has not waited until the last minute to raise these issues. As you are aware, the State and PFS tried unsuccessfully to resolve PFS's refusal, based on the same marketability arguments, to answer similar discovery requests directed to PFS by the State during the formal discovery period.

As to the specific discovery responses, PFS's responses to Request for Admissions No. 3 through 7; 2nd sentence of Request for Admission No. 8; and Documents Requests 5, 6 and 8, and 2nd sentence of No. 7, relate to marketability. Thus, under basis 7, these discovery requests are not only relevant but also germane to the State's preparation for trial. These requests also relate to Bases 2 and 8. Moreover, Request for Admission No. 4 and 5 relate to Basis 1. All of the foregoing bases form part of PFS's Motion for Summary Disposition.

Document Request No. 13 and 14. The recent Energy Resources International ("ERI") revision ("Supko Study") provided a partial production under these two document requests. PFS, however, has claimed some of the material in the Supko Study is proprietary to ERI. The State is handicapped in analyzing the revision to the Supko study because it

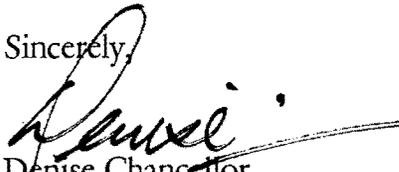
Paul Gaukler, Esq.

Page 3

does not have access to the spreadsheets relating to the study. The Supko study is relevant to Contention E, Basis 2, 7 and 8. To the extent that PFS cannot obtain timely access to those spreadsheets, the State believes that it must protect its interest by including this request in the Motion to Compel. In the meantime, I am more than willing to work with you in determining whether there are reasonable measures we can work out to allow the State timely access to the spreadsheets.

If you have questions, I will be in the office all day today and tomorrow. I will not file the Motion to Compel until late in the day tomorrow.

Sincerely,



Denise Chancellor
Assistant Attorney General

cc: Sherwin Turk, Esq., NRC, Office of General Counsel