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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)

PRIVATE FUEL STORAGE L.L.C.)

(Private Fuel Storage Facility))

Docket No. 72-22-ISFSI

**APPLICANT'S MOTION TO STRIKE PORTION OF TESTIMONY OF
MICHAEL SHEEHAN ON UTAH CONTENTION S**

Pursuant to the Memorandum and Order of the Atomic Safety and Licensing Board ("Board") of May 1, 2000,¹ Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") files this motion to strike part of Prefiled Testimony of Michael F. Sheehan, Ph.D. on Behalf of the State of Utah Regarding Contention Utah S ("Sheehan Utah S"). The part of Dr. Sheehan's testimony subject to the motion concerns the "vintage" of the data underlying PFS's decommissioning cost estimates, which is outside the scope of Utah Contention S ("Utah S") as amended by the Board's Memorandum and Order of May 1.

I. BACKGROUND

Utah S, admitted in April 1998, challenged the adequacy of PFS's decommissioning plan and decommissioning funding plan for the PFSF. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation) LBP-98-7, 47 NRC 142, 196-97, 255 (1998). On April 7, 2000, PFS and the State filed a joint motion to approve a stipulation for the hearing of Utah S.² Both parties agreed that the litigation regarding Utah S

¹ Memorandum and Order (Granting Joint Motion to Approve Stipulation on Contention Utah S and Outlining Administrative Matters) (May 1, 2000).

² Joint Motion by the State of Utah and the Applicant to Approve Stipulation for the Hearing of Utah Con-

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would not involve the estimates that underlie the decontamination costs set forth in PFS's license application. Memorandum and Order at 2.³ Rather, as set forth in the Memorandum and Order,

the focus will be the sufficiency of the funding for direct and indirect decommissioning costs, taking into account (1) the year's dollars used to establish the PFS costs; (2) the escalation factors employed to arrive at the future value of those costs; (3) the maximum quantities of spent fuel at the PFS site during the license term; (4) the potential for large accidents; and (5) the means by which PFS will provide sufficient funds if a comparison between the cost estimate and present funds indicates a deficit in present decommissioning plan funding.

On May 15, the State of Utah filed testimony by Michael Sheehan regarding Utah

S. Questions 8, 19 and 20 state in pertinent part:

Q.8. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A.8. The purpose of my testimony is to provide an analysis of the adequacy of PFS' decommissioning cost estimates in three areas:

.....

3. The inadequacy of PFS' explanation of the vintage of the data underlying its cost estimates and the lack of specification of years [sic] dollars in the estimates; . . .

.....

Q.19. HAS PFS IDENTIFIED THE VINTAGE OF THE DATA USED FOR ITS DECOMMISSIONING COST ESTIMATES?

A.19. Not in any document that has been made available to me.

Q.20. IS IT POSSIBLE TO DETERMINE THE VALIDITY OF THE DECOMMISSIONING COST ESTIMATE WITHOUT KNOWING THE VINTAGE OF THE DATA UNDERLYING THE ESTIMATE AND THE YEARS [sic] DOLLARS?

tention S [hereinafter "Joint Motion"] (Apr. 7, 2000).

³ See also Joint Motion at 1-2. "Both the State and PFS have found that there has been a significant volume of documents relating to the specific costs for decontamination. Both parties also foresee that establishing how the Applicant's decontamination cost estimates were derived, or should have been derived, may entail lengthy testimony and the introduction of a voluminous quantity of documents. Accordingly, the State and PFS have agreed that the underlying decontamination cost estimates will not be the subject of litigation of Contention S."

- A.20. No. If you didn't know and you assumed that a cost estimate was based on current cost data in current dollars, then you would have underestimated the cost of decommissioning by the amount of the real cost increase and the rate of inflation between the actual year of the data and the actual years [sic] dollars to the current year.

Sheehan Utah S at 6, 10-11.

The issue of the "vintage" of PFS's decommissioning cost data is an issue separate and distinct from any of the five issues that the parties agreed to litigate in the Joint Motion and that the Board approved. In addition, the vintage issue goes to the validity of the estimates themselves, which, as shown above, no longer falls within the scope of Utah S as amended. Therefore, the parts of Questions 8, 19, and 20 concerning the vintage of PFS's data should be stricken.

II. DISCUSSION

The Board should strike that part of Dr. Sheehan's testimony, Questions 8, 19, and 20, concerning the vintage of the data underlying PFS's decommissioning cost estimates as being irrelevant, in that it is outside the scope of amended Utah S.

A. Testimony Outside the Scope of a Contention Should Be Excluded

Under NRC regulations governing testimony at hearings, "[o]nly relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an [otherwise] admissible document will be segregated and excluded so far as is practicable." 10 C.F.R. § 2.743(c).

Under NRC case law, "an intervenor is bound by the literal terms of its own contention," and "the reach of a contention necessarily hinges upon its terms coupled with its stated bases." Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 & n.11 (1988). An intervenor is also bound by the

literal terms of its contention as reworded or amended by a licensing board, if so reworded or amended. See Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-876, 26 NRC 277, 284 (1987). Particularly here, where the parties have negotiated a very explicit scope of the contention, testimony which is outside that scope has no place in the proceeding.

B. Dr. Sheehan's Testimony Should Be Stricken As Irrelevant to Amended Utah S

Amended Utah S, Basis 4, which pertains to the basis for PFS's decommissioning costs estimates, reads in pertinent part:

The Applicant has failed to justify the basis for its decommissioning cost estimates of \$17,000 to decommission a storage cask and of \$1,631,000 to decommission the remainder of the ISFSI in that (i) the decommissioning cost estimates do not state *the year's dollars used* (e.g., 1997 dollars) as provided in NUREG-1567, Draft Standard Review Plan for Spent Fuel Dry Storage Facilities, LA Appendix B, Chapter 4, and (ii) the estimates are not properly escalated *to convert past dollar values into future dollar values* (i.e., the future value of costs when the costs are expected to be incurred).

Joint Motion, Attachment A (*italics added*). Thus, the scope of Basis 4 of Utah S is limited to (1) the year's dollars in which PFS provided its decommissioning cost estimates of \$17,000 per cask and \$1,631,000 for the remainder of the site and (2) the escalation of those estimates from the year's dollars in which PFS provided them to future year's dollars for the future year(s) in which the costs will actually be incurred. Nowhere does amended Utah S mention, address, or implicate the vintage of the data underlying PFS's cost estimates (as opposed to the year's dollars in which PFS provided the estimates).

Allowing testimony on the vintage of the data underlying PFS's estimates would essentially put the cost estimates themselves at issue. In fact, Dr. Sheehan's testimony

identifies “the vintage of [PFS’s] data” as one of five distinct issues on which he testifies, the others being: “account[ing] for the risk of large accidents,” “ensur[ing] that decommissioning cost estimates will track actual cost increases over time,” “specification of years [sic] dollars in the estimates,” and “adjust[ing] fees on an ongoing basis to track changes in estimated costs.” Sheehan Utah S at 6 (Question 8). The Board, however, has granted the parties’ motion stipulating that the litigation of Utah S “will not involve the estimates that underlie the decontamination costs set forth in the PFS application.”

Memorandum and Order at 2 (emphasis added). Furthermore, the parties jointly stated in their motion that they

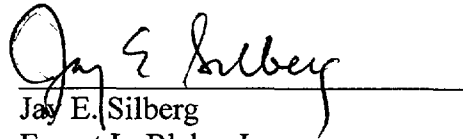
foresee that establishing how the Applicant’s decontamination cost estimates were derived, or should have been derived, may entail lengthy testimony and the introduction of a voluminous quantity of documents. Accordingly, the State and PFS have agreed that the underlying decontamination cost estimates will not be the subject of litigation of Contention S.

Joint Motion at 1-2 (emphasis added). The issue of the vintage of the data underlying PFS’s decommissioning cost estimates goes to how the estimates “were derived, or should have been derived.” Thus, under the parties’ stipulation, the issue is no longer the subject of this litigation. Therefore, the Board should strike as irrelevant to amended Utah S that part of Dr. Sheehan’s testimony in Questions 8, 19, and 20 concerning the vintage of the data underlying PFS’s decommissioning cost estimates.

III. CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Board strike the part of Michael Sheehan's testimony on Utah S concerning the vintage of the data underlying PFS's decommissioning cost estimates as outside the scope of Utah S.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jay E. Silberg", is written over a horizontal line.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Before the Atomic Safety and Licensing Board

Office of the
Administrative
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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Applicant's Motion to Strike Portion of Testimony of Michael Sheehan on Utah Contention S" was served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 31st day of May 2000.

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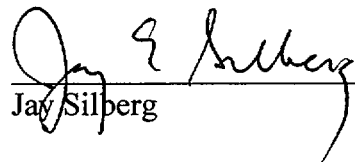
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