

July 20, 1999

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
PRIVATE FUEL STORAGE L.L.C.	)	Docket No. 72-22
	)	
(Private Fuel Storage Facility)	)	

**APPLICANT'S MOTION TO COMPEL ANSWERS
TO INTERROGATORIES BY THE STATE OF UTAH**

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") files this motion to compel the State of Utah ("State" or "Utah") to answer interrogatories pursuant to 10 C.F.R. § 2.740(f)(1). PFS files this motion after receiving responses to its Second Set of Formal Discovery Requests¹ from the State that were deficient and incomplete.

I. STATEMENT OF THE ISSUES

On May 13, 1999, the Applicant served the State with its second formal discovery request. PFS 2nd Req. On June 28, the State served the Applicant with its response. Utah Utah 2nd Resp. After resolving various disagreements with the State,² the Applicant be-

¹ Applicant's Second Set of Formal Discovery Requests to Intervenor State of Utah and Confederated Tribes, dated May 13, 1999 [hereinafter PFS 2nd Req.]; State of Utah's Objections and Response to Applicant's Second Set of Discovery Requests With Respect to Groups II and III Contentions, dated June 28, 1999, [hereinafter Utah 2nd Resp.].

² Pursuant to the Atomic Safety and Licensing Board's ("Licensing Board" or "Board") direction, the Applicant communicated by both letter and phone with the State in an effort to resolve its dispute with the State informally. That effort was in largely successful. See Letter from Paul Gaukler, counsel for Applicant, to Denise Chancellor, counsel for State (July 20, 1999).

lieves that the State's response remains deficient, specifically its responses to Interrogatory Nos. 2-4 and 6 with respect to Utah Contention O.³ The purpose of these interrogatories was to elicit the specific factual and technical bases for the State's allegations that the construction and operation of the Private Fuel Storage Facility ("PFSF") would contaminate both the groundwater and surface water in Skull Valley in order to sharply define the issues for litigation. The State's responses, however, fail to do so, and accordingly PFS files this motion to compel.

II. ARGUMENT

It is imperative that the State answer the Applicant's discovery requests directly, completely and in a timely manner. "[T]he failure to fulfill discovery obligations [not only] unnecessarily delay[s] a proceeding, it is also manifestly unfair to the other parties." Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 NRC 1400, 1417 (1982).

The Applicants in particular carry an unrelieved burden of proof in Commission proceedings. Unless they can effectively inquire into the positions of the intervenors, discharging that burden may be impossible.

Id. (quoting Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 338 (1980)).

As noted above, Interrogatory Nos. 2-4 and 6 for Contention Utah O sought to elicit the specific factual and technical bases for the State's allegations that the construc-

³ See PFS 2nd Req. at 13-14; Utah 2nd Resp. at 81-85.

tion and operation of the PFSF would contaminate both the groundwater and surface water in Skull Valley. These interrogatories requested the State to identify (together with the scientific and technical bases therefor) the specific contaminants that the State claims would enter the various pathways to the ground or surface water identified by the State in response to Applicant's Interrogatory No. 1 and the means or mechanism by which the contaminants would enter those pathways (Interrogatory No. 2), the State's position on the likelihood of such contaminants reaching the surface or ground water in Skull Valley, including identification of the specific bodies of surface waters (Interrogatory Nos. 3 and 4), and any resulting measurable or adverse impacts that the State claims would result on down-gradient hydrological resources (Interrogatory No. 6).

The State's responses are wholly inadequate, particularly at this stage of the proceeding, more than 18 months after the filing of the contentions. In response to the Applicant's request for the State to identify the specific contaminants (and the means of their escape) that the State alleges will be emitted from the PFSF (Interrogatory No. 2), the State merely cited its answer identifying the pathways it alleges such contaminants would follow from the PFSF; it identified no contaminants nor provided any technical bases by which contaminants would escape the PFSF (for example from the spent fuel storage casks) other than the broad generalizations in its response to Interrogatory No. 1 which lack technical content. State 2nd Resp. at 83; see also State 2nd Resp. at 81-83. Similarly, in response to the Applicant's request for the State to identify its position on the likelihood that the specified contaminants would enter the ground or surface water (Interroga-

tory No. 3), the State again merely cited its answer to Interrogatory No 1 identifying the general pathways that it alleges such contaminants would follow from the PFSF; it provided no asserted likelihood of the contamination reaching the ground or surface water nor any technical bases to support a claim that any such contamination would reach the ground or surface water in Skull Valley. Id. In response to the Applicant's request to identify the specific bodies of water the State asserts would be contaminated by the PFSF and the technical bases therefor (Interrogatory No. 4), the State merely cites a list of some 45 bodies of water in Skull Valley which it claims "could be contaminated by operations" without providing any technical basis for its claims. Id. at 83-84 (emphasis added). Finally, in response to the Applicant's request that the State identify and explain any measurable or adverse impacts the PFSF would have on down-gradient hydrological resources (Interrogatory No. 6), the State again merely cited its response to Interrogatory 1, in which it identified the pathways by which it asserts contaminants would follow from the PFSF; it provided no technical explanation or bases whatsoever for its claims that such contaminants would pose any measurable or adverse hazard to down gradient resources. Id. at 85.

In subsequent informal discussions with the Applicant, the State has claimed that it could not provide more detailed answers to these questions because of an alleged lack of detail in PFS's license application. However, as the Applicant indicated to the State informally, no such lack of detail can be claimed, particularly with respect to radiological contaminants, as the license application and RAI responses provide information con-

cerning the spent fuel to be stored at the PFSF as well as the design of structures and systems important to safety. For example, Section 6 of the Safety Analyses Report ("SAR") describes how the PFSF will be designed and operated to preclude releases of radioactivity under normal operating conditions.⁴ Section 8 of the SAR discusses the lack of any credible accidents that would result in a release of radioactivity to the environment.⁵ Sections 3, 4, and 5 of the SAR describe the design and operation of the PFSF on which underpin the above mentioned SAR sections. Further, PFS has responded to the State's interrogatories and document requests with respect to Utah O providing over fifteen pages of answers.⁶ In its responses, PFS has provided additional information on how the PFSF will be designed and operated to preclude the release of radioactivity to the environment.⁷

Further, although the information provided by PFS with respect to non-radiological contaminants is less detailed, the State has sufficient information to provide more complete answers to the interrogatories than the responses that it has provided. In its discovery responses, PFS has provided preliminary engineering drawings for the septic tank system and the associated leaching field as well as providing other general information with respect to the septic system, including identifying the general type of efflu-

⁴ See also PFSF Environmental Report ("ER") at Section 3.4.

⁵ See also ER at Section 5.1.

⁶ See Applicant's Objections and Non-Proprietary Responses to State's First Requests for Discovery, dated April 21, 1999, at 45-62. The State did not issue with adequacy of PFS's responses.

⁷ Id. at 48-51, 54.

ents to be disposed of in the septic system.⁸ PFS has also provided information that it will be most likely be using normal maintenance/cleaning related chemical substances such as commercial cleaners and solvents, and has provide information on diesel fuel, effluents from vehicle and equipment maintenance, and other effluents from construction and operational activities at the PFSF site.⁹

Thus, the Applicant believes that the State has sufficient information to answer Interrogatory Nos. 2-4 and 6, and certainly enough information to provide much more complete (even if not final) answers than those provided by the State. Moreover, certain aspects of the answers are not directly dependent on information provided by PFS, such as the likelihood, assuming a release, of contaminants entering into the groundwater or surface water. Therefore, PFS believes that State's answers are deficient and the Board should order the State to fully answer the specified interrogatories.

It is clear under Commission precedent that the State's non-responsive and incomplete answers are deficient. Boston Edison Company (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 583 (1975) (interrogatory answers "must be complete, explicit and responsive"); 10 C.F.R. § 2.740(f)(1) ("[a]n evasive or incomplete answer or response shall be treated as a failure to answer or respond"). As stated by the Pilgrim board:

⁸ Id. at 45-47, 60.

⁹ See generally id. at 45-62.

[An intervenor] has a responsibility to specify the facts, i.e., the data, information and documents, if any, upon which he intends to rely and upon which he has relied in support of his intervention, so that parties may be advised in advance with regard to the nature of the Intervenor's case.

Pilgrim, LBP-75-30, 1 NRC at 586 (emphasis added).¹⁰ Thus, the State must provide the specific facts, data, and information on which it bases its claims concerning the asserted threat to groundwater or surface water quality posed by the PFSF.

The State's argument that it does not have enough information from PFS to respond, in addition to being wrong, provides no justification for ignoring the interrogatories. It should provide responses based on the extensive information it has now and, if need be, supplement its answers as it obtains further information.

[L]ack of complete or partial knowledge does not excuse failure to make timely answers to interrogatories. In the absence of such knowledge, the party . . . must answer to the best of his ability . . . ; if he claims to have less than full information at the time his answers are due, he should answer by giving the available information and by stating that the answer reflects the limited information that he then has.

Pilgrim, LBP-75-30, 1 NRC at 583 n.10; Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-17, 17 NRC 490, 498-99 (1983).

Therefore, PFS requests that the Board order the State to provide direct, complete, and specific answers to PFS's Interrogatories Nos. 2-4 and 6 for Utah O on the basis of the information the State currently has available to it.

¹⁰ See, also Duke Power Company (Catawba Nuclear Station, Units 1 and 2), LBP-83-29A, 17 NRC 1121, 1124 (1983) (response concerning quality assurance contention should "state the nature of the problem, where in the plant it was found, when it occurred and who was involved"); id. at 1125 (welding response

III. CONCLUSION

For the forgoing reasons, the Board should compel the State to produce the information requested by the Applicant's Interrogatories Nos. 2-4 and 6 related to Utah O.

Respectfully submitted,



Jay E. Silberg

Ernest L. Blake, Jr.

Paul A. Gaukler

SHAW, PITTMAN, POTTS & TROWBRIDGE

2300 N Street, N.W.

Washington, DC 20037

(202) 663-8000

Counsel for Private Fuel Storage L.L.C.

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should give "names, places, dates, etc."); id. at 1127-28 (responses must specifically define contention terms, such as "sufficient").

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CERTIFICATE OF SERVICE

I hereby certify that copies of the Applicant's Motion to Compel Answers to Interrogatories by the State of Utah were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 20th day of July 1999.

G. Paul Bollwerk III, Esq., Chairman Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: GPB@nrc.gov

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: PSL@nrc.gov

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: JRK2@nrc.gov and kjerry@erols.com

* Susan F. Shankman
Deputy Director, Licensing & Inspection
Directorate, Spent Fuel Project Office
Office of Nuclear Material Safety & Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and Adjudications
Staff
e-mail: hearingdocket@nrc.gov
(Original and two copies)

Catherine L. Marco, Esq.
Sherwin E. Turk, Esq.
Office of the General Counsel
Mail Stop O-15 B18
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
e-mail: pfscase@nrc.gov

John Paul Kennedy, Sr., Esq.
Confederated Tribes of the Goshute
Reservation and David Pete
1385 Yale Avenue
Salt Lake City, Utah 84105
e-mail: john@kennedys.org

Diane Curran, Esq.
Harmon, Curran, Spielberg &
Eisenberg, L.L.P.
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
e-mail: dcurran@harmoncurran.com

* Adjudicatory File
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Denise Chancellor, Esq.
Assistant Attorney General
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, Utah 84114-0873
e-mail: dchancel@state.UT.US

Joro Walker, Esq.
Land and Water Fund of the Rockies
2056 East 3300 South, Suite 1
Salt Lake City, UT 84109
e-mail: joro61@inconnect.com

Danny Quintana, Esq.
Skull Valley Band of Goshute Indians
Danny Quintana & Associates, P.C.
68 South Main Street, Suite 600
Salt Lake City, Utah 84101
e-mail: quintana@xmission.com

* By U.S. mail only


Paul A. Gaukler