

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION


BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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|---------------------------|---|---------------------------|
| In the Matter of: |) | Docket No. 72-22-ISFSI |
| |) | |
| PRIVATE FUEL STORAGE, LLC |) | ASLBP No. 97-732-02-ISFSI |
| (Independent Spent Fuel |) | |
| Storage Installation) |) | January 18, 2000 |

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 I assisted the State of Utah in preparing discovery requests to the Applicant, and that the statements contained in State of Utah's January 18, 2000 Motion to Compel Applicant to Respond to State's Eighth Set of Discovery Requests, relating to Utah Contention E, are true and correct to the best of my knowledge, information and belief.

Executed this 18th day of January 2000.

By: 
Michael F. Sheehan, Ph.D.

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



JAN GRAHAM
ATTORNEY GENERAL

JAMES R. SOPER
Solicitor General

REED RICHARDS
Chief Deputy Attorney General

January 12, 2000

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 Eighth Set of Discovery Requests (Contention E)

Dear Paul:

As generally discussed earlier this week and as I advised in my voice message to you today, I advised you that the State intends 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 or to issues related to its financial qualifications. As I have indicated in our previous correspondence relating to other Motions to Compel answers to PFS's responses to discovery on Utah Contention E and also in the State's December 27, 1999, Response to PFS's December 7, 1999 Motion for Summary Disposition for Utah Contention E, and in State's January 10, 2000 Reply to Staff, the State does not agree that it is legally sufficient for PFS to rely only on license conditions to meet the financial assurance requirements. The State believes PFS is required to demonstrate during the licensing proceeding that it is financially qualified to construct and operate the proposed facility. In addition, because PFS's ability to obtain adequate financing is dependent upon its ability to market storage space, marketability is also relevant.

As you are aware, the State and PFS tried unsuccessfully to resolve PFS's refusal to answer similar discovery requests directed to PFS by the State in the past. We recognize that PFS is likely to continue to have a legal disagreement with the State about these matters and that we will not be able to reach resolution of the issues until after a decision on summary disposition is rendered. To protect the State's interests, the State intends to file a

Motion to Compel PFS to answer the discovery requests PFS refused to answer. As we did previously, 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 this month or later. We are also likely to request additional time for discovery on any and all issues that arise as a result of any discovery PFS produces following the Board's decision.

Specifically, the State expects to file a motion to compel with respect to the following areas:

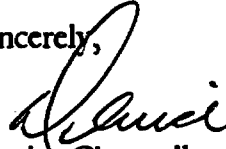
1. **Marketability-Related, Contention E: Request for Admission No. 5, Interrogatory No. 5 and Interrogatory No. 9.** The issues are the same as in our present motion to compel before the Board.
2. **The scope of "include" in PFS's responses to Contention E, Interrogatories No. 7 and 8, Contention S. Interrogatory No. 5.** PFS objected to responding to document requests naming specific documents that PFS had produced about a particular issue, arguing that the State must send an interrogatory to obtain this specific information. The foregoing three interrogatories are in response to PFS's objections. In its current discovery response, PFS states: "the documents PFS had produced to the State include the following documents..." (emphasis in original). While I understand that PFS may not want to categorically state all the documents PFS may have produced, I am concerned that "include" may be read narrowly. If the word "includes" means that, to date, the documents listed are the bulk of the documents that PFS has produced to date and that PFS will timely supplement this interrogatory if it produces more documents, then the word "include" may be satisfactory. On the other hand, if "include" means that PFS is giving the State an "example" of what it has produced then it is an inadequate response.
3. **Contention E, Document Request No. 2.** The State believes that whatever is in the business plan is relevant and requests the redacted pages be produced
4. **Contention E, Document Requests No. 3 and 12.** The State believes that PFS has not produced documents that show the basis for how PFS arrived at the calculated figure for insurance (i.e. \$200 million liability insurance and redacted in off-site property insurance).
5. **Contention S, Interrogatory No. 7.** Currently, PFS appears to have no

documents responsive to this interrogatory except the license application. The State requests that responsive documents be produced prior to the scheduled deposition of the State's expert, David Schlissel (tentatively scheduled for the week of January 24) in time for him to review the documents prior to his deposition.

6. Contention S, Document Request No. 1. PFS's response is inadequate. To the extent that PFS will rely on NRC documents, it must tell the State the name of the NRC documents. The State agrees that PFS need not actually produce publically available NRC documents.

I am sorry I was unable to speak with you by phone today but I believe the above should alert you to the State's concerns. I do not intend to file a Motion to Compel until Tuesday, January 18, 2000, and hope to speak with you about these matters before then.

Sincerely,



Denise Chancellor
Assistant Attorney General

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