

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



JAN GRAHAM
ATTORNEY GENERAL

JAMES R. SOPER
Solicitor General

REED RICHARDS
Chief Deputy Attorney General

February 3, 2000

Sherwin Turk, Esq.
U.S. Nuclear Regulatory Commission
Office of General Counsel
Mail Stop-0-15 B18
Washington, DC 20555

via email (set@nrc.gov) and First Class Mail

re: Staff's Response to State of Utah's 5th Set of Discovery to the Staff.
Private Fuel Storage ISFSI, Docket No. 72-22

Sherwin
Dear Mr. Turk:

I refer to our telephone conversations yesterday and today where I advised you that the State was not satisfied with some of the Staff's responses to the above discovery. The State and the Staff reached resolution on the Document Requests but could not resolve some of the answers to Requests for Admissions.

First as to Document Requests, you agreed to provide a list of documents that the Staff relied upon in developing its position on Chapter 17 of the SER. You mentioned that those documents would be contained in the PFS docket and that you would list them such that I could identify the documents. In addition, you agreed to determine whether there are documents, additional to those in the docket, that the Staff relied upon and describe those documents to me.

Second, Requests for Admission. There are a number of responses that the State considers to be non-responsive. The following are the requests on which that the State will file a Motion to Compel; the others the State will not pursue. Similar to our telephone discussion, I will group the requests into general categories.

1. Request for Admission No. 16 relates to whether the Staff required a showing of financial assurance prior to license issuance for all other ISFSIs licensed to a utility under Part 72. I stated that to my knowledge there were maybe 7 to 10 such licenses, and that the issue was relevant to how the Staff has previously implemented Part 72. You agreed to look at this further and let me know whether you can respond. If we cannot reach agreement by the end of the day tomorrow, I will include this request in the State's Motion to Compel.

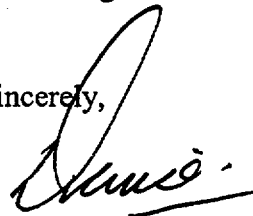
Sherwin Turk, Esq.

Page 2

2. The Admission Requests based LES (Nos. 24-29). In general the Staff responded that the requests were vague, ambiguous, speculative and constituted compound questions. The State believes that these requests are straight forward because the Staff's position and SER Chapter 17, rely on LES for employing license conditions to implement the financial assurance requirements of Part 72. Thus, it is reasonable for the State to enquiry into the differences between the proposed LES facility and PFS's proposed ISFSI.
3. Admission Requests about Service Agreement and Funding (No. 35, 44, and 46). The Staff raised similar objections to those stated in item 2 above. The Staff's responses are inadequate because Admission Request No. 35 calls for whether the Staff know of any reason why PFS would not give the Staff a copy of its Service Agreement; and Requests 44 and 46 relate to how PFS may obtain debt financing and whether PFS will have a sufficient income stream to repay debt. Regardless of the license conditions, these questions are relevant to the Staff's determination (either now or at some future indeterminate date) of what constitutes "reasonable assurance" that PFS will have sufficient funds to meet the requirements of Part 72.
4. Admission Requests about relationship among customers and defaulting customers (No. 36 and 49). Again the Staff's objections were similar to those stated in item 2 above. The Staff's answers are inadequate because the Staff's determination of how PFS's financial capability will cover contingent events, regardless of the license conditions, is significant to whether PFS will have "reasonable assurance" of obtaining funds over the planned life of the facility.

I will be available all day tomorrow. If you think we can reach agreement on any of the issues outlined above, please phone me at (801) 366-0286. If not, I intend to file a Motion to Compel by the end of the day tomorrow--the deadline for filing the motion.

Sincerely,



Denise Chancellor
Assistant Attorney General

cc: Paul Gaukler, Esq. Shaw Pittman (email only)
(paul_gaukler@shawpittman.com)

STATE'S EXCERPT FROM AN NRC PDR LIST OF PART 72 LICENSEES AND APPLICANTS
AS OF AUGUST 31, 1999

ISFSI LICENSES ISSUED TO UTILITIES UNDER PART 72:

7200001	GENERAL ELECTRIC CO. G.E. MORRIS ISFSI LICENSE NO: SNM-2500
7200003	CAROLINA POWER & LIGHT CO. H. B. ROBINSON ISFSI UNIT 2 LICENSE NO. : SNM-2502
7200004	DUKE ENERGY CORP. OCONEE ISFSI LICENSE NO: SNM-2503
7200005	WISCONSIN ELECTRIC POWER CO. POINT BEACH NUC. PLANT, UNITS 1&2 LICENSE NO: SFGL-03
7200007	CONSUMERS ENERGY CO. PALISADES NUCLEAR PLANT LICENSE NO: SFGL-01
7200008	BALTIMORE GAS AND ELECTRIC CO. CALVERT CLIFFS ISFSI LICENSE NO. : SNM-2505
7200009	PUBLIC SERVICE CO. OF COLORADO FORT ST. VRAIN ISFSI LICENSE NO: SNM-2504
7200010	NORTHERN STATES POWER CO. PRAIRIE ISLAND ISFSI LICENSE NO: SNM-2506
7200013	ENTERGY OPERATIONS, INC. ARKANSAS NUCLEAR ONE (ANO) LICENSE NO: SFGL-02
7200014	TOLEDO EDISON COMPANY DAVIS-BESSE NUCLEAR PWR STA #1 LICENSE NO: SFGL-04
7200015	GPU NUCLEAR CORP. OYSTER CREEK NUCLEAR GEN. STATION LICENSE NO: SFGL-05
7200016	VIRGINIA ELECTRIC & POWER CO. NORTH ANNA ISFSI LICENSE NO: SNM-2507