

January 19, 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PRIVATE FUEL STORAGE, LLC) Docket No. 72-22-ISFSI
)
(Independent Spent)
Fuel Storage Installation))

AFFIDAVIT OF MARK S. DELLIGATTI

I, Mark S. Delligatti, having first been duly sworn, do hereby state as follows:

1. My name is Mark S. Delligatti. I am employed as a Senior Project Manager, Spent Fuel Project Office (SFPO), Nuclear Material Safety and Safeguards (NMSS), Nuclear Regulatory Commission (NRC) in Washington, D.C.
2. This Affidavit is prepared in support of the "NRC Staff's Motion to Strike Portions of State of Utah's Reply to the Staff's Response to the Applicant's Motion For Partial Summary Disposition of Utah Contention E/ Confederated Tribes Contention F."
3. On December 15, 1999, the Staff issued its "Safety Evaluation Report of the Site-Related Aspects of the Private Fuel Storage Facility Independent Spent Fuel Storage Installation" (SER). A version of Chapter 17, "Financial Qualifications and Decommissioning Funding Assurance" that was included in the SER and distributed to the NMSS Service List included draft license conditions that had been superseded by a later version of the SER and which differed from the Staff's final proposed license conditions.

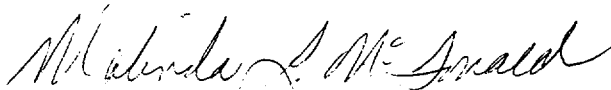
4. The draft version of Chapter 17 of the SER that was released on December 15, 1999 was prepared before the SER was finalized. Upon information and belief, a collation error took place when the document was being prepared for photocopying and distribution, and the incorrect version of Chapter 17 was erroneously included in the final document.

5. On December 28, 1999, the Staff became aware of the inadvertent release of the incorrect version of Chapter 17. On January 4, 2000, the SER was revised and reprinted in its entirety to correct Chapter 17, and on January 7, 2000, I sent a letter to the NMSS Service List, informing all recipients that due to a collation error, Chapter 17 of the SER was not correct and that persons in receipt of the incorrect chapter should return the incorrect version to me or discard it.

6. I hereby certify that the foregoing is true and correct to the best of my knowledge, information and belief.


Mark S. Delligatti

Subscribed and sworn to before me this
19th day of January, 2000.


Notary public

My commission expires: 12/1/2001

January 7, 2000

NOTE TO: PFS Service List

FROM: Mark S. Delligatti, Senior Project Manager
U.S. Nuclear Regulatory Commission

SUBJECT: PLEASE RETURN OR DISCARD EARLIER VERSION
OF PFS SER

Due to a collation error, an incorrect version of Chapter 17 was included in the document originally distributed. Please replace that document with the attached one and either return the original version to me or discard it. If you have any questions, I can be reached at 301 415-8518.

17 FINANCIAL QUALIFICATIONS AND DECOMMISSIONING FUNDING ASSURANCE

17.1 Conduct of Review

17.1.1 Background

Private Fuel Storage L.L.C. is a United States limited liability company owned by eight member companies (members or owners), which is organized under the laws of the State of Delaware and headquartered in La Crosse, Wisconsin. PFS is registered and authorized to transact business in the State of Utah, where it plans to construct, operate, and decommission an ISFSI to store spent fuel from U.S. nuclear power plants, including fuel from its members. These eight members are: Consolidated Edison Company; Genoa Fuel Tech, Inc., an affiliate of Dairyland Power Cooperative; GPU Nuclear Corporation; Illinois Power Company; Indiana Michigan Power Company; Northern States Power Company; Southern California Edison Company; and Southern Nuclear Operating Company, Inc.

In various proprietary documents sent to the NRC supplementing the PFS License Application, PFS has provided details pertaining to the legal, financial, and organizational relationships among its members, as well as financial estimates of various components of expected costs by year. These documents include the PFS Amended and Restated Limited Liability Company Agreement (PFS Agreement) and the PFS Business Plan.

The Facility is designed for a capacity of 40,000 MTU, which will require about 4,000 storage casks and about 500 pads, each pad being capable of supporting eight casks. Each cask will house one sealed metal canister containing multiple spent fuel assemblies. The Facility is designed to store spent fuel for up to 40 years, by which time it is anticipated that the spent fuel will have been transferred offsite so that the Facility can be decommissioned. The initial license request is for a term of 20 years, with plans to renew the license for another 20 years.

With respect to the NRC's financial qualifications requirements, under 10 CFR 72.22(e), an applicant for an ISFSI license must submit sufficient information to demonstrate its financial qualifications to carry out the activities for which the license is sought, in accordance with 10 CFR Part 72 regulations. The information must show "that the applicant either possesses the necessary funds, or that the applicant has reasonable assurance of obtaining the necessary funds, or that by a combination of the two, the applicant will have the necessary funds available to cover the following:

- (1) estimated construction costs;
- (2) estimated operating costs over the planned life of the ISFSI; and
- (3) estimated decommissioning costs, and the necessary financial arrangements to provide reasonable assurance prior to licensing that decommissioning will be carried out after the removal of spent fuel and/or high level radioactive waste from storage."

Regarding decommissioning and decommissioning funding assurance, under 10 CFR 72.30(a), an applicant must provide a proposed decommissioning plan that describes its proposed practices and procedures for decontamination and decommissioning of the site. Further, under

10 CFR 72.30(b), an applicant must submit a "decommissioning funding plan containing information on how reasonable assurance will be provided that funds will be available to decommission the ISFSI." Furthermore, this information "must include a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from [10 CFR 72.30(c)] including means of adjusting cost estimates and associated funding levels periodically over the life of the ISFSI."

The staff also took into consideration the Commission's ruling in Louisiana Energy Services, L.P. (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294 (1997), which pertains to an application by Louisiana Energy Services (LES) to construct and operate a uranium enrichment facility pursuant to 10 CFR Part 70. Among other things, the ruling held that "the NRC is not required as a matter of law to apply the strict financial qualification provisions of Part 50 to all Part 70 license applications." *Id.*, 46 NRC at 298. Rather, "Part 70 calls for a case-by-case inquiry into whether the applicant 'appears to be financially qualified' to take safety measures necessary to assure that activities under the license will not create undue risk to public health and safety." *Id.* at 299. The Commission further observed that Part 50, which applies to nuclear reactors, requires a demonstration at the construction permit stage that the applicant "possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs," and that the Part 50 financial assurance requirements are "far more detailed and comprehensive" than the "general language" found in Part 70 -- which indicates that a Part 70 license may be issued if the applicant "appears to be financially qualified." *Id.* The Commission further observed that the shorter, more flexible language in Part 70 allows "a less rigid, more individualized approach" to determine whether an applicant has demonstrated its financial qualifications, and stated that if the Commission "had intended the Part 50 standards and criteria to apply to all Part 70 applicants . . . the regulations would have either restated the Part 50 criteria or incorporated them by reference." *Id.* at 300. In sum, the Commission concluded that "the general language of Part 70 leaves the Commission free to review the reasonableness of an applicant's financial plan in light of all relevant circumstances," which might or might not lead to application of any or all of the criteria stated in Part 50. *Id.* at 302.

In considering the "relevant circumstances" present in the LES application, the Commission observed that LES lacked contractual commitments by its partners to fund any portion of the project, and also lacked agreements by lending institutions to fund any portion of the project. Nonetheless, the Commission took notice of commitments made by LES in the proceeding not to proceed with the project until certain funding commitments were in hand. Specifically, the Commission found that LES made a financial commitment of not constructing the proposed project in the absence of sufficient advance funding commitments (30% equity and 70% debt) to cover the project's cost, and sufficient advance purchase contracts for the plant's output to cover the construction and operating costs incurred during the term of the contract, including a return on investment. *Id.* at 304-05. The Commission relied on these commitments in developing and imposing two financial assurance conditions in its Order approving the LES application.

The PFS application for an ISFSI under Part 72 has some significant similarities to the LES Part 70 application, such as the fact that it is for a new, joint venture-type entity, made up of significant, financially secure corporations; it requests approval of a non-Part 50 facility application that has less health and safety risks than is associated with the operation of nuclear reactors; the application is not strictly subject to the Part 50 financial assurance requirements;

and the applicant has made financial commitments that it will not proceed with construction of the Facility in the absence of sufficient advance funding commitments. The staff has considered such similarities in this review of the PFS application and in recommending herein certain financial assurance license conditions that the staff believes should be part of any determination to approve it. While Part 72 contains language that differs from Part 70, it is also less prescriptive than Part 50. *Compare* 10 CFR 72.22(e) *with* 10 CFR 50.33(f). Accordingly, as in the LES decision, the staff did not find it necessary or appropriate to rely on Part 50 standards and criteria for its review of the PFS application.

17.1.2 Financial Assurance for Construction Funding

PFS estimates costs of about \$10 million for design and licensing and about \$92 million for Facility construction. Key construction phase components include: site preparation; access road construction; building and storage pad construction; procurement of canister transfer and transport equipment; and transportation corridor (rail line) construction from the main rail line to the Facility site. PFS provided cost estimates of key components of each of the major phases of construction in a response to an NRC RAI, which the staff has reviewed and found to be adequate. These estimates are not shown in this SER, however, since they are proprietary.

Construction is to be funded through several mechanisms, with a total of \$6 million expected from equity contributions from PFS members pursuant to Subscription Agreements and the remainder from revenue commitments from Service Agreements with member and nonmember Customers. If the combination of equity and revenue are insufficient to complete construction, PFS plans to finance the remainder through committed sources of debt financing. The License Application states that no construction will proceed unless and until Service Agreements for a significant commitment of fuel storage have been signed.

PFS plans to execute the Service Agreements referred to above with member and nonmember Customers after the granting of a license by the NRC, and will not have these agreements in place before a license is issued. In addition, PFS has not presented assurance that each member will provide its share of the planned \$6 million aggregate equity contribution or that, if a member fails to provide its share, other members will make up the deficiency.

On the other hand, PFS has supplied information in proprietary documents to the NRC that demonstrate to the staff's satisfaction that PFS has reasonable assurance that it will have adequate funding as required in 10 CFR 72.22(e) before commencing the construction or operation of the Facility. This information, coupled with the financial information that has been provided in non-proprietary documents, the nature of the Facility, and the nature and size of the project's members, provide reasonable assurance of PFS' financial qualifications to construct and operate the Facility without undue risk to public health and safety. The specified initial capacity figure is a proprietary number, which is specified in the PFS' September 15, 1998, and December 3, 1999, submittals (Parkyn, 1998; Gaukler, 1999), and, therefore, is not stated herein. The staff considers this initial capacity figure to be acceptable. Accordingly, the staff recommends that PFS be required to meet the following financial assurance conditions before constructing or operating the Facility and that these conditions should be part of any order approving the PFS application, in order to demonstrate compliance with 10 CFR 72.22(e):

- Construction of the Facility shall not commence before funding (equity, revenue, and debt) is fully committed that is adequate to construct a Facility with the initial capacity as specified by PFS to the NRC. Construction of any additional capacity beyond this initial capacity amount shall commence only after funding is fully committed that is adequate to construct such additional capacity.
- PFS shall not proceed with the Facility's operation unless it has in place long-term Service Agreements with prices sufficient to cover the operating, maintenance, and decommissioning costs of the Facility, for the entire term of the Service Agreements.

17.1.3 Financial Assurance for Operating Costs

PFS plans to fund Facility operations through agreements with Customers obligated under the Service Agreements to pay PFS an annual fee sufficient to fund operational expenses that are not funded by the capital contributions of PFS members. The PFS Business Plan states this annual fee and shows the forecast of annual and total operating costs and revenues based on a "reference case" scenario extending over a 40-year period from 2002-2042. The Business Plan forecasts positive cumulative cash flows and a positive return on equity over the 40-year period. Specific financial forecasts and other data from the Business Plan cannot be cited herein because of their proprietary nature.

The PFS forecast that its own members will store fuel at a significant level over the life of the Facility, approximating the reference case level of usage, provides a considerable degree of assurance that a base level of revenue to meet operating and maintenance (O&M) costs is likely to be available from the members themselves. Collectively, these members have substantial assets and financial resources so that, in the aggregate, they could provide adequate funding for a project of the size and scope proposed by PFS. The License Application states that the Service Agreements will provide assurance for the continued payment of O&M costs by requiring Customers to meet creditworthiness requirements and, if necessary, provide additional financial assurances (such as irrevocable letters of credit or a third-party guarantee).

In sum, the staff finds that the foregoing factors cited in 17.1.3, in combination with the recommended license conditions cited above, provide reasonable assurance that PFS will have adequate funding to operate the Facility.

17.1.4 Financial Assurance for Decommissioning Funding

As noted earlier, decommissioning funding assurance requires a decommissioning cost estimate and a funding plan providing reasonable assurance that adequate funding will be available for decommissioning costs, pursuant to 10 CFR 72.30(b). Furthermore, the Commission's regulations require that financial assurance for decommissioning must be provided by one or more of the following methods, pursuant to 10 CFR 72.30(c):

- Prepayment prior to the start of operations in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

- A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. For example, a surety method may be in the form of a surety bond, letter of credit, or line of credit.
- An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund.

PFS states on page 1-1 of Appendix B of the License Application that before the end of Facility life, the sealed canisters containing spent fuel will be transferred from their storage casks into shipping casks and then transported off site. Since these canisters will be designed to meet DOE guidance for multipurpose canisters for spent fuel storage, transport, and disposal, the fuel assemblies will remain sealed in the canisters such that decontamination of the canisters will not be required. After shipment of the canisters off site, the Facility will be decommissioned by identification and removal of any residual materials above NRC limits. The site will be released for unrestricted use followed by termination of the NRC license.

PFS states on page 1-7 of the License Application that, while its intention is to maintain the Facility free of radiological contamination at all times, the decommissioning cost estimate conservatively assumes that certain areas and components will require decontamination. The method of funding the Facility decommissioning activities will consist of two components: storage cask decommissioning and decommissioning of the remainder of the Facility.

The estimated decommissioning cost for each storage cask is \$17,000, which will be prepaid into an externalized escrow account under the Service Agreement with each Customer prior to shipment of each spent fuel canister to the Facility. PFS plans to place the full amount estimated for decommissioning the casks in a segregated escrow account for this purpose. The staff notes that PFS' proposal to secure payment prior to shipment of the cask to the Facility constitutes a departure from the language in 10 CFR 72.30(c)(1), which indicates that if an applicant selects prepayment as the method of decommissioning funding, payment should be made "prior to the start of operation." Notwithstanding this difference, however, the PFS proposal assures that (a) reasonable assurance of adequate funding to decommission the Facility will be provided prior to the commencement of operations (see the following paragraph), as required in 10 CFR 72.30(c); and (b) funding to decommission the casks will be provided prior to construction of each cask (i.e., prior to commencement of any operations involving that cask), thus assuring that each cask that is constructed will be decommissioned. Accordingly, PFS' decommissioning funding plan provides reasonable assurance that decontamination and decommissioning at the end of Facility operations will provide adequate protection of the public health and safety and satisfies 10 CFR 72.30(c). Although funding for decommissioning the casks will be provided prior to cask construction rather than prior to the commencement of Facility operations, since the decommissioning funding plan provides reasonable assurance of adequate funding, an exemption from strict compliance with the language in 72.30(c)(1) would be issued as part of the license, if necessary, to authorize implementation of the PFS plan.

PFS estimates the cost of decommissioning the remainder of the Facility and site to be \$1.631 million, which is to be funded through a letter of credit coupled with an external sinking fund, pursuant to 10 CFR 72.30(c)(3). Customers will be required under the Service Agreements to pay the cost of decontaminating any portion of the Facility for which they may be responsible for contaminating. As the actual cost of decontamination and decommissioning is paid into the

external sinking fund, PFS plans for the letter of credit to be reduced by an equivalent amount, pursuant to 10 CFR 72.30(c)(3). The per-canister fee and amounts of the escrow account, external sinking fund, and letter of credit are to be reviewed and adjusted annually to account for inflation and any changes in the scope of decommissioning.

PFS estimates the specific cost of components of decommissioning the remainder of the Facility and site as follows (these are non-proprietary figures cited in Appendix B of the LA):

Site Characterization Survey	\$250,000
Decommissioning Four Transfer Casks	\$200,000
Decommissioning Eight Shipping Casks	\$400,000
Decontaminating Canister Transfer Building	\$230,000
Storage Pad Decontamination	\$241,000
Final Release Survey	\$260,000
Independent Verification Survey	\$ <u>50,000</u>
Total	\$1,631,000

The staff finds these estimates of decommissioning costs to be reasonable. Further, the staff finds this surety method of a letter of credit coupled with an external sinking fund, and per-cask prepayment, as proposed by PFS to be acceptable for meeting the requirements of 10 CFR 72.30(c).

17.1.5 PFS Liability Insurance

PFS has committed to pursue and to maintain nuclear liability insurance in the maximum commercially available amount of \$200 million. The NRC does not have specific insurance and indemnity requirements for Part 72 facilities. PFS' commitment to provide nuclear liability insurance, in addition to the funding required by NRC regulations, is acceptable to the staff.

17.2 Evaluation Findings

PFS has identified anticipated sources of equity capital and revenue to fund construction of the Facility, with much of the total revenue being required from Customers as prepayments before they actually ship spent fuel to the Facility. To fund ongoing operations, Customers will pay some additional prepaid fees, plus a relatively small annual storage fee in comparison to their prepaid fees. Also, the estimated \$17,000 cost for decommissioning each Customer storage cask is to be prepaid by Customers in accordance with terms of the Service Agreement. The estimated \$1.631 million cost of decommissioning the remainder of the Facility and the site is a small fraction of the construction cost and is guaranteed by a surety method acceptable to the NRC.

Accordingly, the staff believes that PFS has provided reasonable assurance of its financial qualifications to construct, operate, and decommission the Facility as proposed, subject to the conditions stated herein, in accordance with the requirements of 10 CFR Part 72.

Proposed License Conditions

LC17-1 Construction of the Facility shall not commence before funding (equity, revenue, and debt) is fully committed that is adequate to construct a facility with the initial capacity as specified by PFS to the NRC. Construction of any additional capacity beyond this initial capacity amount shall commence only after funding is fully committed that is adequate to construct such additional capacity.

LC17-2 PFS shall not proceed with the Facility's operation unless it has in place long-term Service Agreements with prices sufficient to cover the operating, maintenance, and decommissioning costs of the Facility, for the entire term of the Service Agreements.

17.3 References

Donnell, J.L. Private Fuel Storage Limited Liability Company. *Supplemental Response to RAIs*. Letter to Director, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission. Docket No. 72-22. June 15, 1999.

Donnell, J.L. Private Fuel Storage Limited Liability Company. *Response to RAI LA 1-6*. Letter to Director, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission. Docket No. 72-22. June 18, 1999.

Gaukler, P.A. Shaw Pittman. *Private Fuel Storage – Docket No. 72-22 – ASLB No. 97-732-02*. Letter to the E. M. Julian, U. S. Nuclear Regulatory Commission. December 3, 1999.

Parkyn, J.D. Private Fuel Storage Limited Liability Company. *Response to Request for Additional Information*. Letter to Director, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission. Docket No. 72-22. May 19, 1998.

Parkyn, J.D. Private Fuel Storage Limited Liability Company. *Supplemental Response to RAIs*. Letter to Director, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission. Docket No. 72-22. September 15, 1998.

Private Fuel Storage Limited Liability Company. *License Application for the Private Fuel Storage Facility*. Docket Number 72-22. June 20, 1997, as amended May 22 and August 28, 1998, and May 19, August 10, August 27, and September 8, and September 21, 1999.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
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PRIVATE FUEL STORAGE, L.L.C.)
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(Independent Spent)
Fuel Storage Installation))

Docket No. 72-22-ISFSI

OFFICE OF THE SECRETARY
ADJUDICATIONS

CERTIFICATE OF SERVICE

I hereby certify that non-proprietary copies of "NRC STAFF'S MOTION TO STRIKE PORTIONS OF 'STATE OF UTAH'S REPLY TO THE STAFF'S RESPONSE TO THE APPLICANT'S MOTION FOR PARTIAL SUMMARY DISPOSITION OF UTAH CONTENTION E/CONFEDERATED TRIBES CONTENTION F'" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the United States mail, first class, as indicated by an asterisk, with copies by electronic mail as indicated, this 19th day of January, 2000.

G. Paul Bollwerk, III, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to GPB@NRC.GOV)

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to kjerry@erols.com)

Office of the Secretary
ATTN: Rulemakings and Adjudications
Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to
HEARINGDOCKET@NRC.GOV)

Dr. Peter S. Lam
Administrative Judge
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to PSL@NRC.GOV)

Office of the Commission Appellate
Adjudication
Mail Stop: 16-C-1 OWFN
U.S.. Nuclear Regulatory Commission
Washington, D.C. 20555

James M. Cutchin, V*
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail to JMC3@NRC.GOV)

Jay E. Silberg, Esq.*
Ernest Blake, Esq.
Paul A. Gaukler, Esq.
SHAW, PITTMAN, POTTS &
TROWBRIDGE
2300 N Street, N.W.
Washington, DC 20037-8007
(E-mail copy to [jay_silberg, paul_gaukler,
and ernest_blake
@shawpittman.com](mailto:jay_silberg, paul_gaukler, and ernest_blake@shawpittman.com))

Denise Chancellor, Esq.*
Fred G Nelson, Esq.
Laura Lockhart, Esq.
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, UT 84114-0873
(E-mail copy to dchancel@State.UT.US)

Connie Nakahara, Esq.*
Utah Dept. of Environmental Quality
168 North 1950 West
P.O. Box 144810
Salt Lake City, UT 84114-4810
(E-mail copy to cnakahar@state.UT.US)

Danny Quintana, Esq.*
Danny Quintana & Associates, P.C.
68 South Main Street, Suite 600
Salt Lake City, UT 84101
(E-mail copy to [quintana
@Xmission.com](mailto:quintana@Xmission.com))

Joro Walker, Esq.*
Land and Water Fund of the Rockies
2056 East 3300 South, Suite 1
Salt Lake City, UT 84109
(E-mail copy to
joro61@inconnect.com)

John Paul Kennedy, Sr., Esq.*
1385 Yale Ave.
Salt Lake City, UT 84105
(E-mail copy to john@kennedys.org)

Diane Curran, Esq.*
Harmon, Curran, Spielberg & Eisenberg
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
(E-mail copy to [dcurran
@harmoncurran.com](mailto:dcurran@harmoncurran.com))

I hereby also certify that copies of the proprietary exhibit to the "NRC STAFF'S MOTION TO STRIKE PORTIONS OF 'STATE OF UTAH'S REPLY TO THE STAFF'S RESPONSE TO THE APPLICANT'S MOTION FOR PARTIAL SUMMARY DISPOSITION OF UTAH CONTENTION E/CONFEDERATED TRIBES CONTENTION F'" in the above-captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by overnight delivery, as indicated by an asterisk, (in double-enclosed envelopes), this 19th day of January 2000.

G. Paul Bollwerk, III, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(including a 3.5 inch diskette)

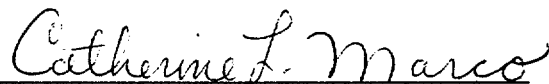
Emile L. Julian, Asst.
Office of the Secretary
Rulemakings and Adjudications
Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Denise Chancellor, Esq.*
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, UT 84114-0973

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Jay E. Silberg, Esq.*
SHAW, PITTMAN, POTTS &
TROWBRIDGE
2300 N Street, N.W.
Washington, DC 20037-8007



Catherine L. Marco
Counsel for NRC Staff