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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD:

ADJUDICATORY STAFF

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

**STATE OF UTAH'S MOTION TO COMPEL
NRC STAFF TO RESPOND TO STATE OF UTAH'S
FIFTH SET OF DISCOVERY REQUESTS REGARDING
UTAH CONTENTION H**

INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.720(h)(2), 2.742, and 2.744, the State hereby moves to compel the Nuclear Regulatory Commission ("NRC" or "Commission") Staff to respond to certain of the State's discovery requests that are included in State of Utah's Fifth Set of Discovery Requests Directed to the NRC Staff (Utah Contentions E, H and L) (January 31, 2000) ("Fifth Request"). As discussed in more detail below, the Staff's general relevance and other objections in its February 14, 2000 Objections and Responses to the State's Fifth Set of Discovery Requests Directed to the NRC Staff ("Staff's Objections and Responses") have no merit. This motion to compel relates only to discovery on Contention H. Discovery on other contentions is addressed separately in other motions to compel.

The State notes that, as directed by the Licensing Board, it attempted to resolve its

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dispute with the Staff regarding the State's Fifth Request before filing this motion. *See* e-mail message from Diane Curran to Sherwin Turk (February 17, 2000), attached as Exhibit 1. This effort was partially successful. In particular, in response to Document Requests Nos. 2, 3 and 4 (2 and 4 are identical), the Staff has agreed to search for documents on which the Staff relied in its review of the HI-STORM 100 thermal analysis and the PFS thermal analysis. If the Staff locates any responsive documents, it has agreed to reconsider whether it will make any objections to releasing them, and will also identify any withheld documents in a privilege log. The State has asked that these documents and/or the privilege log be produced by February 25, 2000, in order to give the State sufficient time to review the documents before depositions on Contention H begin on March 8. The State hopes that this will resolve its dispute with the Staff with respect to these document production requests, but reserves the right to file a motion to compel at a later date in the event that the Staff identifies responsive documents but objects to releasing them or does not produce them in a timely manner.¹

¹ The Staff has also indicated that if the State prevails on the issue of relevance of the HI-STAR 100 cask review, it will reconsider its repeated objection that documents requested by the State are available by other means such as access to the NRC's Public Document Room ("PDR"). Nevertheless, the State wishes to clarify for the record that it does not seek and has never sought from the Staff discovery documents regarding Contention H that are already available in the PDR. The State also explicitly stated in the Fifth Request that the requested documents were not available by any means other than discovery.

The State's fifth set of document requests generally seeks documents on which the Staff relied in reaching the safety findings reported in the Safety Evaluation Reports for the HI-STORM and HI-STAR cask systems. The State has reviewed the relevant indices

ARGUMENT

The Staff uniformly objects on grounds of relevance to any of the State's discovery requests that seek information about the Staff's review of the thermal analysis for the HI-STAR 100 cask system. *See* Staff's Objections and Responses to all six Requests for Admission, both Interrogatories, and Document Request Nos. 1, 5, 6, and 7.² As discussed at length in the State's Motion to Compel Deposition, which is now pending before the Licensing Board, the Staff's objection to the relevance of its analysis of the HI-STAR 100 thermal design to Contention H has no merit. For all of the same reasons set forth in the Motion to Compel Deposition, the requested discovery is relevant and should be allowed.³

With respect to Interrogatory No. 9, the Staff states several grounds in objecting to

in the PDR for such documents and found none. The only documents that can be found in the PDR regarding the Staff's evaluation of the thermal analyses for the HI-STORM and HI-STAR cask systems consist of the SERs for those cask systems. These SERs do no more than briefly outline and summarize the nature of the Staff's analysis. They contain no computations or analyses. *See* quotations from SERs found at pages 3-4 of the State's February 9, 2000 Motion to Compel Deposition of NRC Staff Witness ("Motion to Compel Deposition").

² Notwithstanding its relevance objection, the Staff has answered Request for Admission Nos. 1, 2 and 6. The State requests a ruling on the relevance of these Requests, however, in order to clarify that these requests are subject to the Staff's ongoing obligation to supplement its responses.

³ Rather than repeating here the arguments made in its Motion to Compel Deposition, the State refers the Board to that motion. The State also requests that the Board take into consideration the State's forthcoming response to the NRC Staff's Motion for Protective Order and Response to "State of Utah's Motion to Compel Deposition of NRC Staff Witness" (February 16, 2000), which the State intends to file on February 23, 2000.

the requested discovery. *See* Staff's Objections and Responses at 13. Interrogatory 9 asks the Staff to:

Identify all NRC Staff members who participated in the review and/or approval of the thermal design of the HI-STAR 100 and HI-STORM cask systems, including each individual's title, his or her role in the review process, the time period of their participation in the review, when he or she subsequently left his or her position or the agency (if applicable), and whether he or she left complete records of his or her work on departing.

The Staff first objects on the ground of relevance. Staff's Objections and Responses at 13. This argument has no merit, as discussed in the State's Motion to Compel Deposition. In particular, as discussed at pages 8-9 in the State's Motion to Compel Deposition, the Staff's previous responses to discovery by the State raise significant questions about the statement in the Preliminary SER for the HI-STORM 100 cask system that "[p]revious staff evaluation of the applicant's HI-STAR 100 SAR's FLUENT computer code results, using the ANSYS finite element computer code, confirmed the temperature calculation results of this method." *See* Preliminary SER for HI-STORM 100 Cask System (July 30, 1999) at 4-8. The Staff's January 10 responses to the State's Request for Admission Nos. 16, 17 and 18 now indicate that (a) contrary to the assertions in the HI-STAR SER, it was not the Staff who used the ANSYS code, but an individual named Steven Hogsett; (b) Mr. Hogsett did not run the ANSYS code for the benefit of the Staff's safety review, but for his own personal understanding; (c) Mr. Hogsett has left the agency; and (d) there apparently are no surviving records of Mr. Hogsett's analysis. Thus, these answers raise significant questions about the Staff's basis for asserting, in the

HI-STORM SER, that the Staff previously confirmed the results of Holtec's thermal analysis. In light of these answers, it is relevant and appropriate for the State to make inquiries about exactly who was responsible for the HI-STAR and HI-STORM reviews and whether there are any documentary records to support those reviews.

The Staff also objects to this interrogatory on the grounds that it is unduly burdensome and overbroad. Staff's Objections and Responses at 13. This argument is not supported, nor is it credible. As clarified in Ms. Curran's February 17 e-mail to Mr. Turk, the State does not seek to identify individuals who performed administrative or secretarial functions, but rather those individuals who performed the technical review. The Staff does not indicate how many technical reviewers were involved in evaluating the thermal design HI-STAR and HI-STORM 100 SERs, but the State submits that it is doubtful that there are many NRC Staff members with that type and degree of technical experience who would have been involved in these thermal reviews. This is not an unduly burdensome request.

The Staff also argues that the State seeks information about transportation casks, which it asserts is not relevant to Contention H. Staff's Objections and Responses at 13. This argument is in error. As discussed at page 6 of the State's Motion to Compel Deposition, the HI-STAR 100 cask system includes both storage and transportation components. Thus, although HI-STAR 100 is referred to as a "storage" cask system, it is also appropriate to refer to it as a transportation cask system. The thermal analysis for HI-STAR 100 applies to both the storage and transportation-related aspects of the design.

Finally, the Staff argues that a response to Interrogatory No. 9 is not necessary to a proper decision in this proceeding, and is thus improper under 10 C.F.R. § 2.720(h)(2). Staff's Objections and Responses at 13. According to the Staff, it has previously identified and made available for deposition an individual (Jack Guttman) whom it believes possesses the necessary knowledge to respond to the State's discovery requests within the scope of this proceeding and Contention H. Id. This argument is beside the point. Interrogatory No. 9 is not a request for a deposition, but a question about who in the Staff participated in the review of the HI-STAR and HI-STORM thermal design and whether there are records or individuals at the agency who can support that review.⁴ An answer to the question is necessary to a proper decision in the proceeding, because the Staff's answers to discovery so far raise fundamental questions about whether it can fully document and support its evaluation of thermal analyses that are relevant to the PFS design.

The Staff also objects to Interrogatory No. 10, which asks the Staff to:

Explain the apparent discrepancy between (a) the Staff's statements in Section 4.5.4 of the HI-STORM 100 SER and Section 4.5.4 of the HI-STAR 100 SER to the effect that the Staff performed an independent computer analysis to confirm the results of the Holtec thermal analysis, and (b) the Staff's January 10, 2000, response to Request for Admission No. 17, which indicates that the Staff believes, but is unable to verify, that any such analysis was performed. Your explanation should include a discussion of whether the NRC Staff intends to retract and/or modify any statements in the SERs for the HI-STAR 100 or HI-STORM 100 cask

⁴ In any event, the Staff has refused to produce a witness for deposition who is knowledgeable about the Staff's review of the HI-STAR 100 thermal analysis. This is the subject of the State's Motion to Compel Deposition.

systems regarding the adequacy of Holtec's thermal analysis for those cask systems.


In addition to objecting on relevance grounds, the Staff also objects that this request is (a) vague and ambiguous, (b) mischaracterizes the Staff's previous statements, (c) constitutes an improper compound question, and (d) is improperly argumentative. Staff's Objections and Responses at 14. The question is both relevant and proper, and should be answered.⁵ The interrogatory seeks an explanation of the apparent discrepancy between statements in the HI-STAR 100 and HI-STORM 100 SERs. The discrepancy is properly identified and described, and the Staff should be able to address it.

CONCLUSION

For the foregoing reasons, the State's Motion to Compel the NRC Staff to respond to the State's Fifth Set of discovery requests regarding Contention H should be granted.

DATED this 22nd day of February, 2000.

Respectfully submitted,



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⁵ The issue of relevance is discussed in the State's Motion to Compel Deposition.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S MOTION TO COMPEL NRC
STAFF TO RESPOND TO STATE OF UTAH'S FIFTH SET OF DISCOVERY
REQUESTS REGARDING UTAH CONTENTION H was served on the persons listed

below by electronic mail (unless otherwise noted) with conforming copies by United

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A handwritten signature in black ink, appearing to read "Denise Chancellor", written over a horizontal line.

Denise Chancellor
Assistant Attorney General
State of Utah

From: "Diane Curran" <dcurran@harmoncurran.com>
To: Sherwin Turk <SET@nrc.gov>
Date: 2/17/00 11:49AM
Subject: Discovery on Contention H

Dear Sherwin,

I am writing this short letter to follow up on our conversation today about the Staff's February 14, 2000, response to the State's set of discovery questions on Contention H. We were unable to resolve our disagreement regarding the relevance of the Staff's review of the HI-STAR 100 thermal design, and therefore I will be filing a Motion to Compel on Tuesday regarding all of the Staff's objections that are based on relevance.

I also intend to file a motion to compel with respect to Interrogatory No. 9. In addition to the relevance of this question, I don't think it is unduly burdensome to identify the NRC Staff members who participated in the review of the HI-STAR and HI-STORM thermal designs. It does not seem that there were very many people who participated in these very technical reviews. I want to clarify that I am not asking for names of secretaries and typists or other tangential people, but those people who participated in the technical review.

We were able to make progress on a few issues. With respect to Document Request Nos. 2 and 4 (which are identical), you agreed to ask the Staff to look for documents relied on in the review of the HI-STORM 100 thermal analysis. With respect to Document Request No. 3, you said that you would provide documents related to a 1998 allegation regarding Holtec, which you will send to me today. You also agreed to ask the Staff to look for documents relied on by the Staff in reviewing the thermal design for the PFS facility. In addition, you said that if the Staff identified relevant documents, you would reconsider your other objections to these requests.

You also agreed that in responding to these document requests, if you identify any documents as privileged, predecisional or otherwise exempt from disclosure you will identify them in a privilege log.

Please let me know if your understanding of our agreement on these issues differs in any way from mine.

In closing, I note that we did not settle on a date for the production of documents. In order to prepare adequately for the depositions on March 8-10, the State needs to have all relevant documents in hand by February 25. We also need to see a list of documents withheld as privileged by then.

Sincerely,
Diane Curran

CC: Denise Chancellor <atkey01.dchancel@state.ut.us>, Jean Braxton <atkey01.jbraxton@state.ut.us>