

RAS 1694

May 3, 2000
DOCKETED 5/5/00

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-ISFSI
)	
(Independent Spent)	
Fuel Storage Installation))	

NRC STAFF'S RESPONSE TO
"STATE OF UTAH'S REQUEST FOR ADMISSION OF
LATE-FILED UTAH CONTENTION JJ (CO-SEISMIC FAULT RUPTURE)"

INTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c), and the Atomic Safety and Licensing Board's "Order (Schedule for Responses to Request for Admission of Late-Filed Contention)," dated April 20, 2000, the staff of the Nuclear Regulatory Commission (Staff) hereby files its response to the "State of Utah's Request for Admission of Late-Filed Contention JJ (Co-Seismic Fault Rupture)" (Late-Filed Contention JJ), dated April 19, 2000. For the reasons set forth below, the State's Late-Filed Contention JJ should be rejected.

BACKGROUND

One of the State of Utah's original contentions that was admitted in this proceeding, Contention L ("Geotechnical"), addressed issues regarding the adequacy of the site characterization which had been done concerning geologic conditions, potential seismicity, ground motion, soil stability and foundation loading. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 191 (1998).

Following admission of this contention, additional characterization studies and analyses were submitted by Private Fuel Storage, L.L.C. ("PFS" or "Applicant"), which indicated that the peak horizontal and vertical accelerations could exceed the proposed

facility's seismic design values, using the deterministic criteria set forth in 10 C.F.R. Part 72. To resolve the issue of seismic design, on April 2, 1999, PFS submitted a request for an exemption from the requirements of 10 C.F.R. § 72.102(f)(1) and 10 C.F.R. Part 100 Appendix A, in order to allow it to utilize a probabilistic seismic hazard analysis ("PSHA") and considerations of risk to establish the design earthquake ground motion levels at the facility, in lieu of the deterministic approach required under Appendix A.¹

In response to the Applicant's exemption request, on April 30, 1999, the State filed a "Motion Requiring Applicant to Apply for Rule Waiver Under 10 CFR § 2.758(b) or in the Alternative Amendment to Utah Contention L." On May 26, 1999, the Licensing Board denied the State's request to require PFS to file a rule waiver petition, and it denied the State's request to amend Contention L on grounds of ripeness. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-99-21, 49 NRC 431, 438 (1999). Finding that the Staff had not yet acted on the exemption request, and that the possibility that the Staff could deny the request rendered its status uncertain, the Licensing Board concluded, "the question of admitting or amending contentions relative to the PFS exemption request must await favorable staff action on that request." *Id.* at 439.²

On December 15, 1999 (as corrected and reissued on January 4, 2000), the Staff issued its Safety Evaluation Report (SER) with respect to systems not directly associated

¹ The exemption request proposed to design the facility to the ground motions produced by 1,000-year return period earthquakes. On August 24, 1999, the Applicant revised its exemption request to substitute a 2,000-year recurrence period in place of the 1,000-year period that it had proposed in its initial exemption request.

² The Licensing Board further observed that "to countenance an adjudicatory challenge to the PFS exemption petition, the Board would have to invoke its certified question or referred ruling authority under 10 C.F.R. §§ 2.718(i), 2.730(f) to determine whether the Commission wants the Board to consider the contention." LBP-99-21, 49 NRC at 438 (footnote omitted).

with the dry storage casks proposed for use at the PFS facility. Chapter 2 of the SER evaluated the site characteristics for the proposed facility including, *inter alia*, geology and seismology (SER § 2.1.6). The SER summarized the Staff's review of the Applicant's submittals, and presented the Staff's views with respect to a number of seismic and geological issues including vibratory ground motion, and a preliminary evaluation of the Applicant's request for exemption. (SER § 2.1.6.2, at 2-35 - 2-45).³

On January 26, 2000, following its receipt of the SER, the State filed a request for the admission of a late-filed modification to basis 2 of Utah Contention L. "State of Utah's Request for Admission of Late-Filed Modification to Basis 2 of Utah Contention L," dated January 26, 2000. The State proposed to modify Contention Utah L (a) "to account for the Staff's proposal" to use a PSHA rather than a deterministic seismic hazard analysis, and (b) to challenge "the use of a 2,000 year return period instead of a 10,000 year return period." *Id.* at 1. The Applicant and Staff opposed the State's request;⁴ and the State's request to amend Contention L is currently pending before the Licensing Board.

As part of its continuing review of seismic issues, the Staff, during a February 11, 2000 telephone call with the Applicant, asked the Applicant to describe the likelihood that the Stansbury fault could rupture co-seismically with the East Fault, West fault, or East-West combined fault and, if this rupture scenario is considered likely, how such a combined or co-seismic rupture would alter the current PFSF seismic hazard. The Applicant

³ Other issues addressed in the SER included basic geologic and seismic information (SER § 2.1.6.1); surface faulting (§ 2.1.6.3); stability of subsurface materials (§ 2.1.6.4); slope stability (§ 2.1.6.5); and volcanism (§ 2.1.6.6).

⁴ See "Applicant's Response to State of Utah's Request for Admission of Late-Filed Modification to Basis 2 of Utah Contention L," dated February 14, 2000; "NRC Staff's Response to 'State of Utah's Request for Admission of Late-Filed Modification to Basis 2 of Utah Contention L,'" dated February 14, 2000.

responded by letter dated February 23, 2000, in which it (a) stated that it considers the co-seismic event to be highly unlikely, and (b) provided an analysis showing that the effect of co-seismic rupture on the hazard, if it occurred, would slightly reduce the seismic hazard for the 2000-year return period ground motions. See Letter from John L. Donnell (PFS) to NRC, dated February 23, 2000 (Commitment Resolution Letter). On March 17, 2000, the Applicant submitted revision 10 to the SAR to include this analysis in a new appendix to Chapter 2, Appendix 2G, "Additional Seismic Evaluations." The information contained in the new Appendix 2G is the same as the information provided by the Applicant by letter on February 23, 2000.

On April 19, 2000, the State filed the instant request for admission of Late-Filed Contention JJ ("Co-seismic Fault Rupture"). In support of its contention, the State asserts that the Applicant's co-seismic rupture analysis, contained in Appendix 2G of the SAR, inaccurately computed the seismic hazard implications of possible co-seismic fault rupture for 2,000-year return period ground motions. *Id.* at 7. The State further asserts that the Applicant did not contain an analysis for a 10,000 year return period and did not compute the effects of a co-seismic rupture based on a deterministic seismic hazard analysis. *Id.*

By letter dated April 24, 2000, the Applicant submitted "Errata to Correct Appendix 2G of the PFSF License Application." Letter from John L. Donnell, Project Director, PFS to NRC, dated April 24, 2000. The Applicant stated that the original calculation contained in Appendix 2G omitted an assessment of the effect of simultaneous ruptures on the earthquake magnitude, and that the revised analysis corrects the omission. Further, the Applicant noted that the revisions to Appendix 2G do not change its original conclusion that co-seismic ruptures of the Stansbury with the East and West faults in the PSHA would result in a slight decrease in the 2,000-year return period ground motions.

DISCUSSION

A. Legal Standards for Late-Filed Contentions.

The criteria to be considered when determining the admissibility of a late-filed contention are set forth in 10 C.F.R. § 2.714(a)(1)(i)-(v), as follows:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

It has long been held that the first factor, good cause for lateness, carries the most weight in the balancing test. *See State of New Jersey* (Department of Law and Public Safety's Requests Dated October 8, 1993), CLI-93-25, 38 NRC 289, 295 (1993). Absent a showing of good cause, a petitioner must make a compelling showing that the remaining factors outweigh the lack of good cause for the untimely filing. *See Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 244 (1986).

In evaluating the five lateness factors, two factors -- the availability of other means to protect the petitioner's interest and the ability of other parties to represent the petitioner's interest -- are less important than the other factors, and are therefore entitled to less weight. *Texas Utilities Elec. Co.* (Comanche Peak Steam Elec. Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 74 (1992). With respect to the third factor (the potential contribution to the development of a sound record), petitioners are to provide a "real clue about what they

would say to support the contention beyond the minimal information they provide for admitting the contention.” *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation) LBP-98-7, 47 NRC 142, 208-09 (1998). In addition to showing that a balancing of the five factors favors intervention, a petitioner must also meet the requirements for setting forth a valid contention. 10 C.F.R. § 2.714(d)(2).

B. The State Has Failed to Establish Good Cause For the Late Filing of Contention JJ.

The State has not demonstrated good cause for the filing of its contention over 50 days after the State received the Applicant’s analysis, which is the subject of Utah Contention JJ. See Late-Filed Contention at 5 (State received a copy of the Commitment Resolution Letter on February 28, 2000). The Licensing Board has stated that in assessing a contention’s timeliness, “the emphasis is on the substance and sufficiency of the information available to the contention’s sponsor.” *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-99-43, 50 NRC 306, 313 (1999). Where a new issue is asserted to be based upon information contained in a document that has recently been made available to the public, “an important consideration is the extent to which the new contention could have been put forward with any degree of specificity in advance of the document’s release.” *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-29, 48 NRC 286, 292 (1998). Here, the State had all the information it needed to form its contention based on the analysis contained in the Applicant’s Commitment Resolution Letter -- which contained, verbatim, the same analysis that was subsequently incorporated in the SAR. Thus, the State lacked good cause to file its contention more than 50 days after receipt of the Applicant’s analysis. See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-99-3, 49 NRC 40, 47 (1999) (45-day period for intervention petition stretches the limits of “good cause”).

The State contends that it has good cause for the late filing of Contention JJ on the basis that: 1) the State raised the issue of co-seismic rupture in a discovery response to the Applicant regarding Utah Contention L, which “appears to have prompted” the Staff to require the Applicant to undertake the co-seismic rupture analysis; 2) the State filed its contention within 30 days of receipt of the license application revision containing the analysis; 3) the contention contains very detailed and specific information; and 4) the safety implications of SSCs at the PFS facility not being designed to withstand ground motions based on a 10,000 year return period “weighs in favor of the good cause factor for admitting Contention JJ.” Late-Filed Contention JJ at 13-14. These assertions are without merit.

First, whether the State first prompted the Staff to require an analysis is totally irrelevant to the issue of good cause for the late filing of a contention. If anything, the State’s general interest in the co-seismic rupture issue shows that the State had a general understanding and awareness of this matter as early as August 31, 1999. See “State of Utah’s Supplemental Response to Applicant’s Second Discovery Request (Contention L)” at 3, dated August 31, 1999; “State of Utah’s Sixth Set of Discovery Requests Directed to the NRC Staff (Utah Contention L)” at Requests for Admission 3, 4, and Interrogatory 2, April 24, 2000. Therefore, the State should have been diligent in raising any issues it had concerning the Applicant’s analysis of co-seismic rupture when it first received it. Thus, the State’s interest in this matter does not weigh in favor of good cause for lateness, and, in fact, militates against it.

Second, in support of good cause, the State asserts that it raised its contention within 30 days of receipt of the license application revision. Late-Filed Contention JJ at 13. The State disagrees that it should have filed its contention after receipt of the Commitment Resolution Letter in that the Applicant frequently responds to Staff requests for additional

information and does not revise its license application until the Staff's concerns are resolved. *Id.* Thus, the State contends that in technical matters such as PSHA, the computation of ground motions, and the resultant effects on SSCs, "it is unrealistic to expect an intervenor to undertake a full scale analysis and computations every time the Applicant submits some information to the Staff." *Id.*

The State's argument is unpersuasive. As the State is aware, it has an "ironclad obligation" as an intervenor to examine the application, and "other publicly available documents, with sufficient care to uncover any information that could serve as the foundation for a contention." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-99-43, 50 NRC 306, 313 (1999). The fact that the information is contained in a response to a Staff request for additional information (RAI) rather than the license application does not lessen an intervenor's obligation. As this Licensing Board has previously observed with respect to the State's Late-Filed Amended Contention C:

The RAI response contained information with a degree of specificity sufficient to provide the State with the basis for formulating amended contention Utah C. Nor, as the State asserts, does the fact the information was contained in an RAI response rather than a license application amendment somehow toll its obligation to come forth with a contention based on that information. Even though this RAI response differs procedurally from an application amendment, Commission case law recognizes that such material can provide an acceptable basis for admission.

Id. at 314 (citation omitted; emphasis added). In finding Late-Filed Amended Contention C to be untimely, the Licensing Board rejected the State's argument that the RAI responses were merely provisional on the grounds that State should have known that the information was "likely materially to impact the Staff's consideration of the PFS application." *Id.* at 313-14. As before, information submitted to the Staff in the February 23, 2000 letter was

sufficiently concrete to provide a basis for the State to frame its contention -- in fact, the information was identical to the information in SER Revision 10 which the State claims it relied upon in framing its contention. The analysis contained in the letter of February 23 directly addressed a seismic issue raised by the Staff -- the likelihood and implications of the Stansbury fault rupturing co-seismically with the East, West, or East-West faults -- and thus the State should have considered that it was likely materially to impact the Staff's review of the application. Thus, the State has no excuse for filing its contention late.

Third, the State asserts that the contention contains very detailed and specific information in that it points out why the Yucca Mountain Table may not be appropriate in this case, and uses specific calculations. Late-Filed Contention at 13. The State, however, nowhere demonstrates that it encountered any difficulty in formulating its contention or could not have set forth the detailed information within 30 days after receiving the calculations.⁵ Therefore, these assertions do not set forth good cause for lateness.

Finally, the State asserts that the safety implications of SSCs at the PFS facility not being designed to withstand ground motions based on a 10,000 year return period "weighs in favor of the good cause factor for admitting Contention JJ." Late-Filed Contention JJ at 13-14. The significance of the issue, however, has no bearing on good cause for the late filing of its contention. *See South Carolina Elec. & Gas Co.* (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 887 n.5 (1991) (good cause "depends wholly upon the substantiality of the reasons asserted for not having filed at an earlier date") (emphasis in original). This issue is more appropriately considered in factor three, ability to contribute

⁵ Likewise, the State does not explain how the highly technical nature of the information related to "PSHA . . . the computation of ground motions and their resultant effects on SSCs" worked to prevent the State from setting forth its contention earlier. *See* Late-Filed Contention JJ at 13.

to a sound record. Thus, this issue is not relevant to the inquiry of whether the State has demonstrated good cause for the lateness of its contention.⁶ In sum, the State has failed to demonstrate good cause for the lateness of its contention.

C. The Other Late-Filing Factors Do Not Weigh in Favor Admission of Contention JJ.

With respect to the other factors specified in 10 C.F.R. § 2.714(a)(1), the State has not made a compelling showing that those factors support the admission of Late-Filed Contention JJ. With respect to factor three, whether the State's participation may be expected to assist in developing a sound record, the State asserts that it will offer Dr. James C. Pechmann and that "[r]ather than the narrow perspective offered by the Applicant, testimony by Dr. Pechmann will give the Board a "broad perspective" of the safety implications of co-seismic fault rupture as it relates to the design of SSCs."⁷ Late-Filed Contention JJ at 14. The State provides a discussion of Dr. Pechmann's experience and states that he can present testimony "explaining the Applicant's incorrect use of the Yucca Mountain Table" and "the errors and omissions in the Applicant's co-seismic analysis." *Id.* at 14-15. However, the State's showing with respect to factor three falls short of a compelling showing that admission of this contention will assist in developing a sound record. The State does not provide a "real clue" as to what Dr. Pechmann will say to support the contention. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation) LBP-99-43, 50 NRC 306, 315 (1999). No mention is made of what the "broad perspective" on the safety implications of co-seismic fault rupture is likely to entail, or that

⁶ The Staff, however, is aware of the co-seismic rupture issue and will address it prior to concluding its review of the Applicant's exemption request.

⁷ The State stated that it may also offer testimony of Dr. Walter Arabasz, but did not explain what his testimony would show.

any such “broad perspective” is important here. Moreover, the contention itself does not contain any discussion of the design of SSCs or an explanation of the Applicant’s incorrect use of the Yucca Mountain Table, other than identifying potential errors in the calculations.⁸ Thus, this factor does not weigh in favor of the State.⁹

Finally, the fifth factor weighs against the admission of Late-Filed Contention JJ, in that admission of the contention would broaden the issues and cause delay in the proceeding. The State asserts that this contention would move along the same track as Contention L. Late-Filed Contention JJ at 15. The State’s assertion ignores the fact that discovery on Contention L is substantially closed, except for a limited window that is scheduled for later this year, and the time for summary disposition motions has passed. Therefore, consideration of Contention JJ would likely occasion a delay in the proceeding and would certainly broaden the issues to include the Applicant’s co-seismic fault rupture analysis, including the “broad perspective” of safety implications the State would have its witness address. Therefore, this issue does not weigh in favor of the State.

In sum, the State has not made a compelling showing that the remaining factors overcome the failure of the State to demonstrate good cause for filing its contention late. Accordingly, Contention Utah JJ should be denied.

⁸ Dr. Pechmann’s declaration in support of the late-filed contention is similarly short on details regarding his proposed testimony. See “Declaration of Dr. James C. Pechmann . . .” at ¶ 4 (“I expect that my testimony would follow the general statements and conclusions in Utah Contention JJ.”).

⁹ Regarding factors two and four, other means do not appear to be available to protect the State’s interest with respect to the issues raised in the Late-Filed Contention JJ, and the State’s interest would not be represented by existing parties with respect to these issues. These factors, however, carry less weight than the three other factors specified in the regulation. *Private Fuel Storage*, LBP-98-7, 47 NRC at 208.

D. The Admissibility of Late-Filed Contention JJ

In the event that the Licensing Board should determine that Contention JJ should not be rejected on grounds of timeliness, the contention nonetheless should be rejected in that it (a) fails to provide sufficient information to show that a genuine dispute exists with the Applicant on a material issue of law or fact (with respect to certain matters raised), and/or (b) even if proven, would be of no consequence because it would not entitle the State to relief.¹⁰ See 10 C.F.R. §§ 2.714(b)(2)(iii) and 2.714(d)(2)(ii).

Contention JJ states as follows:

CONTENTION JJ. Co-seismic Fault Rupture

The Applicant's failure to comply with 10 CFR § 72.102 places undue risk on the public health, safety, and the environment because the Applicant's effort to assess the seismic hazard implications of possible co-seismic rupture of the Stansbury Fault with the East and/or West Fault is erroneous and incomplete.

In support of its contention, the State asserts that the Applicant's analysis is erroneous due to a calculational error regarding the probabilistic 2,000 year return period ground motions and the application of the Yucca Mountain adjustment factors to other two-fault scenarios. Late-Filed Contention JJ at 6. The State asserts that the Applicant's analysis is incomplete because it does not address the probabilistic 10,000 year return period ground motions or the ground motions based on a deterministic methodology. *Id.*

The State, in the basis for the contention, indicates that the Applicant used the numbers in the Table, "Adjustment Factors for Multiple Rupture on Two Faults Developed

¹⁰ As stated *supra*, at 4, the Applicant submitted a correction to its analysis in SAR Appendix 2G by letter dated April 24, 2000. The Applicant's errata letter and revised analysis could have the effect of rendering moot the State's proffered contention; however, the Staff did not receive a copy of the errata letter until a few days ago, and has not had time to review it. Therefore, the Staff expresses no opinion at this time as to the impact of revised Appendix 2G on Utah Contention JJ.

by Yucca Mountain Project Expert Panel For Horizontal Peak Ground Acceleration.” *Id.* at 7. The State then asserts as a shortcoming of the Applicant’s analysis that “it is not apparent that the adjustment factors determined by the Yucca Mountain ground motion experts can be transferred wholesale to other two-fault rupture scenarios such as the one discussed in Appendix 2G: an M 6.5 earthquake on a fault at 0.9 km distance (the East fault) and an M 7.0 earthquake on a fault at 9 km distance (the Stansbury fault).” *Id.* at 8 (emphasis added). The State, however, provides no basis for this assertion and, thus, has failed to provide information sufficient to demonstrate a genuine dispute of material fact with the Applicant, contrary to 10 C.F.R. § 2.714(b)(2)(iii). Therefore, this issue should not be admitted in the proceeding.

The State additionally asserts that Applicant’s analysis is erroneous due to the way in which the Applicant has applied the Yucca Mountain adjustment factors. *Id.* at 8-12. The State asserts that the Applicant incorrectly used only the magnitude from the closest of the two ruptures in its analysis, rather than considering earthquake magnitude by combining the seismic moments from both ruptures. *Id.* at 8-9. The State then applies what it believes to be the appropriate peak ground acceleration for the combined rupture, and concludes that the “amount of decrease in the 2,000-year return period ground motions is much smaller.” *Id.* at 11 (emphasis added). Significantly, however, in evaluating the Applicant’s alleged error, the State recognizes that “[t]he implications of its error are arguably not too significant if the NRC allows the design ground motion to be based on the probabilistic 2,000 year return period ground motions.” *Id.* at 12 (emphasis added).

Inasmuch as the Applicant’s analysis was based on the use of the probabilistic 2,000-year return period ground motions, the State’s recognition that the error would “arguably” not be too significant with respect to the use of the probabilistic 2,000 year return

period ground motions renders the existence of the error immaterial.¹¹ As the Licensing Board has noted, “[a]ny issues of law or fact raised in a contention must be material to the grant or denial of the license application in question, i.e., they must make a difference in the outcome of the licensing proceeding so as to entitle the petitioner to cognizable relief.” *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 179 (1998). Thus, the alleged error in the Applicant’s analysis is not material with respect to the probabilistic 2,000 year return period ground motions -- which is the subject of the calculation -- and should not be admitted in the proceeding.

The State also asserts that the Applicant “should be required to perform the same analyses, using the proper value to assess possible effects on the 10,000 year return period peak ground acceleration of 0.78 g,” and that the Applicant’s error “may underestimate probabilistic 10,000 year return period ground motions.” Late-Filed Contention JJ at 11. Further, the State asserts that for deterministic estimates, the “Applicant’s computational error would be significant (~15%),” and that using the appropriate calculations, the 84th percentile deterministic peak ground acceleration would be 1.0g -- which the State notes is above the current design peak ground acceleration for the proposed facility. *Id.* at 10.

These assertions should be rejected. The Staff has already determined that using DSHA methodology, the peak ground acceleration values already exceed the SAR proposed design values. See SER at § 2.1.6.2., 2-36. Therefore, a calculation of the DSHA co-seismic rupture scenario would not be material because in both cases the SAR

¹¹ Moreover, the State does not specify what the result of its re-computation of the combined rupture using the State’s value for peak ground acceleration is, so as to provide a figure for comparison.

proposed design values would be exceeded. Further, while the State asserts that the co-seismic rupture should be considered for the 10,000-year return period, this would appear to be unnecessary since, by the State's own reckoning, the 10,000 year ground acceleration is 0.78g, which is "already significantly higher than the current design value." Late-Filed Contention JJ at 11. In other words, the co-seismic rupture for 10,000-year return period ground motions would not be of material consequence because the SAR proposed design value would already be exceeded.

Finally, the State asserts that the deterministic analysis remains germane as a "valid baseline for comparison to probabilistic design ground motions." *Id.* The State, however, has not demonstrated that such a baseline is necessary for a probabilistic analysis; nor has the State demonstrated how such a baseline would be used. Therefore, this concern fails to set forth a valid basis for the contention.

CONCLUSION

For the reasons set forth above, the Staff submits that the State's Late-Filed Contention JJ should be rejected.

Respectfully submitted,

/RA/

Catherine L. Marco
Counsel for NRC Staff

Dated at Rockville, Maryland
this 3rd day of May 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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PRIVATE FUEL STORAGE L.L.C.) Docket No. 72-22-ISFSI
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(Independent Spent)
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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO "STATE OF UTAH'S REQUEST FOR ADMISSION OF LATE-FILED UTAH CONTENTION JJ (CO-SEISMIC FAULT RUPTURE)" in the above captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterick, or by deposit in the U.S. Postal Service, as indicated by double asterick, with copies by electronic mail this 3rd day of May, 2000:

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