December 24, 1997

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 CONTENTIONS FILED BY (1) THE STATE OF UTAH, (2) THE SKULL VALLEY BAND OF GOSHUTE INDIANS, (3) OHNGO GAUDADEH DEVIA, (4) CASTLE ROCK LAND AND LIVESTOCK L.C., *ET AL.*, AND (5) THE CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION AND DAVID PETE

INTRODUCTION

In accordance with the Licensing Board's Memorandum and Order of October 17, 1997,[1] on or about November 24, 1997, contentions were filed by each of the petitioners for leave to intervene in this proceeding (the "Petitioners") -- *i.e.*, (1) the State of Utah,[2] (2) Ohngo Gaudadeh Devia ("OGD"),[3] (3) Castle Rock Land and Livestock, L.C., Skull Valley Company,

---

[1] "Memorandum and Order (Ruling on Motions to Suspend Proceeding and for Extension of Time to File Contentions)," dated October 17, 1997.

[2] *See* "State of Utah's Contentions on the Construction and Operating License Application by Private Fuel Storage, LLC for an Independent Spent Fuel Storage Facility," dated November 23, 1997 ("Utah Contentions").

[3] *See* "Ohngo Gaudadeh Devia's Contentions Regarding the Materials License Application of Private Fuel Storage in an Independent Spent Fuel Storage Installation," filed November 24, 1997 ("OGD Contentions"), and "Errata" thereto, filed November 25, 1997.

Ltd., and Ensign Ranches of Utah, L.C. (collectively referred to herein as "Castle Rock"),[4] (4) the Confederated Tribes of the Goshute Reservation and David Pete (collectively referred to herein as the "Confederated Tribes"),[5] and (5) the Skull Valley Band of Goshute Indians ("Skull Valley Goshutes").[6]

In accordance with 10 C.F.R. § 2.714(c) and the Licensing Board's Memorandum and Order of October 17, 1997,[7] the NRC Staff ("Staff") hereby responds to the Petitioners' contentions. For the reasons set forth herein, the Staff submits that the Petitioners' contentions should be admitted for litigation in this proceeding to the extent described below.

DISCUSSION

I. Legal Standards Governing the Admission of Contentions.

It is well established that contentions may only be admitted in an NRC licensing proceeding if they fall within the scope of issues set forth in the *Federal Register* notice of hearing and comply with the requirements of 10 C.F.R. § 2.714(b) and applicable Commission case law. *See, e.g., Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976); *Philadelphia Electric Co.* (Peach

---

[4] *See* "Contentions of Petitioners Castle Rock Land & Livestock, L.C., Skull Valley Co., Ltd, and Ensign Ranches of Utah, L.C. on the License Application for the Private Fuel Storage Facility," filed November 21, 1997 ("Castle Rock Contentions").

[5] *See* "Statement of Contentions on Behalf of the Confederated Tribes of the Goshute Reservation and David Pete," dated November 23, 1997 ("Tribe Contentions").

[6] *See* "Supplemental Petition to Intervene," dated November 24, 1997.

[7] This Response is further filed in accordance with a two-day extension of time afforded to the Staff, based upon its unopposed motion of December 16, 1997. *See* "Order (Granting Motion for Extension of Time to File Responses to Contentions and Supplemental Petitions)," dated December 18, 1997.

Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974); *Duquesne Light Co.* (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 245 (1973); *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 194 (1973), *aff'd sub nom. BPI v. Atomic Energy Commission,* 502 F.2d 424, 429 (D.C. Cir. 1974).

Pursuant to 10 C.F.R. § 2.714(b)(1), a petitioner for leave to intervene is required to file a list of the contentions it seeks to have litigated in the proceeding, at least one of which must satisfy the requirements of § 2.714(b)(2). Section 2.714(b)(2), as amended, requires that each contention "must consist of a specific statement of the issue of law or fact to be raised or controverted," and that the following information must be provided in support of the contention:[8]

> (i) A brief explanation of the bases of the contention.
>
> (ii) A concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion.
>
> (iii) Sufficient information . . . to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. On issues arising

---

[8] These provisions were adopted by the Commission upon amending the regulation in 1989. *See* Statement of Consideration, "Rules of Practice for Domestic Licensing Proceedings - Procedural Changes in the Hearing Process," 54 Fed. Reg. 33,168 (Aug. 11, 1989), *as corrected*, 54 Fed. Reg. 39,728 (Sept. 28, 1989).

> under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report.

See generally Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), CLI-91-12, 34 NRC 149, 155 (1991); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-35, 34 NRC 163, 167-68 (1991).[9]

The Commission has recognized that the amended rules "raise the threshold for the admission of contentions." Statement of Consideration, *supra*, 54 Fed. Reg. at 33,168.[10] Under the revised rule, a petitioner must provide a "clear statement as to the basis for the contentions and the submission of more supporting information and references to specific documents and sources that establish the validity of the contention." *Palo Verde, supra,* 34 NRC at 155-56. The Commission has summarized the revised rule as follows:

> These sections demand that all Petitioners provide an explanation of the bases for the contention, a statement of fact or expert opinion upon which they intend to rely, and sufficient information to show a dispute with the applicant on a material issue of law or fact. If any one of these requirements is not met, a contention must be rejected.

---

[9] These requirements are intended, *inter alia,* to ensure that a petitioner reviews the application and supporting documentation prior to filing contentions; that the contention is supported by at least some facts or expert opinion known to the petitioner at the time of filing; and that there exists a genuine dispute between the petitioner and the applicant before a contention is admitted for litigation -- so as to avoid the practice of filing contentions which lack any factual support and seeking to flesh them out later through discovery. *See, e.g., Shoreham, supra*, 34 NRC at 167-68.

[10] At the same time, the Commission has indicated that the revised rule does not constitute "a substantial departure" from then existing practice in licensing cases. 54 Fed. Reg. at 33,170-71; *see also, Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-94-11, 39 NRC 205, 207 (1994). Thus, while the revised rule supersedes, in part, the prior standards governing the admissibility of contentions, those standards otherwise remain in effect to the extent they do not conflict with the amendments. *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-91-19, 33 NRC 397, 400 (1991).

Id. at 155. Further, pursuant to 10 C.F.R. § 2.714(d)(2), a contention must be rejected if:

> (i) The contention and supporting material fail to satisfy the requirements of [§ 2.714(b)(2)]; or
>
> (ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

See generally Palo Verde, supra, 34 NRC at 155; *Shoreham, supra,* 34 NRC at 167.

In this regard, it is well established that the purpose for the basis requirements of 10 C.F.R. § 2.714(b)(2) is (1) to assure that the contention raises a matter appropriate for adjudication in a particular proceeding; (2) to establish a sufficient foundation for the contention to warrant further inquiry into the assertion; and (3) to put other parties sufficiently on notice of the issues so that they will know generally what they will have to defend against or oppose. *Peach Bottom, supra,* 8 AEC at 20-21; *Palo Verde, supra,* LBP-91-19, 33 NRC at 400. Further, the *Peach Bottom* decision requires that a contention be rejected if:

> (1) it constitutes an attack on applicable statutory requirements;
>
> (2) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
>
> (3) it is nothing more than a generalization regarding the petitioner's view of what applicable policies ought to be;
>
> (4) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
>
> (5) it seeks to raise an issue which is not concrete or litigable.

Peach Bottom, supra, 8 AEC at 20-21.

II. The Admissibility of Petitioners' Contentions.

The Staff respectfully submits that a review of the contentions filed by the Petitioners in this proceeding, in the light of the established requirements set forth above, demonstrates that the contentions should be admitted to the extent and in the manner set forth below.

1. The State of Utah

The State of Utah filed 30 contentions, including numerous subparts, which it seeks to litigate in this proceeding. The Staff's response to the State's contentions is as follows.

UTAH Contention A. Statutory Authority.
Congress has not authorized NRC to issue a license to a private entity for a 4,000 cask, away-from reactor, centralized, spent nuclear fuel storage facility.

Staff Response

As the basis for this contention, the State asserts that the Nuclear Waste Policy Act (NWPA), Part B, Interim Storage Program, 42 U.S.C. §§ 10151-10157," defines the scope of facilities authorized for interim storage of spent nuclear fuel" (Utah Contentions at 3). The State claims that in the NWPA, "Congress specifically authorized private storage of spent nuclear fuel at reactor sites," and Congress authorized storage of spent nuclear fuel "away from reactors only at federally owned facilities" (Utah Contentions at 4; emphasis in original). The State contends that "[n]either the NWPA, nor the statutory basis in 1980 for NRC to promulgate Part 72, can be construed as authorizing NRC to issue a license for a 4,000 cask, centralized, privately owned, away-from-reactor, nuclear waste storage facility" (*Id.*). The State concludes that "[a]fter comparing what this Applicant is requesting and what Congress requires under the NWPA, it should be obvious that NRC by regulation is thwarting the national policy and directives Congress set in the NWPA" (*Id.* at 9).

Corrected

The Commission's regulations provide that if the presiding officer determines that any of the admitted contentions constitute pure issues of law, those contentions must be decided on the basis of briefs or oral argument. 10 C.F.R. § 2.714(e). This contention concerns the authority of the Commission to license private, away-from-reactor ISFSIs and, as such, involves a purely legal issue. This issue is appropriate for resolution at the present time.[11]

For the reasons set forth below, the Staff submits that the Commission has the authority to license a private, away-from-reactor ISFSI, as proposed by the Applicant. The Commission's authority is derived from the Atomic Energy Act of 1954, as amended (AEA), which provides for the regulation of special nuclear material, source material, and byproduct material, all of which are contained in spent fuel. The regulations in 10 C.F.R. Part 72 were promulgated as a lawful exercise of that authority, and the NWPA did nothing to impinge or limit the Commission's authority to license private, away-from-reactor, fuel storage. For these reasons, as more fully discussed below, this contention should be rejected.

A. The Atomic Energy Act Authorizes the Commission to Regulate Spent Fuel Storage

The Commission's statutory authority to regulate spent fuel is derived from the AEA. Specifically, section 53a of the AEA authorizes the Commission to "issue licenses to transfer

[11] The Staff believes the issue is clear and has been adequately addressed in the parties' submissions. Thus, it may properly be resolved at this time. If, however, the Licensing Board believes it requires further briefs with respect to this, or other purely legal issues, it could establish a briefing schedule with respect to such issue(s).

The Commission's regulations provide that if the presiding officer determines that any of the admitted contentions constitute pure issues of law, those contentions must be decided on the basis of briefs or oral argument. 10 C.F.R. § 2.714(e). This contention concerns the authority of the Commission to license private, away-from-reactor ISFSIs and, as such, involves a purely legal issue. This issue is appropriate for resolution at the present time, in that the contention constitutes an impermissible challenge to the Commission's regulations.[11]

For the reasons set forth below, the Staff submits that the Commission has the authority to license a private, away-from-reactor ISFSI, as proposed by the Applicant. The Commission's authority is derived from the Atomic Energy Act of 1954, as amended (AEA), which provides for the regulation of special nuclear material, source material, and byproduct material, all of which are contained in spent fuel. The regulations in 10 C.F.R. Part 72 were promulgated as a lawful exercise of that authority, and the NWPA did nothing to impinge or limit the Commission's authority to license private, away-from-reactor, fuel storage. Finally, the contention constitutes a direct and impermissible attack on the Commission's regulations. For these reasons, as more fully discussed below, this contention should be rejected.

A. The Atomic Energy Act Authorizes the Commission to Regulate Spent Fuel Storage

The Commission's statutory authority to regulate spent fuel is derived from the AEA. Specifically, section 53a of the AEA authorizes the Commission to "issue licenses to transfer

[11] The Staff believes the issue is clear and has been adequately addressed in the parties' submissions; further, inasmuch as the contention constitutes an attack on Commission regulations, it may properly be resolved at this time. If, however, the Licensing Board believes it requires further briefs with respect to this, or other purely legal issues, it could establish a briefing schedule with respect to such issue(s).

or receive in interstate commerce, transfer, deliver, acquire, possess, own, receive possession of or title to, import, or export . . . special nuclear material." 42 U.S.C. § 2071.[12] The Commission is authorized pursuant to section 63 of the AEA to issue licenses for source material for, among other things, any use "approved by the Commission as an aid to science or industry." 42 U.S.C. § 2093.[13] Section 81 of the AEA authorizes the Commission to issue licenses to applicants seeking to use byproduct material "for research or development purposes, for medical therapy, industrial uses, agricultural uses, or such other useful applications as may be developed." 42 U.S.C. § 2111.[14]

Section 161b of the AEA authorizes the Commission to "establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property." 42 U.S.C. § 2201. The Commission has recognized that spent fuel includes special nuclear material, as well as byproduct material, source material, and other radioactive materials associated with fuel assemblies. 10 C.F.R. § 72.3. Thus, the Commission has the authority to license the possession and use of spent fuel containing special nuclear

---

[12] Section 11aa of the AEA defines special nuclear material (SNM) as "plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission . . . determines to be special nuclear material." 42 U.S.C. § 2014.

[13] The AEA defines source material as, among other things, "uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 61 to be source material." 42 U.S.C. § 2014.

[14] Byproduct material is defined by the AEA to mean, among other things, "any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material." 42 U.S.C. § 2014.

material, source material, and byproduct material. Section 161i of the AEA authorizes the Commission to establish "standards and restrictions governing the design, location, and operation of facilities" used in the conduct of regulated activities. 42 U.S.C. § 2201. Therefore, the Commission has the authority to license the storage of spent fuel at an away-from-reactor storage installation.

The Commission, pursuant to its authority under the AEA, has promulgated "extensive and detailed regulations concerning the operation of nuclear facilities and the handling of nuclear materials." *Pacific Gas and Electric Co. v. State Energy Resources Conservation and Dev. Comm'n*, 461 U.S. 190, 217 (1983). The Commission's regulations in 10 C.F.R. Part 72 govern "storage and disposal away from the reactor." *Id.* These regulations were promulgated to codify existing regulatory practice and to further define licensing requirements pertaining to storage of spent fuel in an ISFSI. *See* Statement of Consideration, "Licensing Requirements for the Storage of Spent Fuel in an Independent Fuel Storage Installation," 45 Fed. Reg. 74,693 (1980).[15] The "Authority" section for 10 C.F.R. Part 72 indicates that these provisions were issued pursuant to AEA sections 51, 53, and 57 (special nuclear material), AEA sections 62, 63, 65, and 69 (source material), AEA section 81 (byproduct material), and AEA section 161b (SNM, source, and byproduct material), among others. Thus, the Commission promulgated its regulations in 10 C.F.R. Part 72, as an exercise of its authority under the AEA to regulate

---

[15] Prior to November 28, 1980, the date on which 10 C.F.R. Part 72 became effective, storage of spent fuel was licensed under the Commission's general regulations for the domestic licensing of special nuclear material, in 10 C.F.R. Part 70. Statement of Consideration, 45 Fed. Reg. at 74,693. Part 70 was promulgated pursuant to section 161 of the AEA, as interpreted and made applicable by sections 51, 53, 182 and 183 of the AEA. *See* Statement of Consideration, "Part 70 - Special Nuclear Material," 21 Fed. Reg. 764 (Feb. 3, 1956).

special nuclear material, source material, and byproduct material, to specifically address the licensing requirements for ISFSIs.

B. NWPA Does Not Apply to Private Away-From-Reactor Spent Fuel Storage

The State claims that the NWPA defines the scope of facilities authorized for interim storage of spent fuel and does not authorize private, away-from-reactor storage. In determining the construction of a statute, federal courts apply the two-step analysis set forth in *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984). The plain language of the statute must first be examined. *See State of Idaho v. United States Dep't of Energy*, 945 F.2d 295, 298 (9th Cir. 1991), *cert. denied*, 504 U.S. 956 (1992) (court looks to plain meaning of NWPA to determine whether it applies to Department of Energy (DOE) storage agreements reached prior to its enactment).

Subchapter I, Part B of the NWPA addresses requirements for interim fuel storage. 42 U.S.C. § 10151. Section 135 of the NWPA states that DOE shall provide "not more than 1,900 metric tons of capacity for the storage of spent nuclear fuel from civilian nuclear power reactors." 42 U.S.C. § 10155. The NWPA authorizes DOE to enter into contracts with any reactor owner or operator for the purpose of providing storage capacity only if the NRC first determines that: (1) adequate storage capacity cannot be provided by the reactor owner and operator on site, or at the site of any other power reactor operated by such person; and (2) storage capacity cannot be made available through the use of prescribed methods. *Id.* The prescribed methods that utilities must first undertake prior to contracting with DOE for federally-provided storage include: expansion of storage facilities at the site of a reactor; construction of new storage at the site of a reactor; acquisition of modular or mobile storage equipment for use

at the site of a reactor; and transshipment to another reactor owned by the owner or operator." *Id.*[16] Not mentioned in this list is the construction of an away-from-reactor private storage facility.

These provisions are followed by NWPA section 135(h), "Application," which provides that "[n]otwithstanding any other provision of law, nothing in this Act shall be construed to encourage, authorize, or require the private or Federal use, purchase, lease, or other acquisition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government on the date of the enactment of this Act." Thus, the NWPA does not address or apply to private, away-from-reactor ISFSIs. The NWPA only applies to federally-provided interim spent fuel storage, and the conditions placed on reactor owners and operators who wish to contract with DOE for storage at federal sites.

In *State of Idaho v. U.S. Department of Energy*, *supra,* the Ninth Circuit Court of Appeals addressed whether the NWPA applied to storage agreements that DOE had entered into prior to the statute's enactment. In deciding that the NWPA did not apply to such previously entered agreements, the court stated that "[u]nderstood in terms of its history, the interim storage provisions of the Nuclear Waste Policy Act are not comprehensive regulations governing all federal storage of nuclear waste, but remedial legislation addressed to a specific problem." *Id.*, 945 F.2d at 298-99. As stated by the court, "[e]ach of the Act's various requirements

---

[16] The NWPA requires the Commission to establish criteria for assessing whether a utility has exhausted available storage prior to entering into a DOE storage contract. Section 135(g) specifies that such criteria shall include the use of high density fuel storage racks, fuel rod compaction or other technologies approved by the Commission. 42 U.S.C. § 10155. The NWPA streamlines the process by which an applicant may seek Commission approval for the licensing of such technology. *See* 42 U.S.C. § 10154.

concerning interim storage are specifically limited to contracts entered into pursuant to section 10155(a)(1)(A)." *Id.* at 299. Thus, the NWPA's restrictions are limited "to the specific set of remedial storage agreements authorized by the Act itself." *Id.* Similarly, since private, away-from-reactor storage is not the subject of a contract entered into between DOE and a utility in accordance with 10155(a)(1)(A), the NWPA does not apply to this private activity.

The NWPA's historical context and legislative history also make clear that the Act was not meant to prohibit the licensing of private away-from-reactor ISFSIs. Earlier versions of the bill had, in fact, required reactor operators and owners seeking to enter into storage contracts with DOE to first pursue options for non-federal storage away from the site of a nuclear reactor. *See* H.R. 6598, as reported from the Subcommittee on Energy Conservation and Power, July 8, 1982, § 135 (utilities would be permitted to enter into contracts with DOE if they are pursuing licensed alternatives, including the "purchase, lease, or other acquisition of any non-Federal storage facility located away from the site of any nuclear power reactor."). The final bill, however, did not contain such language. As reported by the Committee on Energy and Commerce, "[t]he Committee bill does not require that storage capacity at a private [away-from-reactor facility] be exhausted or unavailable before a utility would be eligible for storage capacity provided by the Secretary." H.R. Rep. No. 785, 97th Cong,. 2d Sess., pt. 1, p.41. The earlier draft language of the bill demonstrated the extent to which Congress desired that utilities solve the waste problem without federal involvement, even to the extent of mandating private away-from-reactor storage as a condition precedent to entering into contracts for federal storage space. Therefore, Congress expressly considered this matter, and did not preclude the use of private away-from-reactor storage, and in relieving utilities of exhausting this option prior

to contracting with DOE for federal storage, indicated that it did not intend to bar such initiatives. Had Congress intended to preclude such private away-from-reactor initiatives, it clearly could have done so.

Moreover, in enacting the NWPA, Congress was aware that the Commission's newly-enacted Part 72 regulations contained provisions relating to the licensing of private away-from-reactor storage. Thus, Chairman Palladino testified as follows:

> I would also like to inform your committee that in anticipation of requests to license away from reactor facilities, the NRC last fall promulgated 10 CFR Part 72 licensing regulation for the storage of spent fuel in an independent spent fuel storage installation. As a result the NRC is ready and able to take prompt action for licensing actions related to interim spent fuel storage.[17]

The NRC Executive Director for Operations provided written testimony in this regard, as follows:

> The Commission has stated with the issuance of its regulation, 10 C.F.R. Part 72, which provides the licensing criteria for independent spent fuel storage installations, that there are no compelling safety or environmental reasons generally favoring either reactor sites or away from reactor sites. Thus, Part 72 establishes the licensing framework for such storage either at reactor sites or away-from-rectors using either wet or dry storage technologies.[18]

---

[17] Testimony of Hon. Nunzio J. Palladino, Chairman, NRC, Joint Hearings before the Committee on Energy and Natural Resources and the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works, United States Senate, 97th Cong., 1st Sess. on S.637, S.1662 (1981), at 236.

[18] Testimony of William J. Dircks, Executive Director For Operations, USNRC, Hearings before the Subcommittee on Energy and the Environment of the Committee on Interior and Insular Affairs House of Representatives, 97th Cong, 1st Sess. on H.R. 1993, H.R. 2800, H.R. 2840, H.R. 2881, H.R. 3809 (1981), at 325-29.

Revised Contention

Therefore, Congress was aware of the existence of 10 C.F.R. Part 72 when it enacted the NWPA. Had Congress desired to prohibit the licensing of private, away-from-reactor fuel storage, it certainly could have done so. Congress, however, did not intend to prohibit the licensing of such facilities and did not so act.

In sum, the Commission has the authority to license a private, away-from-reactor ISFSI, as proposed by the applicant. The Commission's authority is derived from the AEA, which provides for the regulation of special nuclear material, source material, and byproduct material, which are contained in spent fuel. Part 72 of the Commission's regulations was promulgated as a lawful exercise of that authority. The NWPA did nothing to impinge or limit the Commission's authority to license private, away-from-reactor fuel storage. Therefore, this contention should be rejected.

UTAH Contention B. License Needed for Intermodal Transfer Facility.
PFS's application should be rejected because it does not seek approval for receipt, transfer, and possession of spent nuclear fuel at the Rowley Junction Intermodal Transfer Point ("ITP"), in violation of 10 CFR § 72.6(c)(1).

Staff Response:

In this contention, the State of Utah asserts, in essence, that the Rowley Junction Intermodal Transfer Point ("ITP") -- a rail siding off the Union Pacific main rail line, with a 150-ton gantry crane and tractor/trailer yard -- is an integral part of the instant ISFSI application, and should therefore be treated as part of the ISFSI site (Utah Contentions at 10). In support of this assertion, the State asserts that since the Applicant has not indicated it will be

could have done so. Congress, however, did not intend to prohibit the licensing of such facilities and did not so act.

In sum, the Commission has the authority to license a private, away-from-reactor ISFSI, as proposed by the applicant. The Commission's authority is derived from the AEA, which provides for the regulation of special nuclear material, source material, and byproduct material, which are contained in spent fuel. Part 72 of the Commission's regulations was promulgated as a lawful exercise of that authority. The NWPA did nothing to impinge or limit the Commission's authority to license private, away-from-reactor fuel storage. Therefore, this contention should be rejected.

UTAH Contention B. License Needed for Intermodal Transfer Facility.
PFS's application should be rejected because it does not seek approval for receipt, transfer, and possession of spent nuclear fuel at the Rowley Junction Intermodal Transfer Point ("ITP"), in violation of 10 CFR § 72.6(c)(1).

Staff Response:

In this contention, the State of Utah asserts, in essence, that the Rowley Junction Intermodal Transfer Point ("ITP") -- a rail siding off the Union Pacific main rail line, with a 150-ton gantry crane and tractor/trailer yard -- is an integral part of the instant ISFSI application, and should therefore be treated as part of the ISFSI site (Utah Contentions at 10). In support of this assertion, the State asserts that since the Applicant has not indicated it will be

Therefore, Congress was aware of the existence of 10 C.F.R. Part 72 when it enacted the NWPA. Had Congress desired to prohibit the licensing of private, away-from-reactor fuel storage, it certainly could have done so. Congress, however, did not intend to prohibit the licensing of such facilities and did not so act.

In sum, the Commission has the authority to license a private, away-from-reactor ISFSI, as proposed by the applicant. The Commission's authority is derived from the AEA, which provides for the regulation of special nuclear material, source material, and byproduct material, which are contained in spent fuel. Part 72 of the Commission's regulations was promulgated as a lawful exercise of that authority. The NWPA did nothing to impinge or limit the Commission's authority to license private, away-from-reactor fuel storage. The State's assertion that the Commission's regulations contravene the NWPA constitutes an impermissible attack on the regulations. *Peach Bottom, supra,* 8 AEC at 20-21. Therefore, this contention should be rejected.

UTAH Contention B. License Needed for Intermodal Transfer Facility.
PFS's application should be rejected because it does not seek approval for receipt, transfer, and possession of spent nuclear fuel at the Rowley Junction Intermodal Transfer Point ("ITP"), in violation of 10 CFR § 72.6(c)(1).

Staff Response:

In this contention, the State of Utah asserts, in essence, that the Rowley Junction Intermodal Transfer Point ("ITP") -- a rail siding off the Union Pacific main rail line, with a 150-ton gantry crane and tractor/trailer yard -- is an integral part of the instant ISFSI application, and should therefore be treated as part of the ISFSI site (Utah Contentions at 10). In support of this assertion, the State asserts that since the Applicant has not indicated it will be

able to (or will) construct a direct rail spur from the Union Pacific mainline, "the assumption should be made that shipments will be off loaded at Rowley Junction and transferred from rail to truck by PFS at the ITP at an intermodal building constructed at Rowley Junction." *Id.* at 11, *citing* SAR § 4.5 and Fig. 4.5-1. Further, the State asserts that including the ITP as part of the ISFSI "site" is reasonable, in that PFS will use its own "fixed equipment" at that "fixed location" to transfer spent fuel to the ISFSI. *Id.*

Notwithstanding the State's assertions, it is apparent that the ITP is not part of the ISFSI site, and therefore need not be treated as such in the application. An ISFSI "site" is defined in 10 C.F.R. § 72.3 as "the real property on which the ISFSI . . . is located"; the ITP, in contrast, is located on private railroad property about 24 miles away from the ISFSI site.[19] While 10 C.F.R. § 72.24 requires a description of the ISFSI site and significant structures, there is no requirement in 10 C.F.R. Part 72 that any intermodal transfer points or transfer stations along the shipping routes for an ISFSI be treated as part of the ISFSI installation; nor does any such suggestion appear in the applicable regulatory guidance.[20]

Spent fuel is expected to be transported to the ISFSI from a number of reactor sites, and may well be routed through intermodal transfer points, rail yards and interchange points during the normal course of shipment. Indeed, shipments of radioactive materials, including spent fuel,

---

[19] The Applicant's Safety Analysis Report (SAR) indicates that the ITP consists of a rail siding off the Union Pacific mainline, a 150 ton gantry crane, a weather enclosure over the crane, and a tractor/trailer yard area (SAR, §§ 4.5.4.1, 5.1.3).

[20] *See, e.g.,* Regulatory Guide 3.48, "Standard Format and Content for the Safety Analysis Report for an Independent Spent Fuel Storage Installation or Monitored Retrievable Storage Installation (MRS)" (Rev. 1, Aug. 1989), at 1-1, and 2-1 - 2-2.

occur regularly throughout the United States, and may involve intermodal transfer.[21] The use of intermodal transfer points, rail storage and interchange yards by common carriers has long been an accepted practice in the shipment of hazardous materials, including spent fuel and other radioactive material -- and such areas are recognized in regulations promulgated by the U.S. Department of Transportation (DOT) to be an integral part of the transportation process.[22]

Further, the Commission has generically exempted shipments by common carriers from most NRC regulations because such shipments are already covered under DOT's regulations concerning the shipment of hazardous materials;[23] the exception is that the Commission requires

---

[21] *See generally*, NUREG-0725, Rev. 12, "Public Information Circular for Shipments of Irradiated Reactor Fuel" (October 1997), at 4, 10 and 11 (indicating that 74.8% of all spent fuel has been shipped by rail; the highway mode accounted for 94.2% of spent fuel shipment miles; and the highway mode accounted for 89% of spent fuel shipments).

[22] *See, e.g.*, 49 C.F.R. § 174.14 (movements of hazardous materials (by rail) to be forwarded promptly, "after acceptance at the originating point or receipt at any yard, transfer station or interchange point"); 49 C.F.R. § 174.700(b) (limiting the number of packages of Class 7 (radioactive) materials "that may be transported by rail car or stored at any single location"); and 49 C.F.R. § 173.401(b)(1) (regulating the packaging and transportation of Class 7 (radioactive) materials "during the course of transportation, including storage in transportation").

[23] The respective roles of the NRC and DOT for the regulation of safety in the transportation of radioactive materials are addressed in a Memorandum of Understanding (MOU) signed by the two agencies. *See* "Transportation of Radioactive Materials; Memorandum of Understanding," 44 Fed. Reg. 38,690 (July 2, 1979). The MOU states as follows (*Id.*):

> Generally, the DOT is responsible for regulating safety in the transportation of all hazardous materials, including radioactive materials, and the NRC is responsible for regulating safety in receipt, possession, use, and transfer of byproducts, source, and special nuclear materials. The NRC reviews and approves or denies approval of package designs for fissile materials and for other radioactive materials (other than low specificity materials) in quantities exceeding Type A limits, as defined in 10 CFR Part 71.

common carriers to assure that NRC physical protection requirements are implemented during shipment.[24]

In addition, no basis has been shown to support the State's assertion that shipping casks may eventually "queue up" at the Rowley Junction ITP and require "interim" storage there (Utah Contentions at 12-14), or that such a possibility requires the licensing of the ITP as an ISFSI as defined in 10 C.F.R. § 72.3. Any such contingency would appropriately be considered by Part 50 licensees upon scheduling and planning the shipment of spent fuel to the ISFSI, and would be controlled through DOT regulations. Thus, 10 C.F.R. § 71.5 specifies that "[e]ach licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the DOT regulations in 49 CFR parts 170 through 189 appropriate to the mode of transport."[25] DOT regulations, in turn, require that (a) all rail shipments of hazardous materials be forwarded promptly, "after acceptance at the originating point or receipt at any yard, transfer station or interchange point," 49 C.F.R. § 174.14; and (b) all highway shipments of hazardous materials "be transported

---

[24] Pursuant to NRC regulations, common carriers who engage in the shipment of spent fuel are responsible for assuring compliance with NRC physical protection requirements with respect to the spent fuel in transit, including times while it is in "storage incident to" transit. *See* 10 C.F.R. §§ 70.20a(e) and 73.37. Apart from this responsibility, common carriers are otherwise exempt from the requirements of 10 C.F.R. Part 71, pursuant to 10 C.F.R. § 70.20a(c); *see also*, 10 C.F.R. § 70.12.

[25] Pursuant to 10 C.F.R. § 71.0, "requirements for packaging, preparation for shipment, and transportation of licensed material" are established in 10 C.F.R. Part 71; under 10 C.F.R. § 71.12, the Commission has issued a general license to NRC licensees "to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance, or other approval has been issued by the NRC."

without unnecessary delay, from and including the time of commencement of the loading of the hazardous material until its final unloading at destination." 49 C.F.R. § 177.800(d). Accordingly, as a transfer point along the shipping route to be utilized for the transportation of licensed material, the Rowley Junction ITP is subject to regulation under DOT's transportation requirements (including regulations governing in-transit storage), rather than as a facility subject to NRC licensing requirements in 10 C.F.R. Part 72.[26]

Similarly, there is no factual or regulatory basis for the State's assertion that the ITP requires security and emergency plans to address the risks of accidents or sabotage (Utah Contentions at 15). In the event that an incident involving a transport cask occurs at the ITP, no reason has been shown why it should not be handled in the same manner as potential incidents at other locations occurring during the course of shipment. As set forth above, common carriers are responsible for assuring compliance with NRC requirements for physical protection of radioactive materials in transportation, including storage in transportation.[27] Thus, the common carrier is obliged to comply with NRC physical protection requirements while spent fuel is in transit at the Rowley Junction ITP. Further, as the Commission has observed, the primary responsibility for emergency response to accidents occurring during shipment rests with

---

[26] Pursuant to 10 C.F.R. § 72.6 (a), a general license is issued pursuant to 10 C.F.R. Part 72 to receive title to and own spent fuel; however, a general licensee under Part 72 is not authorized to acquire, deliver, receive, possess, use, or transfer spent fuel except as authorized in a specific license, as set forth in 10 C.F.R. § 72.6(b).

[27] DOT regulations provide additional requirements pertaining to incidents in which there has been breakage, spillage, or suspected radioactive contamination involving Class 7 (radioactive) materials shipments. *See* 49 C.F.R. § 174.750 ("incidents involving leakage" during rail shipment). *See also,* 49 C.F.R. §§ 171.15 (immediate notice requirements for certain incidents), 171.16 (detailed hazardous incident reports), and 107.117 (emergency processing).

the State in which such shipment occurs, with supplemental assistance available from the Federal government.[28] *See* discussion *infra* at 47-48 (Utah Contention R).

In sum, no sufficient reason has been shown to require a license for the ITP. Even if a rail spur is not built and most or all of the spent fuel shipments to the site arrive at the ITP for transfer to heavy haul transport tractor/trailers, the ITP remains part of the shipping route and should be treated as such. The State's assertion that an intermodal shipping point must be licensed as an ISFSI constitutes a challenge to the basic structure of the Commission's regulations in 10 C.F.R. Parts 71 and 72, and provides little more than a generalized statement of the State's views as to what the Commission's applicable regulatory approach should be. Accordingly, the contention should be rejected. *See Peach Bottom, supra,* 8 AEC at 20-21; 10 C.F.R. § 2.758.[29]

UTAH Contention C. Failure to Demonstrate Compliance With NRC Dose Limits.
The Applicant has failed to demonstrate a reasonable assurance that the dose limits specified in 10 CFR § 72.106(b) can and will be complied with.

---

[28] *See* "NRC Response to Accidents Occurring During the Transportation of Radioactive Material; General Statement of Policy," 49 Fed. Reg. 12,335 (March 29, 1984); *see* discussion *infra*, at 47-48.

[29] The Staff notes that it intends to review the Applicant's discussion of the equipment and transfer operations to be located at the Rowley Junction ITP, and may seek further information regarding those matters from the Applicant. The Staff will consider, in the course of its review, whether the planned transfer operations at that location present grounds to consider whether additional measures, beyond those specified in Commission and/or DOT regulations, should apply to operations conducted at that location. In the event the Staff concludes that additional requirements may need to be imposed on those operations, it will provide timely notice of that determination to the Licensing Board and parties to this proceeding via a Board Notification.

Staff Response:

The Staff does not oppose the admission of this contention, to the extent it is limited to the Applicant's dose analysis for the hypothetical loss of confinement barrier accident. The Staff opposes the admission of the remainder of the State's issues, which the Staff treats below as if they were stated as individual bases. These bases are not appropriate for litigation in the proceeding because the State has not demonstrated that a genuine dispute of material fact exists with respect to the application. 10 C.F.R. § 2.714(b)(iii).

The State asserts that the Applicant's dose consequence analysis for the loss of confinement barrier is inadequate because it "makes selective and inappropriate use of data sources regarding doses, and fails to take important dose contributors into account" (Utah Contentions at 18). The Staff does not object to the portion of the State's basis that concerns the data relied upon by the Applicant in its dose analysis, or the portion of the State's basis concerning the Applicant's failure to take dose contributors and relevant guidance into account (*Id.* at 21). In this regard, the State claims that the Applicant failed to consider other pathways such as "direct radiation from cesium deposited on the ground, and ingestion of food and water or incidental soil ingestion," contrary to 10 C.F.R. § 72.24(m) – which provides that doses must be calculated for direct exposure, inhalation, and ingestion occurring as a result of the postulated design basis event. The Staff does not oppose the admission of these issues for litigation.

However, the Staff opposes the admission of the remaining issues raised in this contention. For example, the State claims that the HI-STORM and Transtor cask designs have not been fully reviewed or approved by the NRC and, thus, they do not provide an adequate basis for the SAR (*Id.* at 17). The State's statement that the cask designs have not been

approved by the NRC is not sufficient to show that a genuine dispute exists with respect to the accident analyses for the SAR. The State has not explained why the accident analyses in the SAR for the casks are deficient other than to say the casks have not been reviewed and approved. This assertion does not raise a litigable issue.

As mentioned by the Staff in its status report of October 1, 1997, its review schedule depends upon the completion of the certification process for the casks.[30] The vendors of HI-STORM and Transtor cask designs have applied for Commission certification of these designs and the Staff will review those applications through the rulemaking process. Thus, the approval of the cask designs will be addressed in rulemaking, and this issue is therefore not a proper subject for litigation in the instant proceeding. *See* 10 C.F.R. § 2.758; *Kelley v. Selin,* 42 F.3d 1501, 1512 (6th Cir.), *cert. denied*, 515 U.S. 1159 (1995).

The State next claims that the Applicant fails to provide an adequate evaluation of the dose consequences of a design basis accident involving loss of confinement barrier (Utah Contentions at 17). The State challenges the Applicant's statement that hypothetical loss of confinement barrier is not a credible accident. As support for the claim that the accident is credible, the State relies on a report prepared for the Nevada Agency for Nuclear Projects.[31] However, the State

---

[30] "NRC Staff's Status Report and Response to Requests for Hearings and Petitions to Intervene Filed by (1) the State of Utah, (2) Skull Valley Band of Goshute Indians, (3) Ohngo Gaudadeh Devia, and (4) Castle Rock Land and Livestock, L.C." dated October 1, 1997, at 5.

[31] The report indicated that "a General Electric IF-200 truck cask containing an unirradiated fuel assembly was attacked with a military shaped charge" and showed that casks could "be breached by military explosives," and "a considerable fraction of spent fuel could be released by such an attack, although only a small fraction of the release consisted of respirable particles." Halstead and Ballard, "Nuclear Waste Transportation Security and Safety Issues: The Risk of Terrorism and Sabotage Against Repository Shipments" (October 1997), at 25.

does not provide any support for the view that the event specified in the report is a credible accident that should be included in the design basis. Further, the report states that the cask is a General Electric IF-200 truck cask, rather than a HI-STORM or Transtor cask (proposed for use here). The evaluation is thus not applicable to the instant Application, and therefore, this is not an appropriate issue for litigation in this proceeding. Moreover, the issue of sabotage occurring in transportation is addressed in the Commission's Part 71 requirements, and the State's assertion that the risk posed by such attack is not adequately considered (Utah Contentions at 18) constitutes an impermissible attack on the Commission's regulations. *See* discussion *infra* at 46-48. Similarly, the State's claim that offsite emergency planning needs to be considered for this facility (*Id.* at 17), constitutes an impermissible attack on the Commission's regulations in 10 C.F.R. § 72.32, and should be rejected. *See* discussion *infra* at 42-46.

The State claims that the Applicant has failed to calculate doses to children, "which are higher because a child's ratio of surface area to volume of organs is higher" (Utah Contentions at 21). Section 72.24(m) requires an evaluation of the potential dose equivalent or committed dose equivalent to "an individual outside the controlled area." Dose limits for individual members of the public are set forth in 10 C.F.R. Part 20, "Standards For Protection Against Radiation." *See* 10 C.F.R. §§ 20.1301, 20.1302. The State does not indicate that the Applicant has failed to comply with these requirements. Thus, insufficient basis has been provided to support the admission of this issue for litigation in this proceeding.

Finally, the State claims that the dose model used by the Applicant, ICRP-30, is outdated and inadequate to calculate doses to humans. The State offers no support for this assertion and,

thus, it should be rejected. The Commission has generally adopted the philosophy and methodology of ICRP-30 and has based recent amendments to 10 C.F.R. Part 20, Standards for Protection Against Radiation, on that guidance. *See* Statement of Consideration, "Standards For Protection Against Radiation," 56 Fed. Reg. 23,360, 23,361 (May 21, 1991). The State claims that the Applicant should be required to use the ICRP-60 dose model, "which is more accurate for human radiation doses, and also correctly calculates the dose to children" (Utah Contentions at 21). However, the State has not provided any facts to show that the IRCP-60 model is more accurate, or that the Applicant may not rely upon the regulations in 10 C.F.R. Part 20 in preparing its dose calculations. Therefore, this issue lacks basis and should be rejected.

> **UTAH Contention D. Facilitation of Decommissioning.**
> The proposed ISFSI is not adequately designed to facilitate decommissioning, because PFS has not provided sufficient information about the design of its storage casks to assure compatibility with DOE repository specifications. Moreover, in the reasonably likely event that PFS's casks do not conform to DOE specification, PFS fails to provide any measures for the repackaging of spent fuel for ultimate disposal in a high level radioactive waste repository. Moreover, PFS provides no measures for verification of whether the condition of spent fuel meets disposal criteria that DOE may impose.

Staff Response:

The Staff opposes the admission of this contention on the grounds that it fails to provide sufficient information to show that a genuine dispute exists with the Applicant regarding the necessity of having a method for repackaging spent fuel or of demonstrating compatibility with DOE's future requirements. 10 C.F.R. § 2.714(b)(iii).

As a basis for this contention, the State of Utah alleges that the SAR is deficient because it does not provide information to address whether the HI-STORM and Transtor canisters will be compatible with DOE criteria, which are under development (Utah Contentions at 23). The

The State claims that in order to transfer fuel casks that are compatible with DOE requirements or to conduct fuel inspections, "a hot cell is needed" (Utah Contentions at 25). The State reasons that fuel handling will be necessary, and that the originating reactors and the Yucca Mountain facility would not be available for this purpose. However, the State does not provide any support for its assertion that a hot cell or any other fuel handling facility will be necessary for decommissioning (*Id.* at 25-26); and its speculation that a waste repository will not be available constitutes a challenge to the Commission's waste confidence decision. *See* 10 C.F.R. § 51-61. The State does not provide any reason to believe that the Applicant has not satisfied Commission requirements, and, therefore, the contention should be rejected.

UTAH Contention E. Financial Assurance.
Contrary to the requirements of 10 CFR §§ 72.22(e) and 72.40(a)(6), the Applicant has failed to demonstrate that it is financially qualified to engage in the Part 72 activities for which it seeks a license.

Staff Response:

The Staff does not oppose the admission of this contention. The Staff, however, does not agree with the State's belief that the requirements of 10 C.F.R. Part 50 and Appendix C are strictly applicable to financial qualifications of a Part 72 applicant. The State cites a Licensing Board decision in *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-96-25, 44 NRC 333 (1996), for its assertion that 10 C.F.R. Part 50 and Appendix C financial qualification requirements should be applied to a Part 72 application (Utah Contentions at 27). However, this decision was recently reversed by the Commission. *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-15, 46 NRC __ (slip op., Dec. 18, 1997). In its decision, the Commission stated, "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." CLI-97-15, slip op. at 6.[33]

Similarly, with respect to applications submitted under 10 C.F.R. Part 72, the Part 50 and Appendix C financial qualification provisions may be used as guidance, although they are not strictly applicable to a Part 72 application. The financial qualification regulations in Part 50 and Part 72 apply to two different types of licensed activities: Part 50 requirements pertain to a nuclear reactor, while Part 72 requirements pertain to the storage of nuclear material. In promulgating the financial qualification requirements for Part 72, the Commission could have included the specific provisions of Part 50 and Appendix C, but chose not to do so. As the Commission stated in *LES*, "Had the Commission intended the Part 50 standards and criteria to apply to all Part 70 applicants filing financial information . . . the regulations would have either restated Part 50 criteria or incorporated them by reference." CLI-97-15, *supra,* slip. op. at 8. *See also, Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 58 (1978) (indicating the Appeal Board was "very loath to import" Part 50 standards to apply to Part 20, in the absence of a clear indication that the Commission intended that this be done). Compliance with regulations which are not included in Part 72 is not required of a Part 72 applicant and, therefore, the State has not demonstrated that compliance with Part 50 constitutes an appropriate issue for litigation in this proceeding.

---

[33] The Commission noted that it is not precluded from applying Part 50 standards to a Part 70 applicant, if appropriate under the circumstances. CLI-97-15, *supra,* slip op. at 13.

UTAH Contention F. Inadequate Training and Certification of Personnel.
Training and certification of PFS personnel fails to satisfy Subpart I of 10 CFR Part 72 and will not assure that the facility is operated in a safe manner.

Staff Response:

The Staff does not oppose the admission of this contention insofar as it asserts that the Applicant's training program, described in SAR § 9.3, does not comply with the training requirements established in 10 C.F.R. § 72.192. However, the State's assertion that the Safety Analysis Report is deficient for failing to describe "the physical condition of operators" (Utah Contentions at 40), is based on an incorrect reading of 10 C.F.R. § 72.194, in that the SAR is not required to contain such information. Rather, the SAR is only required to describe the applicant's program for assuring that operators are able to perform the tasks to which they are assigned; accordingly, this portion of the contention should be rejected. Further, even if the State is correct in asserting that medical examinations and certificates should be required for operators (*Id.*), it ignores the Applicant's statement that medical examinations will be required in accordance with ANSI N546-1976, "Medical Certification and Monitoring of Personnel Requiring Operator Licenses for Nuclear Power Plants" (Application, at 7-1), and fails to point to any inadequacy in this provision. Accordingly, this portion of the contention lacks basis and should be rejected. *Peach Bottom, supra*, 8 AEC at 20-21; 10 C.F.R. § 2.758.

UTAH Contention G. Quality Assurance.
The Applicant's Quality Assurance ("QA") program is utterly inadequate to satisfy the requirements of 10 CFR Part 72, Subpart G.

Staff Response:

The Staff does not oppose the admission of this contention, insofar as it asserts that the Applicant's QA program must be shown to comply with the Commission's quality assurance

regulations in 10 C.F.R. Part 72. However, the Staff opposes the admission of portions of this contention which suggest that an ISFSI applicant must establish a wholly self-contained program -- without being able to rely in any manner upon the reactor licensee's program -- for quality assurance and/or quality control in "the procurement of materials and packaging of spent fuel by nuclear power plant licensees," and that an ISFSI applicant's QA program must include "inspection of canisters and fuel cladding" (Utah Contentions at 43). Similarly, the Staff opposes the admission of portions of this contention concerning the packaging of spent fuel by nuclear power plant licensees (*Id.* at 46-47).

The State's suggestion that an ISFSI applicant must rely only on its own program for quality assurance in these respects exceeds the requirements set forth in 10 C.F.R. Part 72, and ignores the Commission's establishment of quality requirements in 10 C.F.R. Part 71 governing the preparation, packaging, and shipment of radioactive materials, applicable to the shippers thereof. *See* 10 C.F.R. § 71.103, *et seq.* Under this regulatory approach, spent fuel canisters are required to be loaded and prepared for shipment by the power reactor licensee, in accordance with 10 C.F.R. Part 71 -- *i.e.*, the power reactor licensee is subject to QA requirements during its loading, preparation for packaging, packaging, and shipment of radioactive materials. The reactor licensee is therefore responsible for the quality program oversight of the procurement, fabrication and loading of the canister portion of the storage system, as well as oversight of the canister vendor design and fabrication activities. The ISFSI licensee may choose to rely upon this QA program, subject to the establishment of its own QA program which provides reasonable assurance that such reliance is proper. Further, in conjunction with the ISFSI licensee's receipt

of spent fuel, it should have a receiving inspection procedure in place ready for implementation prior to receipt of the first spent fuel shipment at the ISFSI site.

The State's attempt to impose broader requirements on an ISFSI applicant (the intended recipient of those materials) constitutes a challenge to the basic structure of the Commission's regulatory process and is nothing more than a generalization regarding the State's view of what applicable policies ought to be. Accordingly, these aspects of the contention should be rejected. *Peach Bottom, supra,* 8 AEC at 20-21; 10 C.F.R. § 2.758.

UTAH Contention H. Inadequate Thermal Design.
The design of the proposed ISFSI is inadequate to protect against overheating of storage casks and of the concrete cylinders in which they are to be stored.

Staff Response:

The Staff does not oppose the admission of this contention.

UTAH Contention I. Lack of a Procedure for Verifying the Presence of Helium in Canisters.
The design of the proposed ISFSI fails to satisfy 10 CFR §§ 72.122(f) and 10 CFR § 72.128(a), and poses undue risk to the public health and safety, because it lacks a procedure, or any evidence of a procedure, for verifying the presence of helium inside spent fuel canisters.

Staff Response:

The Staff opposes the admission of this contention on the grounds that ISFSI testing for helium is not required by Commission regulation, and the contention therefore fails to present an appropriate issue for litigation in this proceeding. *Peach Bottom, supra,* 8 AEC at 20-21.

In this contention, the State asserts that PFS "appears to have no measures for testing the helium content inside canisters" (Utah Contentions at 61). The State claims that the Applicant should have means for verifying the presence of helium in the cask because: helium is important

in protecting the fuel from degradation; significant opportunities for human error exist in filling the casks with helium during packaging the fuel for shipment; and, during transportation to the ISFSI, canister lid welds may become loose, and helium may escape (*Id.* at 61-62).

While the State cites 10 C.F.R. §§ 72.122(f) and 72.128(a)(1), neither of these regulations requires that an applicant demonstrate that it has the capability to "open the cask and check for the presence of helium" (*see* Utah Contentions at 62). Section 72.122(f) of the Commission's regulations provides generally that "[s]ystems and components that are important to safety must be designed to permit inspection, maintenance, and testing." Section 72.128(a)(1) provides that in general, storage and handling systems must be designed with "[a] capability to test and monitor components important to safety." Further, the regulatory guide quoted by the State (Reg. Guide 3.48) does not provide or suggest that waste handling facilities at the ISFSI will be needed to inspect the casks by opening the casks to examine for helium. In addition, the State does not show, beyond mere speculation, any reason to believe that helium leakage is a credible concern, nor does it explain with reference to the Applicant's descriptions of the cask design why the confinement barrier for the cask may be inadequate to cope with helium leakage.

Since a factual basis is lacking, and the testing for helium is not required by regulation or included in Reg. Guide 3.48, the basis for this contention is deficient and the contention must be rejected. *See Peach Bottom, supra,* 8 AEC at 20-21 (a contention must be rejected if, among other things, it "is nothing more than a generalization regarding what . . . applicable policies ought to be.").

UTAH Contention J. Inspection and Maintenance of Safety Components, Including Canisters and Cladding.
The design of the proposed ISFSI fails to satisfy 10 CFR §§ 72.122(f) and 72.128(a), and poses undue risk to the public health and safety, because it lacks a hot cell or other facility for opening casks and inspecting the condition of spent fuel.

Staff Response:

The Staff opposes the admission of this contention, which asserts that a hot cell should be required for this facility, because it fails to provide any fact or expert opinion sufficient to demonstrate the existence of a genuine dispute of material fact with the Applicant. Thus, the State fails to address, or to include any reference to, the Applicant's statement that "retrieval of the spent fuel from the canister can be achieved if necessary" (SAR at 4.7-2), nor does it address the adequacy of the Applicant's discussion of its spent fuel handling operations systems or the shielding afforded by the canister transfer building (SAR § 4.7).[34] Accordingly, the contention fails to satisfy the requirements of 10 C.F.R. § 2.714(b)(2)(ii).

UTAH Contention K. Inadequate Consideration of Credible Accidents.
The Applicant has inadequately considered credible accidents caused by external events and facilities affecting the ISFSI, intermodal transfer site, and transportation corridor along Skull Valley Road, including the cumulative effects of the nearby hazardous waste and military testing facilities in the vicinity.

Staff Response:

The Staff does not oppose the admission of this contention, except insofar as it asserts that the Applicant is required to evaluate the risk of accidents occurring at the Rowley Junction intermodal transfer point (ITP) or elsewhere during transportation (Utah Contentions at 77).

---

[34] The Staff notes that its review of the application will include consideration of whether the Applicant's facilities and means for retrieval of spent fuel are adequate to satisfy 10 C.F.R. § 72.122(l).

Such areas are not subject to 10 C.F.R. Part 72 licensing requirements but, rather, are subject to DOT's regulation of transportation. *See* discussion *supra* at 14-19 (Utah Contention B). Further, to the extent that this contention may be construed as asserting that the Applicant's Environmental Report fails to consider the risk of transportation accidents, such assertions are presented separately in Contention V, and should not be admitted as part of this contention. In addition, no information or expert opinion has been provided which would indicate that the State has a genuine dispute with the Applicant's conclusion that explosions on Skull Valley Road would not exceed 1 psi overpressure at the facility (*e.g.,* Emergency Plan at 2-6). For these reasons, these aspects of the contention should be rejected.

UTAH Contention L. Geotechnical
The Applicant has not demonstrated the suitability of the proposed ISFSI site because the License Application and SAR do not adequately address site and subsurface investigations necessary to determine geologic conditions, potential seismicity, ground motion, soil stability and foundation loading.

Staff Response:

The Staff does not oppose the admission of this contention, except insofar as the State asserts that the Applicant should be required to extend its seismic evaluation to consider the potential for seismic events on faults which have had no activity in the past 35,000 years (Utah Contentions at 82). The imposition of such a requirement would exceed the requirements in 10 C.F.R. Part 100, Appendix A (applied in 10 C.F.R. § 72.102(b)), which require the evaluation of "capable faults," *i.e.*, faults which exhibit "movement at or near the ground surface at least once within the past 35,000 years or movement of a recurring nature within the past 500,000 years." Insofar as the contention suggests that faults other than those specified in

10 C.F.R. Part 100 must be evaluated, the contention constitutes an impermissible challenge to Commission regulations and should be rejected. *Peach Bottom, supra,* 8 AEC at 20-21.

UTAH Contention M. Probable Maximum Flood
The application fails to accurately estimate the Probable Maximum Flood (PMF) as required by 10 CFR § 72.98, and subsequently, design structures important to safety are inadequate to address the PMF; thus, the application fails to satisfy 10 CFR § 72.24(d)(2).

Staff Response:

The Staff does not oppose the admission of this contention.[35]

UTAH Contention N. Flooding
Contrary to the requirements of 10 CFR § 72.92, the Applicant has completely failed to collect and evaluate records relating to flooding in the area of the intermodal transfer site, which is located less than three miles from the Great Salt Lake shoreline.

Staff Response:

In this contention, the State further advances its assertion (in Utah Contention B) that the Rowley Junction intermodal transfer point (ITP) should be considered part of the ISFSI site, contending that the Commission's regulations which require a discussion of "natural phenomena that . . . can occur in the region of a proposed site" that could affect "the safe operation of the ISFSI" must be considered with respect to the Rowley Junction ITP (Utah Contentions at 98, *citing* 10 C.F.R. § 72.92). Significantly, the State does not contend that the phenomenon in question (flooding of the Great Salt Lake) could affect the ISFSI, itself, located over 25 miles away; rather, its claim of potential effect is limited to the ITP. Inasmuch as the Rowley

[35] In support of this contention, the State referred to a siting evaluation requirement, set forth in 10 C.F.R. § 72.98. This reference is erroneous, in that the design criteria pertinent to the effect of flooding on structures important to safety are set forth in 10 C.F.R. § 72.122(b).

Junction ITP is not located at or near the ISFSI site (*see* 10 C.F.R. § 72.3 (defining "site")), and is not a part thereof, this contention should be rejected. *See* discussion *supra*, at 15.

UTAH Contention O. Hydrology
The Applicant has failed to adequately assess the health safety and environmental effects from the construction, operation, and decommissioning of the ISFSI and the potential impacts of transportation of spent fuel on groundwater, as required by 10 CFR §§ 72,24(d), 72.100(b) and 72.108.

Staff Response:

The Staff does not oppose the admission of this contention, except insofar as (a) it seeks to impose Part 72 requirements with respect to the Rowley Junction intermodal transfer point (ITP) and transportation routes (Utah Contentions at 100, 103, 104, 106, 108), and (b) asserts that construction of the ISFSI and an access route "will generate a number of radiological, chemical, or heavy metal contaminate sources" (*Id.* at 103). While the State cites 10 C.F.R. §§ 72.24(d), 72.100(b), and 72.108, and NUREG-1567, "Standard Review Plan for Spent Fuel Dry Storage Facilities (Draft for Comment, October 1996), in support of this contention, no support may be found therein to require detailed hydrological analyses of transportation routes or offsite locations such as the ITP, located some 25 miles distant from the proposed ISFSI site.

While 10 C.F.R. § 72.108 requires an evaluation of the potential impact on the environment of spent fuel transportation within the region of the proposed ISFSI, this regulation requires only an assessment of such impacts in the "region" of the ISFSI site <u>as they affect the site suitability of the ISFSI</u>, itself; it does not require an assessments of impacts along transportation routes and transfer points, nor does it require a detailed hydrological study of

transportation routes and transfer points as suggested by the contention.[36] It should be noted that § 72.108 was developed as a site suitability regulation within 10 C.F.R. Part 72, Subpart E ("Siting Evaluation Factors"). Section 72.108 is not a transportation regulation, and it does not impose additional requirements pertaining to spent fuel transportation or the environmental effects thereof, beyond the requirements in 10 C.F.R. Part 71 -- which govern the transportation of spent fuel and other radioactive materials, whether en route to an ISFSI or any other location. Nor does this regulation purport to expand the environmental report requirements stated in 10 C.F.R. Part 51 -- which are specifically made applicable to ISFSIs in 10 C.F.R. § 72.34. Indeed, the Staff's consistent practice in evaluating the environmental impacts of a proposed ISFSI is not to require an environmental or hydrological analysis of shipping routes and transfer points (nor is such an evaluation specified in applicable regulatory guidance) -- as would be required under this contention.[37] Accordingly, these aspects of the contention should be rejected.

Finally, insofar as the State asserts that construction of the proposed ISFSI and access route will produce various contaminants (including radiological contamination), no basis has been provided to support this assertion. Accordingly, this aspect of the contention should also be rejected.

---

[36] The term "region" is defined in 10 C.F.R. § 72.3 as "the geographical area surrounding and including the site, which is large enough to contain all the features related to a phenomenon or to a particular event that could potentially impact the safe or environmentally sound construction, operation, or decommissioning of an [ISFSI] or [MRS]." *See also,* Statement of Consideration, "Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation," 45 Fed. Reg. 74,693, 74,696 (Nov. 12, 1980).

[37] The existence of a consistent Staff (or agency) practice "is one indicator of how an agency interprets its regulations." *Ralph L. Tetrick* (Denial of Application for Reactor Operator License), CLI-97-10, 46 NRC ___ (Aug. 7, 1997), slip op. at 8, *citing Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-6, 43 NRC 123, 129 (1996).

UTAH Contention P. Inadequate Control of Occupational and Public Exposure to Radiation.
The Applicant has not provided enough information to meet NRC requirements of controlling and limiting the occupational radiation exposures to as low as is reasonably achievable and analyzing the potential dose equivalent to an individual outside of the controlled area from accidents or natural phenomena events.

Staff Response:

The Staff opposes the admission of this contention on the grounds that it does not show with specificity that a genuine dispute of material fact exists with the Applicant. 10 C.F.R. § 2.714(b)(iii).

As a basis for this contention, the State asserts that the Applicant has not complied with the Commission's radiation protection and monitoring regulations pursuant to 10 CFR § 72.24(e) and (m), including several NUREGs and regulatory guides.[38] Section 72.24(e) provides that the application must provide the means for meeting ALARA objectives. The State asserts that "[t]he Applicant has not provided detailed technical information to show that the policy of minimizing exposure to workers as a result of handling the casks is adequate." In addition, the State asserts that "PFS has not described the design features that provide ALARA conditions during transportation, storage and transfer of the waste" (Utah Contentions at 110). Further, the State claims that "[i]f the design of the ISFSI has incorporated ALARA concepts then the casks chosen from vendors should have the lowest dose rates" (*Id.* at 109-10).

With respect to the State's assertion that the Applicant has not addressed the application of ALARA to design features and cask handling procedures, the applicant's SAR at Chapter 7

---

[38] As mentioned previously, NRC regulatory guides do not constitute Commission requirements.

"Radiation Protection" contains its Radiation Protection Program. Chapter 7 discusses training and management responsibilities. Section 7.3 discusses radiation protection design features, including shielding and access control. The State offers no support to show that the Applicant's discussions of ALARA are in error or deficient. The Commission has recognized that design provisions, such as shielding of sources and proper equipment layout, are important for the application of the ALARA concept to ISFSI design features. *See* Statement of Consideration, "Licensing Requirements for the Storage of Spent Fuel in an [ISFSI]," 45 Fed. Reg. 74,693, 74,698 (Nov. 12, 1980). The State does not address the Applicant's discussion of layout (SAR § 7.1.2) or shielding (SAR § 7.3.3). Therefore, this basis is not adequate to support the admission of this contention.

With respect to offsite dose estimates, the State asserts that "the Applicant has completely failed to include an analysis of accident conditions including accidents due to natural phenomena" (Utah Contentions at 113). However, this claim disregards specific portions of the application which address such matters. In the SAR, section 8.2 ("Accidents"), the Applicant analyzed the following design events: earthquake, extreme wind, flood, explosion, fire, hypothetical storage cask drip/tip-over, hypothetical loss of confinement barrier, 100% blockage of air inlet ducts, lightning, and hypothetical accident pressurization. The Applicant states that the evaluations show that the release of radioactive material is controlled in compliance with 10 C.F.R §§ 72.106 and 72.126(d) (SAR at 8.2-1). The accident analyses for off-normal events include loss of external power, partial blockage of cask ducts, and off-normal ambient temperatures. The Applicant analyzed each of these events and concluded:

> There is no release of radioactive fission products from inside the canister or abnormal radiation levels associated with these off-normal operations. The only calculated consequence arises from he postulated release of surface contamination from the canister exterior, as discussed in Section 8.1.5. The resultant committed effective dose equivalent (CEDE) and the committed dose equivalent (CDE) to the maximally exposed organ at the Owner Controlled Area (OCA) boundary are shown to be less than 0.1 mrem in Section 8.1.5.3, well below the 10 CFR 72.106 criteria of 5 rem for accidents. Assuming an off-normal condition resulting in release of contamination to the atmosphere occurs on the order of once per year, total annual dose consequences at the OCA boundary from this event and radiation emanating from storage casks (Section 7.6) will not exceed 25 mrem, in accordance with 10 CFR 72.104.

(SAR, at 8.1-2). The State's assertion fails to indicate any reason to believe these statements are in error and therefore is insufficient as a basis for this contention.

> **UTAH Contention Q. Adequacy of ISFSI Design to Prevent Accidents.**
> The Applicant has failed to adequately identify and assess potential accidents, and, therefore, the Applicant is unable to determine the adequacy the ISFSI design to prevent accidents and mitigate the consequences of accidents as required by 10 CFR 72.24(d)(2).

Staff Response:

The Staff opposes the admission of this contention, on the grounds that it lacks adequate basis. While the State questions the Applicant's statement that "'the most vulnerable fuel' can withstand 63g in the most adverse orientation," on the grounds that "the Applicant does not provide a basis for its statement" (Contentions at 114), it nowhere provides any facts or expert opinion to challenge the Applicant's statement, as it is required to do in order to present a genuine dispute of material fact, as set forth in 10 C.F.R. § 2.714(b)(2). Similarly, the State's assertion that "it is <u>unclear</u> whether the Transtor cask is subject to the same quality of fabrication as the VSC-24" (Utah Contentions at 114; emphasis added), fails to provide the

requisite basis to demonstrate the existence of a genuine dispute of material fact. Moreover, the fact that the NRC has issued a demand for information to Sierra Nuclear concerning its products (*Id.*) does not provide grounds for a contention.[39]

In addition, the State's assertion that the SAR's reference to a specified maximum drop height "implies" that drops of greater distances will result in damage (*Id.* at 115) is unsupported, and it fails to describe a litigable issue, in that, even if true, no reason has been shown that this assertion would entitle the Petitioner to relief. Finally, no basis is provided to support the State's assertion that analyses are required to address lifting accidents at locations other than the ISFSI site (*i.e.*, at the Rowley Junction ITP or elsewhere in transit), is unsupported by any basis, and constitutes a challenge to the Commission's regulatory structure which places responsibility for shipment on the shipper and the common carrier. *See* discussion *supra* at 15-19. For these reasons, Utah Contention Q should be rejected.

UTAH Contention R. Emergency Plan.
The Applicant has not provided reasonable assurance that the public health and safety will be adequately protected in the event of an emergency at the storage site, at the transfer facility, or offsite during transportation.

Staff Response:

The Staff opposes the admission of this contention, in that it essentially asserts that various measures are required for offsite emergency planning and preparedness (a) are based upon inapplicable regulatory requirements and guidance, and constitute a challenge to the

---

[39] *See, e.g., Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), CLI-86-1, 23 NRC 1, 5 (1986) (the mere pendency of an investigation, in itself, does not indicate there is a substantive problem, that there has been any violation, or that there exists an outstanding significant safety issue); *accord, Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Plant, Units 1 and 2), LBP-93-9, 37 NRC 433, 446 (1993).

Commission's regulations governing emergency plans for ISFSIs as set forth in 10 C.F.R. § 72.32, (b) constitute a generalization of the Petitioner's view of what applicable regulatory requirements and policies for ISFSI emergency planning ought to be, and (c) seek to raise issues which are not proper for adjudication in the proceeding or do not apply to the facility in question. *Peach Bottom, supra,* 8 AEC at 20-21. Further, while the State makes numerous assertions that the emergency plan lacks necessary information (*see, e.g.*, Utah Contentions at 117, concerning the Applicant's description of accidents), it fails to explain why it believes the information presented by the Applicant is incomplete or otherwise deficient.

In support of this contention, the State asserts as follows:

> The Applicant has not complied with the Commission's emergency planning regulations in 10 C.F.R. § 70.22, nor has it followed Regulatory Guide 3.67, Standard Format and Content for Emergency Plans for Fuel Cycle and Materials Facilities . . . or NUREG-1567, Standard Review Plan for Spent Fuel Dry Storage Facilities (*Draft*) . . . (October 19[9]6) Appendix C (Emergency Planning) . . . .

(Utah Contentions at 116). The State then describes five areas in which it claims the Applicant has failed to comply with the cited regulation and Reg. Guide 3.67, with respect to (1) its description of the facility and impediments to offsite response, (2) offsite emergency response capabilities, (3) the identity of offsite response organizations, and the capability for offsite response to transportation accidents and accidents at the intermodal transfer station, (4) means and equipment to mitigate each type of accident, including cask tip-overs and fires, and (5) equipment available for an offsite response (Utah Contentions at 116-22).

The State's assertion that the Applicant is remiss in not satisfying 10 C.F.R. § 70.22 and Reg. Guide 3.67 is misplaced, in that neither the cited regulation nor Reg. Guide 3.67 is directly

applicable to ISFSIs. Thus, while 10 C.F.R. § 70.22 applies to fuel facilities in general, the Commission adopted specific regulations, set forth in 10 C.F.R. § 72.32, which establish the emergency planning and preparedness requirements applicable to ISFSIs. These regulations -- adopted subsequent to the adoption of § 70.22 and the publication of Reg. Guide 3.67[40] -- establish various ISFSI requirements for on-site emergency planning and preparedness, which differ from the requirements established in § 70.22 for other types of fuel cycle facilities. Further, Reg. Guide 3.67 does not apply to ISFSIs, which are licensed under 10 C.F.R. Part 72;[41] rather, applicable guidance is provided in Appendix C to NUREG-1567, "Standard Review Plan for Spent Fuel Dry Storage Facilities" (Draft for Comment, October 1996).[42]

Most significantly, 10 C.F.R. § 72.32 imposes no requirements for offsite emergency preparedness -- in contrast to § 70.22. Rather, § 73.22 imposes only the limited requirements that ISFSI licensees be committed (and briefly describe the means) to notify offsite response organizations and request offsite assistance, coordinate with offsite response organizations that are expected to assist in an on-site response, effectively use offsite assistance on-site, and make

---

[40] *See* Statement of Consideration, "Emergency Planning Licensing Requirements for Independent Spent Fuel Storage Facilities (ISFSI) and Monitored Retrievable Storage Facilities (MRS)," 60 Fed. Reg. 32,430 (June 22, 1995). In the Statement of Consideration, the Commission set forth a detailed comparison of the provisions of § 72.32 with the provisions in § 70.22, indicating numerous areas in which the rules under Part 72 require less than the corresponding rules in Part 70.

[41] Reg. Guide 3.67 indicates that "the information specified in this guide should be included in the licensee's emergency plan to comply with the requirements of 10 C.F.R. 30.32(i)(3), 40.31((j)(3), or 70.22(i)(3)." Regulatory Guide 3.67, "Standard Format and Content for Emergency Plans for Fuel Cycle and Materials Facilities" (Jan. 1992), at 1.

[42] Although the State refers to NUREG-1567 in its introduction to these five areas, no further mention is made thereof; rather, all of the Applicant's purported deficiencies listed by the State are based upon the State's reading of Reg. Guide 3.67. As set forth in the text above, the State's reliance on Reg. Guide 3.67 is misplaced.

arrangements for providing information to the public. *See* 10 C.F.R. §§ 72.32(a)(8), (15) and (16). Further, specific planning for offsite protective actions is not required, and offsite response organizations are not required to participate in on-site exercises. *See* 10 C.F.R. §§ 72.32(a)(12) and (15).

In adopting its emergency planning regulations for ISFSIs, the Commission explicitly declined to impose any offsite emergency planning and preparedness requirements -- in marked contrast to the requirements applicable to nuclear power reactors (set forth in 10 C.F.R. § 50.47, and 10 C.F.R. Part 50 Appendix E) -- and in contrast even to the limited offsite emergency planning requirements established for fuel cycle facilities authorized to possess or use special nuclear material (or spent fuel) under 10 C.F.R. Part 70. *Compare* 10 C.F.R. § 70.32 *with* 10 C.F.R. § 70.22(i). The Commission explained the new regulations, in part, as follows:

> . . . [T]he proposed regulations require onsite emergency planning with provisions for offsite emergency response in terms of coordination and communication with the public. . . .
>
> * * *
>
> . . . The analysis of potential onsite and offsite consequences of accidental releases associated with the operation of an ISFSI is contained in NUREG-1140. This evaluation shows that the maximum dose to a member of the public offsite due to an accidental release of radioactive materials would not exceed 1 rem effective dose equivalent, which is within the EPA Protective Action Guides or an intake of 2 milligrams of soluble uranium (due to chemical toxicity).
>
> . . . An ISFSI that is to be licensed for a stand-alone operation will need an emergency plan established in accordance with the requirements in this rulemaking. <u>NUREG-1140 concluded that the postulated worst-case accident involving an ISFSI has insignificant consequences to the public health and safety. Therefore, the final requirements to be imposed on most</u>

> ISFSI licensees reflect this fact, and do not mandate formal offsite components to their onsite emergency plans.[43]

Similarly, the Commission acknowledged that "the consequences of a postulated worst-case accident involving an ISFSI are insignificant in terms of public health and safety." Statement of Consideration, 60 Fed. Reg. at 32,437; emphasis added.[44]

---

[43] Statement of Consideration, "Emergency Planning Licensing Requirements for Independent Spent Fuel Storage Facilities (ISFSI) and Monitored Retrievable Storage Facilities (MRS)," 60 Fed. Reg. 32,430, 32,431 (June 22, 1995) (emphasis added), *citing* NUREG-1140, "A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees" (Final Report, January 1988). The Commission distinguished stand-alone ISFSIs that do not plan to handle, process and/or repackage spent fuel (such as the instant facility) from MRS and ISFSI facilities that do conduct such activities; for such other facilities, the Commission adopted enhanced emergency planning provisions, to include a limited offsite component, comparable to the requirements imposed for low power reactor licensing. *See* 10 C.F.R. § 72.32(b).

[44] In response to one commenter who questioned whether the Commission had considered worst-case accident scenarios (including acts of radiological sabotage such as terrorist attacks employing explosives), and who proposed the establishment of reduced offsite emergency planning zones, the Commission stated:

> Emergency planning requirements for power reactors, fuel cycle facilities, ISFSIs and MRSs are all based on a spectrum of accidents, including worst-case accidents. Emergency planning focuses on the detection of accidents and the mitigation of their consequences. emergency planning does not focus on the initiating events. Therefore, based on the potential inventory of radioactive material, potential driving forces for distributing that amount of radioactive material, and the probability of the initiation of these events, the Commission concludes that the offsite consequences of potential accidents at an ISFSI or MRS would not warrant establishing Emergency Planning Zones.

Statement of Consideration, 60 Fed. Reg. at 32,435. Similarly, based on "the very low probability of offsite consequences resulting from potential accidents at these facilities in conjunction with the low probability of a significant accident occurring," the Commission rejected a suggestion that it require that communications checks with offsite response organizations be conducted quarterly rather than semiannually; and it rejected a suggestion that

(continued...)

The Commission's response to various comments filed in response to the proposed rule further illustrates the Commission's view that offsite emergency planning is not required for ISFSIs such as the facility proposed here -- and that the areas which the State asserts are deficiencies in the Applicant's emergency plan, related to offsite response, are not required to be addressed under § 72.32. Thus, the Commission stated: "There is nothing in the emergency planning licensing regulations for ISFSI that requires, implies, specifies or connotes the need for a formal offsite emergency response plan." *Id.*; emphasis added.

While the State asserts that local hospitals must be shown to be capable of handling radiological emergencies, and deficiencies exist due to the site's remote location and the lack of equipment and training at nearby offsite response organizations (Utah Contentions at 117-19), the Commission specifically rejected similar concerns upon adopting § 72.32, due to the lack of significant offsite consequences of an ISFSI accident.[45] Thus, in view of the limited offsite impact associated with an ISFSI, the Commission specifically rejected one commenter's concern

---

[44](...continued)
emergency classification systems should include higher classification levels, based on the Commission's conclusion that the maximum offsite dose will not exceed 1 rem. *Id.*

[45] Similarly, the Commission rejected a suggestion that a "near-site" facility be provided for offsite response organizations, such as fire, police and medical personnel who play a role in an onsite emergency response (Statement of Consideration, 60 Fed. Reg. at 32,436); and it rejected the suggestion that it should require arrangements to be made (such as letters of agreement) with any organizations capable of augmenting the onsite response. In this regard, the Commission stated:

> The Commission believes that offsite response organizations will respond in the event of an actual emergency in order to protect the health and safety of the public. Therefore, the Commission does not believe that this requirement would be necessary.

Id., 60 Fed. Reg. at 32,435.

that "the current applicants for MRS facilities are all Indian Nations whose reservations are located in rural areas with no emergency response training, equipment or expertise for handling nuclear emergencies," such that the Commission "must require training and equipment for both emergency response personnel as well as hospital facilities." Statement of Consideration, 60 Fed. Reg. at 32,440.

In addition, although the State asserts that the Applicant has failed to adequately describe "equipment for restoring safe conditions to the site" (Utah Contentions at 120, *citing* 10 C.F.R. § 72.32(a)(5)), it failed to note that the Commission specifically deleted from this regulation the corresponding language in § 70.22 which had required a description of "equipment." Thus, this portion of the contention must also be rejected.

Finally, the State incorrectly contends that the Applicant's emergency plan must address accidents occurring at other locations, either in transit or at the intermodal transfer point (Utah Contentions, at 119-20). Such contingencies are inappropriate for consideration in an ISFSI's emergency plan, in that ISFSI emergency plans are on-site emergency plans only. Spent fuel shipments are regulated by both the NRC and the U.S. Department of Transportation (DOT),[46]

---

[46] The NRC evaluates and certifies the design of the shipping casks, while DOT regulates the actual transportation, including route selection, vehicles and drivers. *See generally*, NUREG-0725, Rev. 12, "Public Information Circular for Shipments of Irradiated Reactor Fuel" (October 1997), at 1. DOT's highway routing requirements are based upon DOT regulations pertaining to highway transportation; subsequent to DOT's designation of routes, the States may designate their preferred routes (*Id.* at 2); and the carrier then selects the route ultimately to be followed. Rail carriers are not subject to DOT routing requirements. Pursuant to 10 C.F.R. § 73.37(b)(7), the NRC approves the specific routes selected for rail and road shipment of spent fuel, for safeguards purposes only. *See generally, Shipments of Fuel from Long Island Power Authority's Shoreham Nuclear Power Station to Philadelphia Electric Company's Limerick Generating Station*, DD-93-22, 38 NRC 365, 372-73 (1993) (describing the respective regulatory responsibilities of DOT and NRC).

and are subject to DOT requirements and NRC regulations set forth in 10 C.F.R. Part 71. Transportation safety requirements are appropriately imposed on the shipper of radioactive materials under 10 C.F.R. Part 71, as well as on the shipper and/or common carrier under DOT regulations, and are not the proper subject of an application for an ISFSI under 10 C.F.R. Part 72. *See* discussion *supra* at 15-19.

As discussed above in response to Utah Contention B (*supra* at 15-19), common carriers engaged in the transportation of spent fuel are responsible for assuring compliance with NRC physical protection requirements for the spent fuel shipments, including at staging or transfer areas incident to transit. *See* 10 C.F.R. §§ 70.20a, 73.37. Further, shippers and/or common carriers are responsible for complying with DOT's requirements governing the shipment of hazardous materials, including hazards communication, emergency response information, and routing.[47]

In addition, a generic framework has been developed for responding to accidents involving radioactive materials in transportation. Briefly, this consists of the following elements: (1) As the Commission has recognized,[48] State and local governments are responsible for responding to transportation accidents involving radioactive materials which occur within their

---

[47] Where a person or entity ships radioactive materials, it is responsible to provide the proper package, labels, placards and shipping papers (including notice of a 24-hour emergency phone number), in accordance with NRC and DOT requirements. *See* 49 C.F.R. Part 172, Subparts C (Shipping Papers), D (Marking), E (Labeling), F (Placarding), and G (Emergency Response Information); 49 C.F.R. Part 397 (Highway Routing); and 10 C.F.R. Part 71.

[48] *See* "NRC Response to Accidents Occurring During the Transportation of Radioactive Material; General Statement of Policy," 49 Fed. Reg. 12,335 (March 29, 1984).

jurisdictions;[49] (2) the Federal government provides technical expertise and guidance to State and local governments for the development of radiological emergency response plans, as well as guidance for responding to transportation accidents in which hazardous materials (including radioactive materials) may be involved;[50] and (3) the emergency response of State and local governmental authorities may be supplemented, if necessary, by FEMA, DOE, and other Federal agencies.[51]

In sum, no regulatory basis exists for the State's assertions that an ISFSI applicant's emergency plan must be evaluated with respect to the adequacy of an offsite emergency response. Also, the State's assertion that the Applicant's emergency plan is deficient in failing to address transportation accidents should be rejected, in that an ISFSI applicant is not required to engage in emergency planning for transportation accidents involving the shipment of

---

[49] The NRC Staff has surveyed the States to ascertain their assessment as to their preparedness to respond to transportation accidents involving radioactive materials; no State indicated that it was unprepared to respond. *See, e.g.,* NUREG/CR-5399, "Survey of State and Tribal Emergency Response Capabilities for Radiological Transportation Incidents (1990); NUREG/CR-1620, "Survey of Current State of Radiological Emergency Response Capabilities for Transportation Related Incidents" (1980).

[50] DOT has distributed guidance to first responders to transportation accidents entitled the "North American Emergency Response Guidebook," which is used in the training of State and local authorities throughout the United States. Other guidance has been published by the Federal Emergency Management Agency (FEMA) and the U.S. Department of Energy (DOE), with respect to emergencies involving radioactive materials. *See, e.g.,* FEMA-REP-5, Rev. 1, "Guidance for Developing State, Tribal, and Local Radiological Emergency Response Planning and Preparedness for Transportation Accidents" (June 1992); SAIC-89/1354, "Emergency Preparedness for Transportation Incidents Involving Radioactive Materials" (DOE, May 1990).

[51] In this regard, the Staff notes that FEMA, in cooperation with the NRC and other Federal agencies, has published a comprehensive plan for Federal agencies to use in responding to a radiological emergency, including transportation accidents involving radioactive materials. *See* Notice, "Federal Radiological Emergency Response Plan (FRERP); Operational Plan," 61 Fed. Reg. 20,944 (May 8, 1996).

radioactive materials to its facility. Moreover, in order to demonstrate a reason to believe that any deficiencies in the Applicant's emergency plan may exist, it was incumbent upon the State to compare the emergency plan with the pertinent regulation -- here, 10 C.F.R. § 72.32 (rather than § 70.22, cited by the State) -- and to describe any alleged failures to meet those requirements. Inasmuch as the State has not done so, the portions of its contention concerning offsite response training, planning, equipment and capabilities, should also be rejected.

> **UTAH Contention S. Decommissioning.**
> The decommissioning plan does not contain sufficient information to provide reasonable assurance that the decontamination or decommissioning of the ISFSI at the end of its useful life will provide adequate protection to the health and safety of the public as required by 10 CFR § 72.30(a), nor does the decommissioning funding plan contain sufficient information to provide reasonable assurance that the necessary funds will be available to decommission the facility, as required by 10 CFR § 70.3(b) [sic].

Staff Response:

The Staff does not oppose the admission of this contention, except with respect to certain of the issues presented in support thereof.

As the basis for this contention, the State has set forth eleven deficiencies in the Applicant's decommissioning and funding plans (Utah Contentions at 123-30). The Staff opposes the admission of the following State issues: Issue (3), the Applicant has failed to identify contingent costs in the event that the ISFSI cannot be decommissioned at the end of the license due to unavailability of disposal or alternate storage; Issue (6), the Applicant has failed to reasonably anticipate the extent of severity of contamination by presuming there will be no residual contamination on the casks or pads; Issue (7), the Applicant has failed to propose decontamination and disposal practices, and types of waste; Issue (8), the Applicant has failed

to address decontamination of storage casks; Issue (9), the Applicant has failed to estimate the cost of decontaminating each storage cask liner; and Issue (11), the Applicant has failed to provide decommissioning procedures and costs at the intermodal transfer facility.

The Staff opposes the third issue statement because the regulations at 10 C.F.R. § 72.30(a) require a decommissioning plan to account for practices and procedures for decontamination of the site "after all spent fuel or high-level radioactive waste has been removed." Thus, an applicant is not required to submit a decommissioning plan that includes removal of the spent fuel to the disposal facility or originating source. The State's attempt to include "contingent costs in the realistic event that the ISFSI cannot be decommissioned" is outside of the scope of the regulations pertaining to decommissioning funding and is based upon mere speculation. Thus, this concern is not appropriate for litigation in this proceeding.

The State claims that the applicant must estimate "solid and hazardous waste generated during the license term" and "other regulated materials; and demolition and removal of the structures and restoration of the site to its original state" (Utah Contentions at 127). However, the Commission has stated that decommissioning activities do not include "the removal and disposal of nonradioactive structures and materials beyond that necessary to terminate the NRC license. Disposal of nonradioactive hazardous waste not necessary for NRC license termination is not covered by these regulations but would be treated by other appropriate agencies."[52] Further the Commission stated, "[u]nrestricted use refers to the fact that from a radiological standpoint, no hazards exist at the site, the license can be terminated, and the site can be

---

[52] Statement of Consideration, "General Requirements for Decommissioning Nuclear Facilities," 53 Fed. Reg. 24,018, 24,019 (June 27, 1988).

considered an unrestricted area." 53 Fed. Reg. at 24,020. In addition, the Commission indicated, "[o]nce the license is terminated the facility buildings and site can be used for any other non-nuclear purposes, including industrial purposes." *Id.* For this reason, the issue is not appropriate for litigation.

The Staff objects to the State's Issue 6 because it does not specify the State's reasons for asserting that the Applicant's estimate that there will be no residual contamination of the casks or pads is faulty. In addition, the State faults the Applicant's statement that it will provide funding for 10% of the storage pads; however, while the State claims that the Applicant's basis for funding 10% is "not justified," however, the State does not offer any rationale for asserting that more than 10% of the pads will require decontamination or what the percentage should be. The SAR states that with respect to storage pads, "[t]he only mechanism which could result in contamination of a storage pad is by having a contaminated canister which was not detected prior to insertion in a storage cask. The possibility of such an occurrence is remote, but is addressed for decommissioning purposes by assuming up to 10 percent of the storage pad area will require surface decontamination." SAR, Appendix B, pp. 4-3 and 4-4. No basis was provided by the State to challenge this determination. Therefore, the State has not supported this concern, and it should not be a subject for litigation in this proceeding.

The Staff objects to the State's Issue 9 because the State fails to provide its reasoning why the Applicant's estimate that only 20% of the storage cask liner will be contaminated is in error, other than to say it is "unsupported." The State claims that "[a] larger percentage would increase the estimated decontamination cost beyond that provided for in cask decontamination prepayments." However, the State does not suggest that the Applicant is in error and does not

provide its own estimate of the extent of the contamination to cask liners. The State fails to satisfy the Commission's requirements to show a genuine issue of material fact with respect to this concern, and therefore, this issue should not be litigated.

The Staff objects to the State's Issue 11, pertaining to the intermodal transfer point, in that it does not constitute a part of the ISFSI. *See* discussion *supra,* at 15-19.

UTAH Contention T. Inadequate Assessment of Required Permits and Other Entitlements.
In derogation of 10 CFR § 51.45(d), the Environmental Report does not list all Federal permits, licenses, approvals and other entitlements which must be obtained in connection with the PFS ISFSI License Application, nor does the Environmental Report describe the status of compliance with these requirements.

Staff Response:

The Staff does not oppose the admission of this contention insofar as it asserts that the Applicant has not identified all of the governmental permits, license, or approvals which may be necessary for it to construct and operate the proposed facility. *See* ER, Ch. 9. However, the Staff opposes certain aspects of the contention, insofar as the State asserts that (a) the Applicant is required to produce its entire lease with the Skull Valley Band of Goshutes (including the financial terms thereof) for inspection by the State -- beyond the lease portions which it has already produced -- in order to demonstrate it is "entitled" to construct its facility (Utah Contentions at 131-32); and (b) that the Commission "<u>must</u>" require this facility (which is "eligible" for IAEA safeguards under 10 C.F.R. §§ 75.2 and 75.4) to satisfy the provisions of Part 75, regardless of whether or not the IAEA has "identified" the facility as subject to IAEA safeguards (Utah Contentions at 136; emphasis added). *See* 10 C.F.R. §§ 75.21, 75.31, and 75.41.

Pursuant to the agreement between the IAEA and the United States, the Commission and DOE provide a list of eligible facilities (not including facilities of national security significance) to the IAEA, which then selects facilities to be inspected. Accordingly, only after a facility is placed on the eligible list, and only after IAEA has selected it pursuant to this agreement (or the protocol thereto), would a facility have to comply with IAEA safeguards requirements.[53] It should be noted, however, that U.S. safeguards requirements have been found to meet or exceed IAEA requirements -- so an ISFSI which meets U.S. safeguards requirements would not be required to adhere to more stringent requirements by virtue of its having been selected by the IAEA for selection. In these respects, the contention lacks any supporting statutory or regulatory authority, and should be rejected.

UTAH Contention U. Impacts of Onsite Storage Not Considered.
Contrary to the requirements of NEPA and 10 CFR 51.45(c), the Applicant fails to give adequate consideration to reasonably foreseeable potential adverse environmental impacts during storage of spent fuel on the ISFSI site.

Staff Response:

As a basis for this contention, the State claims: (1) that the ER fails to consider the impacts of overheating, as set forth in its Contention H; (2) that the ER fails to consider the safety risks raised by the lack of adequate means for canister inspection and repair, as set forth in Contention J; (3) that the ER fails to consider the risks posed by a blockage of the cooling vents on the storage casks; and (4) that the ER fails to consider the risks of a sabotage event in which one or more storage casks is breached, as set forth in Contention V (Utah Contentions at 142-43).

---

[53] *See* IAEA Information Circular 288, "The Text of the Agreement of 18 November 1977 Between the United States of America and the Agency for the Application of Safeguards in the United States of America."

The ER discussion pertaining to these concerns references the SAR discussion of the postulated accidents. The Staff's consideration of the State's issues (1), (2), and (4) are set forth in the Staff's responses to each of the enumerated contentions. The Staff opposes the admission of the State's third issue, concerning the Applicant's discussion of the risks posed by a blockage of the cooling vents on the storage casks (Utah Contentions at 143). The State claims that the Applicant must assess the consequences of an inadvertent blockage of the cooling ducts by "animal or plant infestation, or by snow and ice during the winter." *Id.* The Staff opposes the admission of this issue because the State does not explain why the Applicant's analysis of "100% Blockage of Air Inlet Ducts," contained in Section 8.2.8 of the SAR and referenced in the ER, is inadequate. The analyzed event "involves postulated complete blockage of all four storage cask air inlet ducts." (SAR § 8.2.8). The State has not shown any reason to believe that a genuine dispute exists with the Applicant, and, therefore, this issue is not an appropriate issue for litigation in this proceeding.

UTAH Contention V. Inadequate Consideration of Transportation-Related Radiological Environmental Impacts.
The Environmental Report ("ER") fails to give adequate consideration to the transportation-related environmental impacts of the proposed ISFSI.

Staff Response:

The Staff opposes the admission of this contention, insofar as it (a) incorrectly asserts that Table S-4 of 10 C.F.R. Part 51 (describing the environmental impacts associated with the transportation of spent fuel to and from light-water reactors) does not apply to an ISFSI, (b) challenges the adequacy of the Commission's regulations which incorporate Table S-4, and (c) contends that the Applicant is required to separately consider the radiological impacts of the spent fuel storage at the Rowley Junction intermodal transfer point (ITP).

As set forth in 10 C.F.R. § 51.52, environmental reports submitted at the construction stage of light water-cooled nuclear power reactors (LWRs) are to discuss the transportation of fuel and radioactive wastes to and from that reactor. The regulation further states that the LWR construction permit applicant must either (1) meet the conditions set forth in § 51.52(a), in which case its environmental report may rely upon Summary Table S-4, "Environmental Impact of Transportation of Fuel and Waste to and From One Light-Water-Cooled Nuclear Power Reactor," to describe the environmental impacts of transportation of fuel and waste to and from the reactor, or (b) provide a "full description and detailed analysis" of such environmental effects, as stated in § 51.52(b).

It is clear that 10 C.F.R. § 51.52 applies to environmental reports submitted at the construction stage of an LWR. In the absence of further information, one might be tempted to argue, as does the State,[54] that Table S-4 has no applicability to other types of facilities to or from which spent fuel is transported -- or even to the environmental reports submitted for an LWR at the operating license (OL) stage. Such a conclusion, however, would be too simplistic and unfounded.[55] Table S-4 has been relied upon to support (a) the transportation of spent fuel from one operating reactor to another, and (b) the transportation of slightly irradiated fuel from

---

[54] To be sure, while the State here argues that Table S-4 does not apply, elsewhere it challenges the Applicant's dismissal of the weight assumption contained in Table S-4 as "an impermissible attack on the regulations" (Utah Contentions at 147).

[55] Indeed, a contrary argument could be made, that Table S-4 directly applies, on the grounds that 10 C.F.R. § 72.34 specifically requires ISFSI applicants to file an environmental report which meets the requirements of "subpart A of part 51 of this chapter," and Subpart A, in turn, requires in § 51.52 that applicants evaluate the environmental effects of transportation of fuel and waste in accordance with Summary Table S-4. The Staff does not make this argument here.

one reactor to another. *See Shipments of Fuel from Long Island Power Authority's Shoreham Nuclear Power Station to Philadelphia Electric Company's Limerick Generating Station*, DD-93-22, 38 NRC 365 (1993) (hereinafter referred to as "New Jersey Petition");[56] *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 793 (1985). *Accord, Carolina Power and Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-837, 23 NRC 525, 544 (1986).

In rejecting one intervenor's assertion that Table S-4 only applies to the shipment of spent fuel to a reprocessing plant, on the theory that the regulation embodies that assumption, the Appeal Board upheld, as "generally correct," the Licensing Board's rejection of that contention as an impermissible challenge to Table S-4, further stating as follows:

> As the Licensing Board indicated . . ., the Commission's generic determination of transportation impacts in the regulation is equally applicable to the transshipment of spent fuel between reactors as well as to a hypothetical reprocessing facility <u>because it is the same fuel regardless of destination.</u>

Catawba, supra, ALAB-825, 22 NRC at 793 (emphasis added).[57]

---

[56] The Commission's action approving the transfer of irradiated fuel from Shoreham to Limerick, and its reliance on Table S-4 was noted (without comment) in *New Jersey v. Long Island Power Authority*, 30 F.3d 403, 411-13 (3rd. Cir. 1994) (affirming a District Court's denial of New Jersey's request for an injunction to bar irradiated fuel shipment). *See also, State of New Jersey* (Department of Law and Public Safety's Requests Dated October 8, 1993), CLI-93-25, 38 NRC 289 (1993) (denying State's petition for leave to intervene on the issue of barge shipments between Shoreham and Limerick, in the absence of any pending application).

[57] As noted by the Court of Appeals, the Commission advanced this view in its argument concerning the shipment of irradiated fuel from Shoreham to Limerick, citing the prior decisions in *Catawba* and *Shearon Harris*. *See New Jersey v. Long Island Power Authority*, 30 F.3d at 413 n.17.

This principle was further underscored in the agency's decision to deny a petition concerning the transportation of slightly irradiated fuel from Shoreham to Limerick. There, the following conclusion was reached:

> The regulation implementing the S-4 Table provides that the transportation of fuel and radioactive wastes shall be considered in the environmental report prepared for the construction permit stage of a nuclear reactor. 10 C.F.R. § 51.52. That statement does not imply that the effects of transportation need not be considered later on, at the operating license stage or at the time of an amendment that requires an environmental review under NEPA. Likewise, the statement does not imply that the S-4 Table is not applicable at such times.
>
> When, as in this case, a federal action requires analysis of environmental effects of transporting irradiated fuel, the NRC must consider whether the potential consequences are within the "envelope" of those that have already been evaluated. The analysis supporting the S-4 Table considered the environmental effects that would be expected over the operating life of a reactor. WASH-1238 at 3. The S-4 Table is the means to evaluate the impacts of particular fuel shipments that are made during operation of the plant. The "envelope" of environmental impacts therefore includes shipments of fuel that occur during operation of the plant. Indeed, for it to have any useful purpose, application of the Table cannot be limited to the construction permit phase of a reactor since no fuel shipments can be made until the construction is complete.

New Jersey Petition, supra, DD-93-22, 38 NRC at 377. The decision continued as follows:

> The risk analysis in Table S-4 is applicable here despite the fact that fuel is only slightly irradiated and partially spent fuel, rather than fully spent fuel. Table S-4 is equally applicable to the shipment of fully irradiated spent fuel between reactors as to the shipment of such fuel from a reactor for waste disposal. *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 793 (1985); *accord, Carolina Power and Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-837, 23 NRC 525, 544 (1986).

Just as these decisions indicate that Table S-4 is applicable regardless of whether the spent fuel is shipped to a reactor rather than to a reprocessing facility, as contemplated in Table S-4, the transfer of spent fuel from a reactor to an ISFSI rather than to a reprocessing facility does not constitute a significant difference which would render Table S-4 inherently inapplicable. The Staff believes that the environmental impacts of spent fuel transportation, summarized in Table S-4, may generally be applied to the transportation of spent fuel from a reactor to an ISFSI.[58] As has previously been concluded, where spent fuel shipments are within the parameters of Table S-4, that Table may not be challenged "regardless of whether the spent fuel was shipped directly to a final repository or shipped by way of another reactor before ultimately resuming the journey to a final repository." *Shearon Harris, supra*, ALAB-837, 23 NRC at 544, *citing Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP-83-8B, 17 NRC 291, 293[-94] (1983).

In the instant proceeding, the Applicant's environmental report considers the transportation of spent fuel from individual reactors to its facility, and indicates that not all the parameters of Table S-4 may be satisfied. For instance, the Applicant states that shipments may include spent fuel having a greater enrichment (up to 5% U^{235}) and burnup level (up to 60,000 MWd/MTU) than was explicitly assumed in 10 C.F.R. § 51.52 and Table S-4 (ER at 4.7-2). The Applicant indicates, however, that these factors are within the envelope of parameters

---

[58] *See generally,* Statement of Consideration, "Environmental Effects of Transportation of Radioactive Materials to and from Nuclear Power Plants," 40 Fed. Reg. 1005, 1008 (Jan. 6, 1975) (noting that Table S-4 applies to reactor shipments for a model individual reactor and was not intended to assess the cumulative impacts of transportation for all (possibly 1,000) reactors contemplated to be in operation in the future).

considered in the Commission's recently published generic environmental impact statement (EIS) for license renewal, which included the following statement:

> The values shown in Tables S-3 and S-4 of 10 CFR Part 51 are conservative estimates originally developed on the basis of an average fuel irradiation (burnup) of 33,000 MWd/MTU. Discussions and analyses in NUREG/CR-5009 (PNL-6258), *Assessment of the Use of Extended Burnup Fuel in Light Water Power Reactors*, February 1988, show that the burnup level of fuel up to 60,000 MWd/MTU will not result in environmental impacts that are greater than the values currently in Tables S-3 and S-4, and, in many instances, are less (for example, see Table S.1 on p. viii of NUREG/CR-5009). Thus no revision to these tables would be required as a result of extended fuel burnup of up to 60,000 MWd/MTU. Experience in handling fuel with burnups over 55,000 MWd/MTU and up to 5.5 percent ^{235}U enrichment has not revealed any unresolved safety concerns (NUREG/CR-5009 p. 1-7.[59]

The State challenges the Applicant's use of Table S-4, given the differences between the Application here and the assumptions in Table S-4 (Utah Contentions at 146). The State asserts that the Applicant must seek an "exception" from 10 C.F.R. § 51.52(a) and, further, that Table S-4 does not apply here due to the greater number of shipments anticipated for the ISFSI as compared to an individual reactor, and the greater shipping distances involved here than the average distance of 1,000 miles assumed in Table S-4 (Utah Contentions at 148, 160-61).

In the Staff's view, although certain differences exist between Table S-4 assumptions and the Applicant's proposal, these considerations do not require that Table S-4 be wholly set aside or that a full site-specific environmental impact analysis be conducted to consider the impacts of spent fuel transportation for this facility, without reliance upon any of the analyses or

---

[59] NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (May 1996), at 6-25 (emphasis added).

conclusions which underlie Table S-4. *See* NUREG-1437, *supra*. The Staff notes that the generic EIS for license renewal affords generic treatment of the transportation impacts of spent fuel. The generic EIS explicitly considered the continued applicability of Table S-4 in assessing the environmental impacts of spent fuel transportation, in light of the increased amount of spent fuel and longer shipping distances (up to 2,000 miles) associated with spent fuel shipments to a possible high-level waste repository at Yucca Mountain in Nevada. The generic EIS determined:

> [T]he environmental impacts of transportation are so small that even an increase by a factor of 10 would not significantly change the total environmental impacts of the whole fuel cycle. Therefore, the values in Table S-4 do not need to be updated, because the conservatism . . . built into these estimates ensures that the total fuel cycle environmental impacts per reactor are not underestimated. Table S-4 would bound the proposed renewal of licenses currently permitted under 10 CFR 2.109 and 50.51.

NUREG-1437, *supra*, at 6-35. The generic EIS further concluded as follows:

> The environmental impacts from the transportation of fuel and waste attributable to license renewal are found to be small when they are within the range of impact parameters identified in Table S-4. The estimated radiological effects are within regulatory standards. . . . Table S-4 should continue to be the basis for case-by-case evaluations of transportation impacts of fuel and waste until such time as a detailed analysis of the environmental impacts of transportation to the proposed repository at Yucca Mountain becomes available. . . .

Id., at 6-36. These conclusions demonstrate that, to the extent an applicant's anticipated transportation of spent fuel falls within the parameters of Table S-4, the applicant may reasonably cite that Table's generic assessment of environmental impacts.

Further, as indicated by the Applicant (ER at 5.2-2), the Commission has issued a generic environmental impact study of the impacts associated with the transportation of

radioactive materials, including spent fuel. *See* "Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes," NUREG-0170 (December 1977). This assessment concluded that "the environmental impacts of normal transportation of radioactive material and the risks attendant to accidents involving radioactive material shipments are sufficiently small to allow continued shipment by all modes," without requiring any change in the NRC's transportation regulations. *Id.*, "Summary and Conclusions," at viii. Also, the generic assessment concluded that "the risks of . . . sabotage of radioactive materials in transit resulting in a significant radiological release are sufficiently small to constitute no major adverse impact on the environment. *Id.* at ix.[60] The Commission has accepted the risk assessment contained in NUREG-0170, relying on that assessment, in part, in determining that no change to its transportation regulations was warranted.[61]

As further noted by the Applicant (ER at 5.2-2), generic consideration of the environmental impacts of spent fuel transportation, in particular, was provided in an extensive study of spent fuel cask response to severe accidents. NUREG/CR-4829, "Shipping Container Response to Severe Highway and Railway Accidents" (February 1987) (the "Modal Study"). The results of that study support the continued belief that the transportation of spent fuel in

---

[60] The range of events considered in NUREG-0170 did not include a terrorist attack. The generic assessment concluded that additional physical protection requirements for the transportation of spent fuel were not then required; and it noted that the NRC would continue to study issues related to physical protection. *Id.* at viii-ix.

[61] *See* Withdrawal of Advance Notice of Rulemaking, "Radioactive Material; Packaging and Transportation by Air," 46 Fed. Reg. 21,619 (April 13, 1981). The Staff notes that a partial reassessment of NUREG-0170 is currently in progress, conducted by the Sandia National Laboratory under contract to the NRC, related to the shipment of spent fuel to a repository or central storage facility.

compliance with existing regulations provides adequate protection of public health and safety, and that the environmental impacts of such transportation are not significant:

> The results . . . indicate that no radiological hazard would be expected in at least 994 of every 1000 severe transportation accidents. In only about one accident every 40 million shipment miles (or once every 13 years assuming 3 million shipment miles per year) would minor functional cask damage be expected. If any radiological hazards were created, their magnitude would be expected to be less than currently-defined compliance values in existing regulation. In only about one accident every 80 million shipment miles could cask damage be significant enough to cause a radiological hazard which could equal or slightly exceed existing compliance values.

NUREG/BR-0111, "Transporting Spent Fuel; Protection Provided Against Severe Highway and Railroad Accidents" (March 1987), at 3 (Summary of Modal Study).

On the basis of its generic evaluations of spent fuel transportation, and the safety of shipping packages certified in accordance with 10 C.F.R. Part 71, the Commission routinely permits the transportation (or delivery to a carrier for transportation) of spent fuel by NRC licensees under a general Part 71 license, without requiring an application for a specific license or the preparation of an environmental analysis specific to a particular application. *See* 10 C.F.R. § 71.12; *State of New Jersey* (Department of Law and Public Safety's Requests Dated October 8, 1993), CLI-93-25, 38 NRC 289, 294 (1993).

In the Staff's view, therefore, as long as the Applicant's proposal is enveloped by the generic rule and evaluations referred to above, no additional evaluation of the environmental impacts of spent fuel transportation to its facility would be required; further, to the extent that the instant application may include elements beyond the envelope of these generic evaluations, the Applicant may need to evaluate the impact of those differences, all other considerations

remaining the same. However, the State's assertion that certain studies or other considerations invalidate Table S-4 or the underlying technical basis provided in WASH-1238 (Utah Contentions at 151-160),[62] and that additional consideration is required of "new information and changed circumstances" unrelated to the differences between the parameters in Table S-4 and the Applicant's proposal (Utah Contentions at 151-60) -- such as the probability of a terrorist attack resulting in breach of a shipping cask (*Id.* at 152-53) -- constitute an impermissible challenge to the regulation and to Table S-4's reliance on NUREG-1238 and Supplement 1 thereto. Accordingly, these assertions are inadmissible for adjudication in this proceeding. *Peach Bottom, supra,* 8 AEC at 20-21; 10 C.F.R. § 2.758.

UTAH Contention W. Other Impacts Not Considered.
The Environmental Report does not adequately consider the adverse impacts of the proposed ISFSI and thus does not comply with NEPA or 10 CFR § 51.45(b).

Staff Response:

The Staff opposes the admission of this contention -- in which the State largely reiterates issues it raised in other contentions -- on the grounds that the State has not provided any information to support its assertion that the Applicant's Environmental Report fails to address in an appropriate manner the matters listed in this contention. For example, the State has provided no information to support its assertions (a) that further consideration is required of the "cumulative impacts" of this facility in conjunction with other facilities in the area (*see* discussion of Contention K, *supra*, at 32-33) -- or that an accident at this facility could cause

---

[62] Table S-4 (at n.1) indicates that data supporting the table are set forth in the Commission's "Environmental Survey of Transportation of Radioactive Materials to and From Nuclear Power Plants," WASH-1238 (December 1972), and Supplement 1 thereto, NUREG/75-038 (April 1975).

other facilities several miles away to be evacuated (Utah Contentions at 162);[63] or (b) that further consideration is required of environmental pollution and seismic matters (Utah Contentions at 163). (See discussion of Contentions T and L, *supra*, at 33-34 and 52-53).[64]

Similarly, while the State asserts that further consideration is required of "visual effects" (*Id.* at 163-64), it principally cites the potential aesthetic effect on visitors to Horseshoe Springs -- located fully 15 miles away -- and provides no information which would reasonably suggest that the Applicant's discussion of visual effects is inadequate (*see* ER, §§ 2.22, 4.1.8.2). In the absence of such information, the contention lacks the necessary basis required by 10 C.F.R. § 2.714(b)(2)(ii), and should be rejected.

UTAH Contention X. Need for the Facility.
The Applicant fails to demonstrate there is a need for the facility as is required under NEPA.

Staff Response:

The Staff opposes the admission of this contention on the grounds that the State has not provided sufficient information to show that there is a genuine issue of material fact with respect to this issue.

---

[63] Not only was no basis provided to support Utah's assertion that other facilities located miles away from the ISFSI may have to be evacuated as a result of an accident at the ISFSI (Utah Contentions at 162), but that no assertion flies in the face of the Commission's conclusion, in adopting 10 C.F.R. § 72.32, that significant offsite consequences will not occur in the event of an accident at an ISFSI. *See* discussion *supra*, at 41-49.

[64] With respect to the State's assertion that further consideration is required of the risk of flooding at the Rowley Junction ITP, or of traffic accidents on Skull Valley Road (Utah Contentions at 163), *see* discussion *supra*, at 15-19 and 46-49.

As the basis for this contention, the State claims that the Applicant has not substantiated that reactor sites are physically or economically unable to meet their anticipated spent fuel storage requirements (Utah Contentions at 165). The State claims that "economic advantage to a select group is the driving need for this facility," and that the limited benefit is not sufficient to justify the need for the facility. The State also asserts that the application must discuss the national need by detailing at each reactor site "the present and projected quantity of spent nuclear fuel, the projected storage capacity, the cost of on-site storage, the specifics of state-imposed restrictions and whether those restrictions are preempted by federal law" (*Id.* at 166).

The State has not demonstrated any reason to believe that the Applicant's discussion regarding the need for the facility is inadequate. Further, the Commission recognized, in promulgating Part 72 following the President's deferral of spent fuel reprocessing in April 1977, that "regardless of future development, spent fuel would have to be stored for a number of years prior to its ultimate disposition, and that storage of spent fuel in an ISFSI would be a likely additional new step in the nuclear fuel cycle." Statement of Consideration, *supra,* 45 Fed. Reg. at 74,693. Therefore, this contention should not be admitted in the proceeding.

UTAH Contention Y. Connected Actions.
The Applicant fails to adequately discuss the link between this proposal and the national high level waste program, a connected action, as is required under NEPA.

Staff Response:

The Staff objects to this contention because it constitutes an impermissible challenge to the NWPA and the Commission's regulations. *See Peach Bottom, supra,* 8 AEC at 20-21; 10 C.F.R. § 2.714(b)(iii).

As a basis for this contention, the State claims that the Applicant's proposal is "tightly linked" to DOE's high level waste program, and thus, this proposal needs to be considered together with other high level waste programs to ensure the cumulative effects are properly considered (Utah Contentions at 167). As authority for its assertion, the State cites to 40 CFR § 1502.4, which is a Council on Environmental Quality (CEQ) regulation.

The CEQ regulations provide that agencies shall determine which proposals shall be subject to a single impact statement. Proposals which are so closely related so as to be "in effect, a single course of action" are to be evaluated together. 40 C.F.R. § 1502.4. These regulations do not apply, however, where compliance would be inconsistent with statutory requirements. 40 C.F.R. § 1500.3.

CEQ regulations which the Commission has not expressly adopted are not binding on the Commission, although they are entitled to "substantial deference." *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 72 n.2 (1991). *See also Limerick Ecology Action v. Nuclear Regulatory Commission*, 869 F.2d 719, 743 (3rd Cir. 1989) (CEQ guidelines are not binding on an agency unless they have been expressly adopted). The Commission has not adopted CEQ regulations pertaining to 40 C.F.R. § 1502.4, which the State cites here.

Assuming, for the sake of argument, that the CEQ guidelines cited by the State are binding on the Commission, the CEQ guidelines do not require a consideration of all nuclear waste disposal and storage proposals in a single impact statement. The Commission is not permitted to "segment an overall plan into numerous parts, each of which has little environmental effect." *Kerr-McGee Corp.* (West Chicago Rare Earths Facility), CLI-82-2,

15 NRC 232, 263-64 (1982). However, where the activities and environmental concerns involved under the proposed action are "sufficiently distinct" from other activities, the other activities do not have to be considered in an integrated EIS. *Id.* at 265 (demolition of facility building is sufficiently distinct from disposal of the waste from the facility that the actions do not require joint consideration in a comprehensive impact statement). Further, in a case involving the transfer of spent fuel from one reactor to another, it has been recognized that the Commission may limit its environmental review of only a segment of an applicant's total plan if that portion has "independent utility" and approval of that portion would not foreclose the Commission's ability to withhold approval of the remaining segments of the plan. *See Duke Power Co.* (Amendment to Materials License SNM-1773 --Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-651, 14 NRC 307, 313-14 (1981) (further noting that the building of an ISFSI has "manifest independent utility," *Id.* at 315).

In this proceeding, if the Commission approves the PFS application, it would not be precluded from taking whatever action is necessary, within its authority, regarding future considerations of spent fuel storage or disposal. Thus, other waste disposal and storage actions do not require consideration in an integrated EIS.

Further, the CEQ regulations referenced by the State do not apply where compliance would be inconsistent with statutory requirements. 40 C.F.R. § 1500.3. The NWPA states that with respect to federal interim storage, except for construction at a civilian reactor, the preparation of an environmental impact statement under NEPA is not required. 42 U.S.C. § 10155. The NWPA provides for specific and unique information to be contained in an

environmental impact statement for a high level waste repository. 42 U.S.C. § 10134. In particular, the NWPA states that the NRC need not consider in an environmental impact statement the need for the repository, alternate sites to Yucca Mountain, or "nongeologic alternatives to such site." 42 U.S.C. § 10134. Similarly, the NWPA states that for a monitored retrievable storage facility, no consideration of the need for the facility or alternatives to the design criteria need be considered in the environmental impact statement. 42 U.S.C. § 10168. Therefore, the Commission need not consider future waste disposal and storage proposals in its analysis of this ISFSI.

The State claims that "[a]s another connected action, the Applicant needs to consider the implication that the Skull Valley site will become a "de facto permanent repository." The Applicant, however, is not required to consider implications that the facility will become a de facto permanent repository. *See* 51 C.F.R. § 51.61 (no impacts for storage of spent fuel at an ISFSI beyond its license terms need to be discussed in ER). Therefore, apart from the fact that this concern is wholly speculative, this basis is in conflict with the Commission's regulations. Since the State has not set forth an acceptable basis to support this contention, it should be rejected.

UTAH Contention Z. No Action Alternative.
The Environmental Report does not comply with NEPA because it does not adequately discuss the "no action" alternative.

Staff Response:

The Staff does not oppose the admission of this contention.

UTAH Contention AA. Range of Alternatives.
The Environmental Report fails to comply with the National Environmental Policy Act because it does not adequately evaluate the range of reasonable alternatives to the proposed action.

Staff Response:

The Staff does not oppose the admission of this contention, limited to the single issue raised by the State in its basis: the Applicant's evaluation of alternative sites in its ER.

UTAH Contention BB. Site Selection and Discriminatory Effects
The Applicant's site selection process does not satisfy the demands of the President's Executive Order No. 12,898 or NEPA and the NRC staff must be directed to conduct and thorough and in-depth investigation of the Applicant's site selection process.

Staff Response:

The Staff does not oppose the admission of this contention -- subject to the understanding that while the State uses the term "investigation" (which is a term of art in NRC regulatory parlance), what it really seeks is an evaluation of the Applicant's site selection process.[65] In the event, however, that Utah seeks to require an "investigation" of this matter by the NRC Office of Investigations (OI), the Staff would oppose the contention as lacking in basis and as presenting a matter which is inappropriate for consideration in this proceeding.

---

[65] The Staff notes that the Licensing Board's "environmental justice" decision in *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-97-8, 45 NRC 367 (1997) ("LES"), cited by the State here (Utah Contentions at 176-77), is currently under review by the Commission and does not constitute a final agency action. *See Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-7, 45 NRC 437 (June 30, 1997) (granting review of LBP-97-8). The Staff believes that the *LES* decision is based upon an incorrect reading of Executive Order 12898 and is otherwise in error, and the Staff has therefore filed an appeal from that decision.

UTAH Contention CC. One-Sided Costs-Benefit Analysis.
Contrary to the requirements of 10 CFR. § 51.45(c), the Applicant fails to provide an adequate balancing of the costs and benefits of the proposed project, or to quantify factors that are amenable to quantification.

Staff Response:

In this contention, the State asserts that the Applicant does not weigh the numerous adverse environmental impacts, such as those discussed in Utah Contentions H through P, against the facility's benefits (Utah Contentions at 178). The Staff does not oppose the admission of portions of this contention, to the extent that the Staff does not oppose the admission of Utah Contentions H through P. Further, while the State additionally asserts that the Applicant fails to compare the environmental costs of the proposal with the costs of the no-action alternative, the State does not set forth any facts to demonstrate a reason to believe that the Applicant's discussion of this matter is deficient; and this assertion is therefore lacking in the requisite basis.

The State additionally claims that the Applicant fails to "weigh the benefits to be achieved by alternatives that could reduce or mitigate accidents, environmental contamination, and decommissioning costs, such as inclusion of a hot cell in the facility design" (Utah Contentions at 178). The State, however, ignores the Applicant's discussion of facility design alternatives contained in section 8.2 of the ER. In that discussion, the Applicant weighs the advantages and disadvantages of five types of systems--including a hot cell (*see, e.g.*, ER at 8.2-3). Further, as part of the discussion of the advantages and disadvantages of the single purpose cask systems and single purpose canister systems, a description of the hot cell that would be needed for these systems and the disadvantage of its use is provided. ER §§ 8.2.1.-8.2.2. The State does not provide any reason

to believe the Applicant's analysis is deficient. Therefore, this issue lacks the requisite factual basis, and should not be admitted for litigation in the proceeding.

Finally, the State asserts that the Applicant does not quantify the costs associated with the impacts of the facility (Utah Contentions at 179). The State claims that costs associated with accidents and contamination can be quantified in terms of health effects and dollar costs. Also, decommissioning impacts and emergency response costs can be quantified as well as "visual impacts" in terms of lost tourist dollars. The Commission's regulations at 10 C.F.R. § 51.45 provide that "[t]he analyses for environmental reports shall, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations that cannot be quantified, those considerations or factors shall be discussed in qualitative terms." However, the State has not demonstrated any reason to believe that these costs are amenable to quantification or that the Applicant's analysis is deficient. Therefore, this basis is not sufficient to support the contention and should not be subject to litigation.

UTAH Contention DD. Ecology and Species
The Applicant has failed to adequately assess the potential impacts and effects from the construction, operation and decommissioning of the ISFSI and the transportation of spent fuel on the ecology and species in the region as required by 10 CFR §§ 72.100(b) and 72.108 and NEPA.

Staff Response:

The Staff does not oppose the admission of this contention to the extent that it is limited to the Applicant's discussion of the impacts on the peregrine falcon at the Timpie Springs Waterfowl Management Area, adjacent to the Rowley Junction ITP. The Staff, likewise, does not oppose the admission of the State's issue concerning the Applicant's discussion of livestock and farm animals.

The Staff opposes the admission of the remaining issues in this contention on the basis that the State has not shown that a genuine issue of material fact exists with respect to the Applicant's ER. 10 C.F.R. § 2.714(b)(iii).

The State makes several assertions with respect to this contention, which the Staff addresses as follows:

The State first claims that the Applicant does not discuss the long term impacts on the overall ecological system in Skull Valley due to construction activities (Utah Contentions at 180). The Applicant, however, states that "most of the construction impacts on wildlife will occur in the first construction phase" and that impacts on wildlife will lessen "as the level of construction related activities is reduced and wildlife should repopulate the area shortly thereafter." ER at 4.1.2. In addition, the Applicant discusses the reduced traffic effects during the last phases of construction. The State does not indicate why the Applicant's discussion is defective.

The State claims that the Applicant has failed to address impacts on various species as a potential result of contaminated ground or surface waters, including ponds or puddles (Utah Contentions at 181). The State, however, does not explain why the Applicant's statement that surface runoff is uncontaminated and will not adversely affect vegetation or wildlife is incorrect. The State asserts that the Applicant does not address any "water born radioactive, chemical, or heavy metal contaminants that may be absorbed by wildlife, aquatic organisms, or vegetation" (*Id.*). The State, however, does not indicate any reason to believe the Applicant's provisions for runoff control are inadequate, and thus why the ER is deficient.

The State asserts that the Applicant has not proposed and developed various protective or mitigative plans in conjunction with appropriate authorities. *Id.* The apparent concern of the

State with respect to this issue is that the Applicant has indicated that development of mitigation and protection plans for Horseshoe Springs, Timpie Springs Waterfowl Management, and Salt Mountain Springs will be developed in the future. The State claims that the protective or mitigative measures must be identified now so that they can be evaluated (*Id.*). However, the State does not indicate any basis to believe that the mitigation and protection plans must be developed and evaluated at this time. Therefore, this issue is not appropriate for litigation.

The State claims that the Applicant "does not discuss and acknowledge the importance of the variety of species found in the Skull Valley ecological system, including aquatic organisms" (*Id.* at 182). The State, however, fails to specify what species, including aquatic organisms, the Applicant has failed to discuss. Thus, the State has not shown that the Applicant's discussion of the ecology, vegetation, wildlife, aquatic resources, plants, and animals, contained in section 2.3 of the ER, is deficient. For the same reason, the State has not substantiated its claim (*Id.*) that the Applicant does not discuss the "interdependence of various species" in light of Appendix 2B, "Life History Information," which describes the habitat, diet (including predator/prey relationships), breeding, and range of certain species. Similarly, the State has not substantiated its claim (*Id.*) that the Applicant does not discuss the "collective impact of the proposed action on the ecological system as a whole" in light of the Applicant's discussions pertaining to the "Effects on Ecological Resources." ER §§ 4.2.2, 4.3.2., 4.4.2. Thus, since the State has not demonstrated which species the Applicant has failed to discuss and has not demonstrated where the ER is defective. 10 C.F.R. § 2.714(b)(iii).

The State claims that the Applicant's ER is deficient because the Applicant has not completed a survey of pocket gopher mounds "to determine the presence of Skull Valley pocket

gophers and the overall impact" (Utah Contentions at 183). The application, however, recognizes that the presence of the pocket gopher has been documented and could occur within the project's 5-mile radius. ER § 2.3.1.4.2. The Applicant claims that the gopher is not protected as a state or federal threatened or endangered species and that it will conduct the surveys "shortly before construction" to accommodate the Utah Division of Wildlife Resources' request that a survey be conducted and surface disturbance within 100 feet of any burrow be avoided. ER at 4.1.2. The State does not indicate where it is required that the Applicant survey gopher mounds at this time or why the Applicant's discussion of this matter is deficient. Therefore, this issue should not be admitted for litigation.

The State claims that the Applicant has not identified plant species that may be culturally or medicinally significant and that the Applicant must determine whether significant plant species may be impacted by the action (Utah Contentions at 183). The State, however, does not indicate what these plant species are or why the Applicant's general discussion of vegetation in its environmental report (ER § 2.3.2.1) or Appendix 2D ("Vegetation-Soil Site Type Inventory") is deficient. Therefore, this issue is not appropriate for litigation.

The State claims that the Applicant has not identified aquatic plants which may be adversely impacted by the proposed action and "the fragile ecological system of wetlands" (Utah Contentions at 184). The ER, however, states that "[u]nlike the area within the 5-mile radius for the PFSF, there is some wetland/riparian habitat along the transportation corridor. This wetland habitat is found at Timpie Springs, Horseshoe Springs, Muskrat Springs, and Salt Mountain." ER at 2.3.2.1. Further, the ER states that "there are no unique habitat features in areas proposed for permanent or temporary vegetation removal," and "[c]onstruction of the

proposed facility will not impact vegetation or habitats located outside of the site area and access road." ER at 4.1.2. The State has not explained why the Applicant's discussion of impacts on vegetation is inadequate.

The State identifies four "Specific Habitats": Horseshoe Springs Wildlife Management Area (9.5 miles from Rowley Junction, 1100 feet from Skull Valley Road); Timpie Springs Waterfowl Management Area (near the Rowley Junction ITP), Great Salt Lake (near the ITP, over 20 miles from the ISFSI site); and Salt Mountain Springs (300 feet from Skull Valley Road). With the exception of the speckled dace, a fish inhabitant at Salt Mountain Springs, the State has not identified any species at any of these areas that it claims the Applicant has failed to assess--and it recognizes that even the speckled dace has been considered (Utah Contentions at 186). While the State claims that the Applicant has not discussed radiation or other pollution impacts at Salt Mountain Springs (*e.g.*, Utah Contentions at 182-85), the State does not provide any reason to believe that radiation or pollution as a result of the proposed action would impact the speckled dace or other unidentified species. The State does not explain why each of these "habitats" needs to be separately considered, beyond the Applicant's discussion of these areas in the ER. Accordingly, these issues should be rejected.

2. <u>Ohngo Gaudadeh Devia</u>

Ohngo Gaudadeh Devia filed 16 contentions, including numerous subparts (some of which are intertwined with other contentions), which it seeks to litigate in this proceeding. The Staff's response to OGD's contentions is as follows.

OGD Contention A. Lack of sufficient provisions for prevention of and recovery from accidents.
The license application poses undue risk to pubic health and safety because it lacks sufficient provisions for prevention of and recovery from accidents during storage resulting from such causes as sabotage, fire, cask drop and bend, lid drop damage and/or improper welds.

Staff Response:

The Staff opposes the admission of this contention on the grounds that it does not set forth sufficient information to show that a genuine dispute exists regarding the Applicant's discussion of accidents, and it constitutes a generalization of OGD's views on what applicable regulatory standards ought to be. *Peach Bottom, supra*, 8 AEC at 20-21; 10 C.F.R. § 2.714(b)(iii).

In this contention OGD states that the Applicant has not included the "full range of accidents which could occur" during various handling activities (OGD Contentions at 2). OGD has not specified what accidents during these activities it considers the Applicant to have failed to include in its accident analysis. Further, OGD does not explain why the Applicant's analysis regarding loss of external power, in which canister transfer operations are described, (SAR section 8.1.1) or hypothetical storage cask drop/tipover, (SAR section 8.2.6) is inadequate.

OGD also states that the license application does not adequately address similar handling accidents that could occur at the Intermodal Transfer Facility. However, as discussed above concerning Utah Contention B, the ITP is not a part of the ISFSI, and need not be considered in the ISFSI application. *See* discussion *supra,* at 14-19.

OGD also states that the license application does not address the impacts of human errors or intentional human actions, such as sabotage, with respect to facility planning and equipment design; license application and SAR preparation; facility construction; systems design and

fabrication and installation; and monitoring (OGD Contentions at 3). OGD, however, has not specified what accidents could occur in relation to these aspects that have not been adequately considered by the Applicant.

OGD also asserts that the application is deficient because it does not address the impacts of human errors or intentional human actions which could cause accidents at the Intermodal Transfer Facility (OGD Contentions at 4). This issue, however, is beyond the scope of the ISFSI application since it pertains to the off-site ITP. *See* discussion *supra* at 14-19.

OGD asserts that the application is deficient because it does not include a hot cell to "safety unload, replace, and reload a fuel canister damaged in an accident" (OGD Contentions at 4). OGD states that "[i]t is unreasonable to assume that the storage facility could operate for 20 or more years, and handle 40,000 MTU or more of spent fuel, without receiving a single defective fuel canister or experiencing a single accident requiring reloading of a damaged fuel canister" (*Id.*) OGD has alleged no facts or expert opinion in support of its assertion, and it ignores the Applicant's accident analyses in the SAR (in which the Applicant indicates loss of confinement barrier is a non credible accident, SAR § 8.27) and the Applicant's discussion in the ER of facility design alternatives (in which the Applicant describes the use of a hot cell with respect to two design alternatives which were not selected, ER §§ 8.2.1.5, 8.2.2.2). The Applicant indicated that among the advantages of the dual purpose cask system which it selected was the advantage that the canister did not need to be opened, and spent fuel assemblies did not need to be exposed or handled at the ISFSI (ER § 8.2.4.3). OGD does not challenge this assertion, and does not offer any facts to challenge the Applicant's other statements in the SAR and ER. Thus, this basis fails to provide adequate support for this contention.

Finally, with respect to this contention, OGD sets forth a list of seven measures it believes should be implemented to minimize accident risks, and to mitigate the impacts of accidents and incidents (OGD Contentions at 5). This list constitutes a generalization of OGD's views on what applicable regulatory standards ought to be, and thus, is inadequate to support the contention. *See Peach Bottom, supra,* 8 AEC at 20-21. For the reasons set forth above, OGD has not shown an adequate basis to support its contention. Therefore, the contention should be rejected.

> **OGD Contention B. Emergency Plan fails to address the safety of those living outside of the facility.**
> The license application, specifically the emergency plan submitted with the license application fails to address the safety provisions made for those individuals living outside of the facility within a five mile radius of the facility. The emergency plan addresses only those measures that pertain to employees and have not addressed the provisions that would apply to those people living around the facility. The emergency plan does not address a warning system such as would be implemented to put the residents on notice of an accident.

Staff Response:

In this contention, OGD asserts that various protective measures must be put in place for persons living within five miles of the facility. Further, OGD asserts that the Applicant has failed to provide backup means for offsite communication, has failed to indicate how it plans to comply with the Emergency Planning and Community Right-to-Know Act of 1986, and has failed to show a commitment and means to promptly notify offsite response organizations of a need for assistance, as set forth in 10 C.F.R. § 72.32 (OGD Contentions, at 6).

OGD's assertion that offsite protective measures must be put in place for persons living within a 5-mile radius of the facility constitutes a general statement of its views concerning

acceptable emergency planning, but is not based upon any Commission requirement; indeed, as discussed above, the Commission has explicitly stated that its ISFSI emergency planning regulations do not include an offsite component, since such measures are not required, and the Commission specifically rejected the suggestion that a 1-5 mile Emergency Planning Zone is required. *See* discussion *supra*, a 43-48; Statement of Consideration, 60 Fed. Reg. at 32435. Accordingly, this portion of OGD's contention constitutes a challenge to the Commission's regulations and should be rejected.

OGD's remaining assertions fail to point to any specific language or sections of the Applicant's emergency plan which it contends are inadequate; and, indeed, nothing appears in the contention or basis therefor which would indicate that OGD has a specific dispute with that plan. Accordingly, the Staff opposes the admission of this contention, on the additional grounds that it lacks the specificity required of contentions pursuant to 10 C.F.R. § 2.714(b).

> **OGD Contention C. License application lacks sufficient provisions for protection against transportation accidents.**
> The license application poses undue risk to public health and safety because it lacks sufficient provisions for protection against transportation accidents, including a criticality accident.

Staff Response:

The Staff opposes the admission of this contention on the grounds that it inappropriately seeks to impose safety requirements pertaining to the transportation of spent fuel and/or the design of shipping casks in which spent fuel may be transported (OGD Contentions at 7), as matters which must be considered in an ISFSI application submitted under 10 C.F.R. Part 72. Contrary to OGD's understanding, issues pertaining to transportation safety and shipping cask design are properly the subject of an application for a transportation license under 10 C.F.R.

Part 71 and applicable DOT regulations. *See* discussion *supra*, at 41-49 (Utah Contention R). The instant application does not seek a certificate authorizing the use of a spent fuel shipping cask under 10 C.F.R. Part 71, but rather seeks authority to construct and operate a fuel storage installation under 10 C.F.R. Part 72. Accordingly, the contention raises design and safety analysis issues which are inappropriate for consideration in this proceeding and should be rejected. *Peach Bottom, supra,* 8 AEC at 20-21.

Further, to the extent that OGD seeks to challenge the adequacy of shipping casks to withstand accidents and sabotage, including terrorist attack, it constitutes an impermissible challenge to the Commission's determination that compliance with its design requirements provides adequate safety assurance in 10 C.F.R. Part 71. Indeed, the Commission has had occasion to reconsider the adequacy of its transportation regulations, and expressly found that "the present regulations are adequate to protect the public against unreasonable risk from the transport of radioactive materials."[66]

---

[66] Withdrawal of Advance Notice of Rulemaking, "Radioactive Material; Packaging and Transportation by Air," 46 Fed. Reg. 21,619, 21,620 (April 13, 1981). The Commission's reassessment and conclusions were based upon its publication of NUREG-0170, "Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes" (December 1977), and comments received in response thereto. *Id.* at 21,620. The Commission also indicated that, although it was satisfied that its transportation regulations were adequate, it would continue to study transportation safety and safeguards issues, with the potential for additional regulatory actions to follow. *Id.* The Staff notes that an evaluation of the consequences of a successful sabotage attempt against a spent fuel package has found the likely releases to be acceptably low. *See* NUREG/CR-0743, SAND79-0369, "Transportation of Radionuclides in Urban Environs: Draft Environmental Assessment" (1980). Although further consideration of these issues may continue, it is clear that the Commission's regulations in 10 C.F.R. Part 71 govern the transportation of spent fuel at this time; and OGD's citation to various arguments or studies challenging the adequacy of those rules must be rejected as an impermissible attack on Commission regulations.

While OGD Contention C essentially consists of a safety contention, it includes various statements asserting that the Applicant has not given adequate consideration to (a) the consequences of accidents which could occur during transportation (OGD Contentions at 8-12), and/or (b) the risk of sabotage or terrorist attack during transportation (*Id.* at 12-14). Even if these assertions are viewed as stating an environmental contention, OGD has not provided any reason to believe that the Applicant's analysis of environmental impacts (including radiological impacts) may not rely upon the Commission's generic determination of the environmental impacts associated with the transportation of spent fuel, as set forth in Table S-4, the generic EIS on license renewal, NUREG-0170, and NUREG/CR-4829. *See* discussion *supra*, at 54-63. Moreover, although OGD repeatedly asserts that the Applicant's "license application" is deficient in these respects, it fails to specify any language or specific section of the Applicant's environmental analysis, contained in its Environmental Report, which OGD contends may be deficient.

Also, while OGD posits the risk of "gridlock traffic incidents" on the road between the Rowley Junction Intermodal Transfer Point to the ISFSI (OGD Contentions at 14), no basis was presented to show that such occurrences may reasonably be anticipated or that the consequences would exceed the consequences of transportation accidents which have been considered by the Applicant (ER § 5.2), so as to support the need for such postulated incidents to be considered further.

Finally, while OGD presents a list of nine conditions which it "petitions the Commission to require" in connection with any license issued for this facility (*Id.* at 15-16), many of those conditions -- such as OGD's proposal to <u>require</u> (a) construction of a rail spur, (b) use of

dedicated trains, (c) "full-scale testing of transportation casks "in addition to" other NRC certification requirements, (d) use of armed escorts in non-highly populated areas, (e) construction of a hot cell, and (f) preparation of a transportation risk assessment -- constitute additional requirements which exceed the generic requirements established for ISFSIs and/or the transportation of spent fuel, as set forth in 10 C.F.R. Parts 71, 72 and 73. Moreover, even if some of OGD's proposed license conditions are deemed not to constitute a challenge to the Commission's regulations, no basis has been shown to support its proposed license conditions. Accordingly, these matters should be rejected as bases for the contention.

> **OGD Contention D. License Application lacks procedures for returning damaged casks to the generating reactor.**
> The license application poses undue risk to public health and safety because it has not provided procedures for returning casks to the generating reactor. The SAR indicates that the casks will be inspected for damage prior to "accepting" the cask and before it enters the Restricted Area. SAR p. 5.1-4. If the casks are damaged or do not meet the criteria specified in LA AP. A, p. TS-19 there is no provision for housing the casks prior to shipping the cask back to the generating reactor.

Staff Response:

The Staff opposes the admission of this contention on the grounds that it misinterprets the Commission's regulations and constitutes a generalization of OGD's views on what applicable regulatory standards ought to be. *See Peach Bottom*, 8 AEC at 20-21.

In this contention, OGD asserts that the Applicant has not complied with the Commission's requirements at 10 C.F.R. § 72.32, which require the Emergency Plan to include "[a] brief description of the means of restoring the facility to a safe condition after an accident." OGD asserts that the license application does not provide for procedures for returning casks to the generating reactor. OGD, however, mistakenly assumes that a damaged cask involves the

loss of the confinement barrier. The regulations do not require the Emergency Plan to include a means for returning damaged casks, because damage to a cask does not necessarily result in an accident, as described in the SAR. Further, the SAR and Emergency Plan describe an event that involves receipt of a cask that has been contaminated during loading operations at the originating power plant (*see, e.g.,* SAR § 8.1.5.1). The means of restoring the facility, following an accident, are set forth in Chapter 7 of the Emergency Plan ("Safe Conditions: Reentry and Recovery)." OGD has not explained why a procedure for returning the cask is required to be included in the Emergency Plan.[67] For all of these reasons, the contention lacks the requisite factual and regulatory basis and should be rejected.

> **OGD Contention E. License Application fails to provide information and a plan to deal with casks that may leak or become contaminated during the 20 to 40 year storage period.**
> The License Application poses undue risk to the public health and safety because it fails to provide information and a plan to deal with casks that may leak or become contaminated during the 20 to 40 year storage period. Sending such casks back to the generating reactor may not be an option for several reasons, such as: PFS does not have the facilities to repackage contaminated canisters, the casks may be too contaminated to transport, or the nuclear power plant from which the fuel originated may have been decommissioned, and there are no assurances that the storage will be only "interim".
>
> The license application provides no assurance that there will be an alternative location to which canisters and/or casks can be shipped if they become defective while in storage at PFS.

Staff Response:

The Staff opposes the admission of this contention on the grounds that it fails to set forth any support for the underlying premise that casks may leak or become contaminated while at the

---

[67] Further, DOT regulations provide an appropriate mechanism for an ISFSI to refuse to accept delivery of damaged casks which may exceed regulatory radiation limits. *See* discussion *supra* a 18 and 46-47.

ISFSI in storage, or that the Applicants' proposed measures to deal with such contamination are inadequate (*see* ER §§ 3.1 - 3.3). *Peach Bottom, supra,* 8 AEC at 20-21; 10 C.F.R. § 2.714(b)(iii).

In this contention, OGD asserts that "the license application does not provide for procedures for returning casks . . . or dealing with casks should the generating facility have become decommissioned should there be [an] accident or a contaminated canister." (OGD Contentions at 17). OGD does not set forth the reasons for its belief that the casks may leak or become contaminated in storage and does not reference the Applicant's SAR accident analysis or Emergency Plan measures for detecting and mitigating such events. Accordingly, this contention should be rejected.

OGD Contention F. The License application fails to make clear provisions for funding of estimated construction costs, operating costs, and decommissioning costs.
The license application fails to make clear provisions for funding of estimated construction costs, operating costs, and decommission costs. It also fails to make clear as part of the construction costs who the contractors will be.

Staff Response:

The Staff opposes the admission of this contention on the grounds that it fails to provide sufficient information to show that a genuine dispute of material fact exists, and does not reference the specific portions of the application that OGD considers to be inadequate. 10 C.F.R. § 2.714(b)(2)(iii). As the basis for this contention, OGD merely recites the requirements of 10 C.F.R. § 72.22(e) and claims that the license application does not comply. As such, the basis lacks the requisite specificity and the contention should not be admitted.

OGD Contention G. The License application fails to provide for adequate radiation monitoring.
The license application poses undue risk to public health and safety because it fails to provide for adequate radiation monitoring to protect the health of the public and workers. It also fails to provide for adequate radiation monitoring necessary to facilitate radiation detection, event classification, emergency planning and notification.

Staff Response:

The Staff opposes the admission of this contention on the grounds that (a) it fails to provide sufficient information to show that a genuine dispute of material fact exists, in that it fails to reference the specific portions of the application that OGD considers to be inadequate; (b) it fails to provide supporting information regarding the reasons for OGD's belief that the Applicant's radiation monitoring program is inadequate and; (c) it essentially provides OGD's general views on what applicable regulatory standards ought to be, far in excess of the Commission's regulatory requirements. *Peach Bottom, supra,* 8 AEC at 20-21; 10 C.F.R. § 2.714(b)(2)(iii).

In this contention, OGD asserts that the license application does not meet 10 C.F.R. § 72.32(a)(6) requirements and that the license application does not address releases of radioactive material outside of the ISFSI (OGD Contentions at 19). In addition, OGD provides a list of measures that it "petitions the Commission to require PFSF to implement" (*Id.*). OGD does not indicate with specificity the basis for its belief that the license application is deficient, nor does it reference the Applicant's discussions of effluent and direct radiation monitoring (contained in SAR sections 3.3.5, 7.3.5, and 7.6.1). Further, OGD does not explain with references to the Applicant's Emergency Plan, the basis for its belief that the Applicant's discussion of "Accident Assessment" (EP § 3.3) is deficient or fails to satisfy 10 C.F.R.

§ 72.32(a)(6), which requires the Emergency Plan to provide a "brief description of the methods and equipment to assess releases of radioactive materials."

OGD does not demonstrate by reference to a Commission requirement that the Applicant must address releases outside of the ISFSI. The Commission's regulations concerning radiation monitoring at an ISFSI are found at 10 C.F.R. § 72.126. That regulation provides for radiation protection systems at all areas and operations where "onsite personnel may be exposed," provides for radiological alarm systems in "accessible work areas," and effluent and direct radiation monitoring "as appropriate for the handling and storage system." The regulation specifies that "areas containing radioactive materials" must be provided systems for measuring radiation levels "in and around these areas." Finally, effluent release monitors must have means for calibration and testing. *Id.*

OGD does not reference any Commission requirement that the Applicant include any of its listed eight measures regarding radiation exposure monitoring, the collection of baseline data, offsite radiation monitoring, or, for example, mental and physical health monitoring of "gridlock incident victims." These concerns consist of a generalization of the OGD's views on what applicable regulatory standards ought to be and thus do not constitute an adequate basis for this contention. *See Peach Bottom*, 8 AEC at 20-12. For these reasons, this contention should not be admitted in this proceeding.

OGD Contention H. The license application poses undue risk to public health and safety because it fails to provide adequate protection of the site against intruders.

The license application poses undue risk to public health and safety because it fails to provide adequate protection of the ISFSI against intruders. The site is in such a remote area that it would take at least two (2) hours for access to the sight [sic] to be made by emergency personnel.

Staff Response:

The Staff opposes the admission of this contention on the grounds that it (a) constitutes an attack on the Commission's physical protection regulations in 10 C.F.R. Part 73, (b) constitutes a generalization of the Petitioner's views on what applicable regulatory standards and policies for an ISFSI security plan ought to be (different from the Commission's regulatory requirements), and (c) fails to provide any reason to believe that the Applicant's security plan does not comply with NRC regulatory requirements applicable to an ISFSI. *See Peach Bottom, supra,* 8 AEC at 20-21. Further, OGD fails to identify any specific deficiency in the Applicant's security plan -- which it concedes it has not seen -- and any basis for the contention is therefore lacking in specificity. *See* 10 C.F.R. § 2.714(b)(2)(ii).

In this contention, OGD essentially asserts that the Applicant's facility should be required to provide protection against armed intruders, including persons carrying high energy explosive devices and/or missiles or rockets, and that the storage casks must be designed to withstand an attack by intruders using such devices (OGD Contentions, at 21). OGD notes that the Applicant intends to install fence(s) and an intrusion detection device, but that "since the security plan is not public information, one can only speculate about whether this security system will be manned full time or by how many individuals." *Id.*

OGD, however, fails to provide any regulatory support for its assertion that physical protection must be provided against armed attacks of this nature beyond the measures which will be provided by the Applicant, nor does OGD point to any regulatory requirement which it believes will not be satisfied. In this regard, it should be noted that the Commission's regulations for physical protection at ISFSIs do not require the same level of protection for an

away-from-reactor ISFSI as is required for a nuclear power reactor.[68] *See, e.g.,* 10 C.F.R. § 73.55(c)(7) (specifically exempting ISFSIs from requirements pertaining to the malevolent use of vehicles);[69] NUREG-1497, "Interim Licensing Criteria for Physical Protection of Certain Storage of Spent Fuel" (November 1994), at 1-2 (indicating that 10 C.F.R § 73.50 should be selectively applied to away-from reactor ISFSIs, and describing the general design objective and performance criteria applicable to such facilities). Likewise, although OGD cites and attaches numerous exhibits pertaining to the risk of terrorist attack or sabotage involving spent fuel in transit (*e.g.*, Exhibits 3, 10, 11, and 12), these exhibits are inapplicable; the Commission has other regulations in place which address the risk of an attack involving spent fuel in transit, and the documents cited by OGD, on their face, simply do not pertain to fixed site facilities.

Moreover, OGD has not sought access to the Applicant's security plan, nor is this contention supported by any knowledge of what that plan contains. As the Licensing Board is aware, one other party (the State of Utah) has requested that its attorneys and experts be afforded access to the Applicant's security plan pursuant to a protective order, and a protective order governing the disclosure of that plan has been issued by the Licensing Board.[70] Despite

---

[68] The Commission has published a proposed rule (including new § 73.51) which clarifies the physical protection requirements for away-from-reactor ISFSIs. *See* Proposed Rule, "Safeguards for Spent Nuclear Fuel or High-Level Radioactive Waste," 60 Fed. Reg. 42,079 (Aug. 15, 1995). The Staff understands that the final rule will be published shortly, possibly in January 1998.

[69] *See* Statement of Consideration, "Protection Against Malevolent Use of Vehicles at Nuclear Power Plants," 59 Fed. Reg. 38,889, 38,897 (Aug. 1, 1994) (noting that attacks against spent fuel removed from a reactor core have lower consequences, due in part to the aging of the fuel and the degree of protection afforded by the approved means of storage).

[70] *See* "Memorandum and Order (Protective Order and Schedule for Filing Security Plan Contentions)," dated December 17, 1997.

OGD's awareness of the State's request for access to the security plan pursuant to a protective order and the Board's Orders with respect thereto,[71] OGD did not respond to the State's request. Accordingly, inasmuch as OGD's contention is not based upon any particular alleged flaw in the Applicant's security plan, it lacks specificity and is not capable of being litigated in this proceeding. Accordingly, this contention should be rejected.

OGD Contention I. The cask design is unsafe and untested for long periods of time.
The license application poses undue risk to public health and safety because it calls for use of a cask whose design is unsafe and untested for long periods of time and which has not been certified for either transportation or long term storage.

Staff Response:

The Staff opposes the admission of this contention on the grounds that OGD has not set forth a basis for its claim that the cask design is unsafe and has not referenced a Commission requirement that a cask design be certified by the Commission prior to consideration for use at an ISFSI. 10 C.F.R. § 2.714(b)(iii).

As a basis for this contention, OGD asserts that until the cask design is certified, there is no way that the Applicant can make the "necessary description of their ability to operated [sic] the facility as planned" (OGD Contentions at 22). OGD further asserts that "without the certified cask design it would be impossible for PFS to do this [plan for ongoing operations] with sufficient assurances for the license to be granted at this time" (*Id.*).

---

[71] *See* "Memorandum and Order (Ruling on State of Utah Motion for Protective Order)," dated November 21, 1997, at 2, 5-6; "Order (Responses to Motion for Protective Order)," dated November 17, 1997.

Nowhere in the basis does OGD support the statement in its contention that the cask design is unsafe. Neither does OGD set forth Commission requirements that would preclude consideration of a cask for use at an ISFSI on the basis that the cask has not received Commission certification. Part 72, Subpart B sets forth the requirements for the form and contents of a license application for an ISFSI. Prior Commission cask certification is not required for an ISFSI application, as indicated in 10 C.F.R. § 72.230. *See* Response to Utah Contention C, *supra* at 20-23. Therefore, this contention should be rejected.

> **OGD Contention J. The license application fails to address the status of compliance with all permits, licenses and approvals required for the facility.** The license application violates NRC regulations because the ER falls to address the status of compliance with all permits, licenses and approvals required for the facility.

Staff Response:

The Staff does not oppose the admission of this contention, except insofar as it seeks to incorporate by reference OGD Contention A, concerning potential accidents (OGD Contentions at 24). The Commission's requirement that an ISFSI applicant identify necessary permits and approvals is a separate matter which does not require the litigation of potential accidents, and should therefore be treated as a discrete issue in this proceeding.

Also, in this contention, OGD asserts that the Federal government, including the Commission, has a "trust responsibility" for Indian tribes (OGD Contentions at 23-24). While this assertion is not contested here, it should be noted that the existence of such a trust responsibility does not create a litigable issue pertaining to whether the instant ISFSI application satisfies pertinent statutory and regulatory requirements. Accordingly, this aspect of OGD Contention J should not be considered as part of the contention, in that it does not present a

concrete and litigable issue appropriate for adjudication in this proceeding. *See Peach Bottom, supra*, 8 AEC at 20-21.

> **OGD Contention K. There are no provisions for paying for casks that may need to be returned to the generating facility.**
> The license application poses undue risk to public health and safety because it does not address how the facility will deal with paying for or returning casks that may prove unsafe should the generating reactor have been decommissioned.

Staff Response:

The Staff opposes the admission of this contention on the grounds that it misinterprets the Commission's regulations and constitutes a generalization of OGD's views on what applicable regulatory standards ought to be. *See Peach Bottom*, 8 AEC at 20-21.

In this contention, OGD asserts that the Applicant has not complied with the Commission's requirements in 10 C.F.R. § 72.22(e)(3), which require the Applicant to show that it will have the necessary funds to cover estimated decommissioning costs, and the necessary financial arrangements to provide reasonable assurance that decommissioning will be carried out "after the removal of spent fuel and/or high-level radioactive waste from storage" (OGD Contentions at 25). However, OGD fails to point to any specific aspect of the application which it believes is inadequate.

OGD also claims that the Application is deficient because it does not contain enough information regarding the financial arrangements and the financial capacity of the PFS member generating facilities "to assure that <u>after</u> decommissioning there will be funds to carry out necessary mitigation should a problem arise" (*Id.*, emphasis added). However, OGD fails to show in the basis for this contention any Commission requirement regarding financial assurance for events following decommissioning. In addition, this basis does not support OGD's

contention that provisions must be made for "paying for casks that need to be returned to the generating facility" (*Id.* at 24). To the extent that OGD is raising the disposal of spent fuel in this contention, the Commission's regulations specifically exclude consideration of spent fuel removal from the showing required by an applicant regarding decommissioning funding. *See* 10 C.F.R. § 72.30(a).

OGD additionally claims that there is no assurance that "other generating facilities will be allowed to use the facility" and that there is no information to determine the financial capabilities of these "other facilities" to provide "adequate mitigation should there be problems in the future" (OGD Contentions at 25). The application, however, does not rely on funds received from the storage of spent fuel for other generating facilities; and OGD does not reference any Commission requirements that other generating facilities must be allowed to store waste at a privately-owned ISFSI or that other generating facilities are responsible for mitigating problems at the ISFSI which the ISFSI is, itself, obliged to address. 10 C.F.R. § 2.714(b)(iii). Therefore, this contention should be rejected.

> **OGD Contention L. Operators will not be trained for the specific job when hired and operators will undergo on-the-job training.**
> The license application poses undue risk to public health and safety because it provides that operators will not be trained for the specific job when hired and that operators will undergo on-the-job training, and classroom training leading to certification. The license application states that "of necessity, the first individuals certified may have to improvise in certain situations to complete the practical factors." See License Application, LA Chapter 7 p. 7.1. This doesn't protect public health and safety in any manner.

Staff Response:

The Staff opposes the admission of this contention, in that it fails to provide any basis for challenging the Applicant's proposed training program. OGD apparently believes that the

Applicant's reference to "on-the-job training" (Application at 7-1) indicates that operators will be trained on-the-job, in the actual handling of spent fuel. This constitutes an incorrect understanding of the proposed training program, which is described in greater detail in the Applicant's SAR. There, the Applicant explains that it intends to hire personnel "with the training, education and experience" needed for them to perform their assigned tasks, and that it will supplement this knowledge through its training program (SAR, § 9.3.1). The Applicant further indicates that its training program will consist of two forms of training -- on-the-job and in the classroom -- and that "there will be an adequate complement of trained and certified personnel prior to the receipt of spent fuel for storage, and throughout the period of the NRC operating license" (*Id.*; emphasis added). OGD has not provided any basis or reason to believe that this training program fails to comply with NRC regulatory requirements, and the contention should therefore be rejected.[72]

OGD Contention M. No provisions for transportation accidents are made. The license application poses undue risks to public health and safety because it makes no provisions for transportation accidents that might occur.

Staff Response:

In this contention, OGD asserts that the Applicant's emergency plan fails to consider (a) the potential for an explosion involving military explosives being transported on Skull Valley Road to the Dugway Proving Ground, and (b) the potential for a collision between a truck

---

[72] In light of OGD's expressed concern for the safety of its members, the Staff notes that it inspects an applicant's operations, administration, emergency preparedness, and training programs prior to facility operation, in accordance with NRC Inspection Manual Chapter (MC) 2690. In addition, pursuant to MC 2690, the Staff inspects the preoperational testing program prior to facility operation; that program is intended to demonstrate that procedures, equipment and personnel are ready for operations.

carrying such explosives and a tractor trailer hauling spent fuel to the ISFSI (OGD Contentions at 26).

The Staff opposes the admission of this contention, on the grounds that it lacks basis, in that the emergency plan does consider the potential for an explosion occurring on Skull Valley Road (*see* Emergency Plan at 2-6). In this regard, OGD has not challenged, or provided any basis to challenge, the Applicant's conclusion that such an explosion would not exceed 1 psi overpressure at the ISFSI (*Id.*). Further, the potential occurrence of an accident involving a radiological release during the transportation of spent fuel is beyond the required scope of an ISFSI's emergency plan. *See* discussion *supra* at 41-49 (Utah Contention R). Accordingly, this contention should be rejected.

> **OGD Contention N. There may be a leak that contaminates the present water system.**
> The license application poses undue risk to public health and safety because it fails to address the possibility of a leak occurring that might contaminate the present water system that members of the community rely on. The application admits that several wells are going to have to be built to meet the demand that will be presented by the facility. Neither contingencies to deal with contamination nor lowering of the present water table are discussed.

Staff Response:

The Staff opposes the admission of this contention, in that it fails to provide any basis for its assertion that the Applicant has not adequately considered the potential drawdown impacts of any wells it will construct vis a vis local groundwater resources, or the potential for "a leak that might contaminate the present water system" (OGD Contentions at 23, 24). OGD has not provided any facts, information, or expert opinion to support an assertion that the Applicant's consideration of potential drawdown effects or groundwater contamination is inadequate,

contrary to the requirements of 10 C.F.R. § 2.714(b)(2). Rather, the sole "basis" offered by OGD is its incorporation by reference of its assertion that the Federal government, including the Commission, has a "trust responsibility" for Indian tribes, as set forth in OGD Contention J. That assertion notwithstanding,[73] no basis was provided by OGD to support its assertion that further analysis of potential groundwater contamination is required. Accordingly, this contention should be rejected.

> **OGD Contention 0. Environmental Justice Issues are not addressed.**
> The license application poses undue risk to public health and safety because it fails to address environmental justice issues. In Executive Order 12898, 3 C.F.R. 859 (1995) issued February 11, 1994, President Clinton directed that each Federal agency "shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations in the United States." It is not just and fair that this community be made to suffer more environmental degradation at the hands of the NRC. Presently, the area is surrounded by a ring of environmentally harmful companies and facilities. Within a radius of thirty-five (35) miles the members of OGD and the Goshute reservation are inundated with hazardous waste from: Dugway Proving Ground, Utah Test and Training Range South, Deseret Chemical Depot, Tooele Army Depot, Envirocare Mixed Waste storage facility, Aptus Hazardous Waste Incinerator, Grassy Mountain Hazardous Waste Landfill and Utah Test and Training Range North.

Staff Response:

The Staff does not oppose the admission of this contention, except insofar as OGD asserts (a) that the psychological "fear" of living in proximity to this facility must be considered (OGD Contentions at 30 and 35), and (b) that the "cumulative" impacts of this facility, in combination

---

[73] As set forth above, the Staff does not oppose the admission of OGD Contention J. *See* discussion *supra*, at 90-91. However, as noted in that discussion, OGD's assertion that a trust responsibility exists does not create a litigable issue as to whether the instant ISFSI application satisfies pertinent statutory and regulatory requirements.

with numerous other facilities, must be considered (*Id.* at 32-34). OGD's assertion that psychological fear must be considered raises a matter which is not concrete or litigable, and is improper for consideration as an issue in NRC adjudicatory proceedings under the National Environmental Policy Act. *See, e.g., Metropolitan Edison Co. v. People Against Nuclear Energy,* 460 U.S. 766 (1983); *accord, Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), ALAB-872, 26 NRC 127, 132 n.15 (1987).

Further, OGD's assertion that the cumulative impacts of this and other facilities must be considered lacks the requisite regulatory and factual basis. OGD does not limit its contention to sites in the immediate vicinity of the ISFSI or even within five miles thereof (see SAR at 7.6-2), but argues that hazardous sites located elsewhere "within a radius of 35 miles" must be considered (OGD Contentions, at 32). OGD's assertion that the effects of such far-away facilities must be considered in conjunction with the potential effects of the Applicant's ISFSI lacks any basis whatsoever, in that it has not provided any reason to believe that an ISFSI located at this site could have any appreciable "cumulative" effect in conjunction with any of the other facilities it mentions, as is required pursuant to 10 C.F.R. § 2.714(b)(2)(ii).[74] Moreover, the National Environmental Policy Act (NEPA) does not require any evaluation of impacts beyond those which are reasonably foreseeable. Thus, it has been observed:

---

[74] The Staff notes that, in a different context, the Commission has considered, on the merits, a contention which asserted that a nuclear power reactor's discharge of radioactive effluents into the Mississippi River would have a "synergistic effect" in combination with various chemical pollutants in the river. *See Louisiana Power and Light Co.* (Waterford Steam Electric Station), LBP-82-100, 16 NRC 1550, 1568-1571 (1982), *aff'd*, ALAB-732, 17 NRC 1076, 1090 (1983).

> NEPA's requirement that environmental effects of a proposed agency action be described is subject to a rule of reason. An agency need not foresee the unforeseeable. *Scientists' Institute for Public Information [Inc.] v. AEC*, 481 F.2d 1079, 1092 (D.C. Cir. 1973).

Louisiana Power and Light Co. (Waterford Steam Electric Station), LBP-82-100, 16 NRC 1550, 1571 (1982), *aff'd*, ALAB-732, 17 NRC 1076, 1090 (1983). Inasmuch as OGD has not provided any reason to foresee that licensing of the proposed ISFSI will result in cumulative impacts with any other facilities, this aspect of the contention lacks the requisite factual basis and should be rejected.

In addition, to the extent that OGD here raises issues pertaining to the need for and cost of the facility, those issues are not shown to affect the issue of whether environmental justice has been adequately considered and do not support the admission of this contention. Moreover, OGD's reliance upon the availability of a "full core reserve" for transfer of spent fuel from a reactor core during a refueling outage (OGD Contentions at 31) is not relevant to the issue of whether this ISFSI is needed for spent fuel storage other than during refueling outages. Accordingly, this issue should be rejected.

> **OGD Contention P. Members of OGD will be adversely impacted by routine operations of the proposed storage facility and its associated transportation activities.**
> The ability of OGD members to pursue the traditional Goshute life style will be adversely impacted by the routine operations at the storage facility. Obvious impacts resulting from the physical presence of the facility are; visual intrusion, noise, worker and visitor traffic to and from the storage site, and presence of strangers in the community. Those impacts that are not as obvious but nonetheless serious are: individual and collective social, psychological, and cultural impacts such as a sense of loss of well-being because of the dangerous wastes that are being stored near their homes, in their community, and on their ancestral lands.

> The ability of OGD members to pursue a traditional Goshute life style will be adversely affected by routine transportation operations of spent nuclear fuel and/or the presence of trucks, especially very large heavy haul trucks. The other obvious and other effects include the same kind of effects that are listed above, including fear that a transportation accident might happen, fear of acts of terrorism or sabotage which could expose members of OGD and their families, their homes, the community and their ancestral land.

Staff Response:

The Staff opposes the admission of this contention on the grounds that OGD has not provided the specificity required by 10 C.F.R. § 2.714(b)(2). While OGD asserts that the application should be denied due to a variety of environmental impacts, it failed to indicate that any portion of the Applicant's Environmental Report fails to adequately consider those impacts. OGD's failure to consider the discussion of these issues contained in the Environmental Report is problematic, in that many of the issues raised in this contention are specifically considered in that document -- *e.g.*, routine operations (ER, § 4.2), transportation (ER, §§ 4.3, 4.4), visual intrusion (ER, § 4.1.8.2, 4.2.8.2), noise and traffic (ER, §§ 4.1-12, 4.2.7, 4.3.7, and 4.4.7), and the influx of workers from areas outside the Reservation (ER, §§ 4.1.6, 4.2.2, and 4.2.6). With respect to OGD's concern over the potential impacts on Native American lifestyles, no basis was provided to support this assertion or to challenge the Applicant's environmental analyses. Accordingly, OGD failed to comply with the Commission's requirements that it provide sufficient information to show a genuine dispute exists with the applicant, in that it failed to provide "references to the specific portions of the application (including the applicant's environmental report)" that it disputes "and the supporting reasons for each dispute," and failed to base this contention "on the applicant's environmental report." 10 C.F.R. § 2.714(b)(iii).

Finally, OGD's assertion that members of the community will experience psychological impacts such as fear and loss of a sense of well-being, raise matters which are not concrete or litigable, and are improper for consideration as an issue in NRC adjudicatory proceedings under the National Environmental Policy Act. *Metropolitan Edison Co. v. People Against Nuclear Energy,* 460 U.S. 766 (1983); *accord, Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), ALAB-872, 26 NRC 127, 132 n.15 (1987).

Accordingly, OGD Contention P should be rejected.

3. Castle Rock Land and Livestock, L.C., *et. al.*

Castle Rock Land and Livestock, L.C., and its related companies, filed 24 contentions, including numerous subparts, which it seeks to litigate in this proceeding. The Staff's response to the Castle Rock's contentions is as follows.

> **Castle Rock Contention 1. Absence of NRC Authority.**
> The Application is defective because NRC does not have authority to license a large-scale, off-site facility for the long-term storage of spent nuclear fuel such as the proposed PFSF.

Staff Response:

The Staff's response to this contention is the same as the response provided to Utah Contention A. *See* discussion *supra,* at 6-14. For the reasons discussed therein, this contention should be rejected.

> **Castle Rock Contention 2. Non-Compliance with Regulations.**
> PFS's Application is defective because it seeks a license for an ISFSI pursuant to 10 C.F.R. Part 72. However, the proposed storage installation is not an ISFSI and is otherwise not licensable under 10 C.F.R. Part 72.

Staff Response:

The Staff opposes this contention on the basis that it constitutes an impermissible attack upon the Commission's regulatory structure and upon the Commission's regulations. *Peach Bottom, supra,* 8 AEC at 20 (licensing proceedings are not the proper forum for "challenges to the basic structure of the Commission's regulatory structure"); 10 C.F.R. § 2.758(a) (Commission's regulations are not subject to attack in licensing proceedings). In addition, this contention misconstrues the provisions of the NWPA.

The first basis for this contention is that "[b]ecause the NWPA does not permit NRC to license a facility such as the PFSF, if the regulations in 10 C.F.R. Part 72 are valid in any respect, they remain valid only to the extent the definition of "ISFSI" is construed to exclude the proposed PFSF" (Castle Rock Contentions at 10). This basis impermissibly attacks the Commission's regulations and, as such, is precluded from litigation in this proceeding. Moreover, as set forth in the Staff's Response to Utah Contention A, Castle Rock's premise for this basis is incorrect: the Commission does have the authority under the AEA to license such a facility and the Commission's promulgation of 10 C.F.R. Part 72 is a lawful exercise of this authority. Castle Rock cites *Emery Mining Corp. v. Secretary of Labor*, 744 F.2d 1411, 1414 (10th Cir. 1984), for the proposition that a "regulation must be interpreted so as to harmonize with and further and not to conflict with the objective of the statute it implements" (Castle Rock Contentions at 11). However, 10 C.F.R. Part 72, which pertains to the licensing of ISFSIs,

does not implement the NWPA -- rather, it implements the AEA and harmonizes with it.[75] Therefore, this basis is deficient to support the proposed contention.

Castle Rock's other bases for this contention assert that in light of NWPA requirements, 10 C.F.R. Part 72 must be construed to: (a) "require PFS to demonstrate maximization of the use of existing storage capacity at the site of civilian nuclear power reactors" (Castle Rock Contentions at 12); (b) "require an applicant to demonstrate that DOE has exhausted all means for providing off-site storage capacity before any private, off-site facility can be licensed" (*Id.* at 13); and (c) "require a showing that DOE has attempted to establish a cooperative demonstration program for the on-site dry storage of spent nuclear fuel before any private off-site facility can be licensed" (*Id.* at 14). However, as set forth in the Staff's response to Utah Contention A, *supra* at 10-14, the NWPA does not apply to the licensing of private, away-from-reactor ISFSIs and, therefore, the NWPA does not require PFS to demonstrate that storage at the site of any reactor is exhausted, or that DOE has exhausted all means for providing off-site storage, or that DOE has attempted to establish a cooperative demonstration program for on-site dry storage. Therefore, because this contention attacks Part 72 of the Commission's regulations and the Commission's regulatory structure pertaining to the licensing of ISFSIs, and because it erroneously applies the NWPA, this contention should be rejected. See 10 C.F.R. § 2.758; *Peach Bottom, supra*, 8 AEC at 20-21.

---

[75] Castle Rock additionally asserts that the definition of the term "ISFSI" in 10 C.F.R. Part 72 is "unrestrictive and to a large extent ambiguous" (Castle Rock Contentions at 11). Castle Rock's assertion, however, constitutes an impermissible challenge to the Commission's regulations at 10 C.F.R. § 72.3, and therefore, should be denied.

Castle Rock Contention 3. Conflict with DOE Duties and Prerogatives. The Application must be denied because the proposed PFSF interferes with DOE duties and prerogatives under the NWPA.

Staff Response:

The Staff opposes the admission of this contention because it constitutes an impermissible attack upon the Commission's regulatory structure in 10 C.F.R. Part 72, is not sufficiently supported by fact or otherwise, and, even if true, would not entitle Castle Rock to any relief. *See Peach Bottom, supra*, 8 AEC at 20 (licensing proceedings are not the proper forum for "challenges to the basic structure of the Commission's regulatory structure"); 10 C.F.R. §§ 2.714(b)(iii), 2.714(d)(2)(ii), 2.758(a).

Castle Rock sets forth as a basis for this contention that "[t]he NWPA imposes certain responsibilities and grants certain rights related to spent nuclear fuel exclusively to DOE" (Castle Rock Contentions at 15). Castle Rock states that these DOE responsibilities include: "establishment of a permanent repository for spent nuclear fuel, establishment of an interim storage program using new technologies to expand on-site storage capacity, taking title to certain spent nuclear fuel on January 31, 1998, and establishment of a Monitored Retrievable Storage facility" (*Id.*). Further, Castle Rock claims that "[a]bsent a showing of on-site optimization, cooperation with DOE, or the need to move spent fuel off-site, [PFS's application] undermines DOE's statutorily mandated duty to 'expedite the effective use of available storage . . . at the site of each civilian nuclear power reactor" and to establish demonstration programs designed to produce new technologies for safe on-site storage (*Id.*) Castle Rock also claims that the application "interferes with DOE's statutory mandate to accommodate excess spent nuclear fuel by providing 1,900 MTU of capacity through one of several enumerated methods and, if this 1,900 MTU of capacity is inadequate, to submit to

Congress a proposal for a larger scale facility" (*Id.*) Finally, Castle Rock argues that the application's "failure to provide for transfer of the spent nuclear fuel to DOE will obstruct DOE in carrying out its statutorily and contractually mandated duty to assume responsibility for such fuel beginning January 31, 1998 and, as soon as possible, place such fuel in a safe, permanent repository." (*Id.* at 15-16).

To the extent that Castle Rock is claiming that the Commission does not have the authority under the AEA to issue a license for an ISFSI, as set forth in the Staff's Response to Utah Contention A and Castle Rock Contention 2, the Commission does have the authority under the AEA to license such a facility and the Commission's promulgation of 10 C.F.R. Part 72 is a lawful exercise of this authority.

Further, Castle Rock has not set forth any support for its belief that DOE would not be able to fulfill any of its statutory requirements under the NWPA as a result of the proposed licensing action. With respect to Castle Rock's claim that the application's "failure to provide for transfer of the spent nuclear fuel to DOE" will obstruct DOE's duty to assume responsibility for such fuel beginning January 31, 1998, the Staff notes that the NWPA requires DOE to establish criteria for disposal service contracts. 42 U.S.C. § 10,222. Waste disposal contracts are required to contain as a provision that DOE, beginning no later than January 31, 1998, will dispose of spent fuel. 42 U.S.C. § 10,222. DOE's Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste, 10 C.F.R. § 961.11, contains delivery provisions for the spent fuel. In particular, the Standard Contract states that the contracting utilities "shall have the right to determine which [spent fuel] is delivered to DOE," provided that the utilities comply with the Standard

Contract. 10 C.F.R. § 961.11, Art. V, § E. Further, the contracting parties may exchange approved delivery commitment schedules with each other for disposal. *Id.*

No support exists for Castle Rock's assertion that PFS's application will obstruct DOE's obligation to dispose the spent fuel "beginning not later than January 31, 1998." 42 U.S.C. § 10222. DOE's obligation to assume responsibility for this fuel will exist regardless of where the fuel is located. *See generally, Northern States Power Co. v. United States Department of Energy,* No. 79-1064 (D.C. Cir., Nov. 14, 1997). Further, the owners of the spent fuel which is shipped to this facility may choose to specify that this spent fuel will not be delivered to DOE immediately or will be delivered only at some later time. In addition, the owners of the spent fuel may choose to defer specific shipments by trading schedules with other contracting parties. Therefore, under this scheme, DOE would remain in compliance with the NWPA. *See* 42 U.S.C. § 10222 (DOE shall set forth criteria establishing conditions under which disposal services shall be made available). Therefore, this contention should be rejected.

Castle Rock Contention 4. Attempts to Evade the Requirements of the NWPA.
The status of the Application suggests that DOE has either tacitly or directly agreed with PFS and its member utilities to allow the Application to proceed in an attempt to evade the statutory mandates of the NWPA.

Staff Response:

The Staff opposes the admission of this contention on the grounds that it constitutes at attack upon the Commission's regulations, raises an issue that is beyond the scope of this proceeding, is not supported by sufficient facts or other evidence, and, even if true, would not entitle Castle Rock to any relief in this proceeding. *See Peach Bottom, supra,* 8 AEC at 20-21; 10 C.F.R. §§ 2.714(b)(iii), 2.714(d)(2)(ii), and 2.758(a).

As the basis for this contention, Castle Rock asserts that under the NWPA, DOE has numerous responsibilities with respect to the interim and permanent storage of spent nuclear fuel, "each of which it has failed, or will fail, to timely execute" (Castle Rock Contentions at 21). Castle Rock further asserts, "If approved, the PSF would encroach on DOE's jurisdiction and make timely accomplishment of many such statutorily mandated duties unnecessary; nevertheless, DOE has failed to intervene to prevent PFS from usurping DOE's responsibilities" (*Id.* at 18). As stated by Castle Rock: "These facts suggest tacit or express agreement by DOE not to oppose the Application and to permit construction of the proper PSF so that DOE will be able to evade statutory mandate" (*Id.*).

To the extent that Castle Rock is claiming that the Commission does not have the authority to issue a license, the Commission does have the authority under the AEA to license such a facility and the Commission's promulgation of 10 C.F.R. Part 72 is a lawful exercise of this authority. *See* Staff Response to Utah Contention A and Castle Rock Contention 2. Castle Rock has not set forth any support for its belief that DOE has entered into a "tacit or explicit agreement" with PFS other than the fact that DOE has not intervened in this proceeding. Notwithstanding the cases cited by Castle Rock, the Staff is not aware of any obligation for DOE to intervene in an NRC proceeding. In any event, even if this assertion is assumed to be correct, it would not entitle Castle Rock to any relief in this proceeding. Therefore, this contention should be rejected.

Castle Rock Contention 5. Application For Permanent Repository.
The proposed PFSF is properly characterized as a de facto permanent repository, and the Application fails to comply with the licensing requirements for a permanent repository.

Staff Response:

The Staff opposes the admission of this contention on the grounds that it constitutes an impermissible challenge to the Commission's regulations, including the Commission's waste confidence regulation, and, thus, should be denied.

Castle Rock sets forth as the basis for this contention that no permanent repository exists "or foreseeably will exist at the time PFS proposes to dismantle the PSF" (Castle Rock Contentions at 22). PSF further states, "If the PSF is constructed, it will continue to store spent fuel indefinitely into the future," thus, "the PSF is a de facto permanent storage facility, and the Application must be evaluated and assessed as an application for a permanent repository" (*Id.*). As stated by Castle Rock:

> NRC must ask whether the proposed PFS will realistically store spent nuclear fuel for only twenty or forty years, as proposed in the Application. If NRC determines, as it must, that there is no realistic prospect that a permanent repository capable of absorbing 40,000 additional MTU of spent nuclear fuel will exist on the proposed date of decommissioning, NRC cannot treat, assess, and license the proposed PSF as an interim storage facility pursuant to 10 C.F.R. Part 72.

Id. at 25.

This contention constitutes an attack on the Commission's regulations in 10 C.F.R. Part 72, which provide the requirements for the licensing of ISFSIs. The initial term for a license must not exceed 20 years. 10 C.F.R. § 72.42(a). Applications for renewal of the license must undergo review similar to initial licensing. 10 C.F.R. § 72.42(b). In addition, the Commission has stated that "there is reasonable assurance that at least one mined geologic repository will be available within the first

quarter of the twenty-first century." 10 C.F.R. § 51.23. Therefore, this contention should be rejected. 10 C.F.R. § 2.758; *Peach Bottom, supra*, 8 AEC at 20-21.

Castle Rock Contention 6. Emergency Planning and Safety Analysis Deficiencies.
The Application does not provide for reasonable assurance that the public health and safety will be adequately protected in the event of an emergency affecting the PFSF.

Staff Response:

In this contention, Castle Rock asserts that the Applicant's on-site emergency plan and SAR fail to adequately address (a) the potential on-site consequences of certain off-site events (*i.e.*, off-site fires, and accidents at various local sites which possess hazardous materials), in support of which Castle Rock cites 10 C.F.R. § 72.32 and NUREG-1537, and (b) the potential of a terrorist attack associated with the Winter Olympic Games to be held in Salt Lake City in the year 2002.

The Staff does not oppose the admission of this contention, to the extent that it asserts the Applicant's onsite emergency plan and SAR fail to adequately consider the onsite impacts of accidents involving offsite hazardous materials and fires. However, Castle Rock's assertion that the Winter Olympics requires the Applicant to provide "heightened security measures," and that the Applicant should be required to describe measures to notify and coordinate with Olympic and Federal officials (Castle Rock Contentions at 30) constitutes a challenge to the Commission's emergency planning regulations and should be rejected. As set forth in the Staff's response to Utah Contention R, the Commission has indicated, in adopting 10 C.F.R. § 72.32, that the emergency planning regulations take into consideration the consequences of a worst-case accident, including radiological sabotage involving a terrorist attack, and that there is no need

for offsite emergency planning. *See* discussion *supra*, at 42-46. Accordingly, to this extent, the Staff opposes the admission of this contention.

Castle Rock Contention 7. Inadequate Financial Qualifications.
The Application does not provide assurance that PFS will have the necessary funds to cover estimated construction costs, operating costs, and decommissioning costs, as required by 10 C.F.R. § 72.22(e).

Staff Response:

The Staff does not oppose the admission of this contention, except with respect to its fifth basis, which states that PFS's showing of financial qualifications must include a description "of the Tribe's obligations to compensate third parties for accidents or injuries arising from acts or omissions of the Tribe" (Castle Rock Contentions at 39). In this regard, Castle Rock does not point to any regulatory requirement that the Applicant must "assure" the Skull Valley Band of Goshutes' obligations to compensate third parties for accidents or injuries arising from its acts. Section 72.22(e) pertains to the financial information required to be submitted "to demonstrate the financial qualifications of the applicant." The Skull Valley Band of Goshutes is not a member of PFS, and therefore, any obligations pertaining to it would be outside of the scope of this proceeding. For this reason, this issue is not a proper subject for litigation in this proceeding.

Finally, the Staff notes that it agrees with Castle Rock that the Commission's regulations contained in Part 50 and Appendix C should be used "as guidance" for reviewing the Applicant's financial qualifications. However, those provisions are not contained in 10 C.F.R. Part 72 and, thus, do not require strict adherence. *See* response to Utah Contention E, *supra* at 26-27; *LES, supra*, CLI-97-15, slip op. at 8-9 and 13.

Castle Rock Contention 8. Groundwater Quality Degradation.
The Application, including the ER, is defective and therefore raises the issue of risk to public health and safety because the proposed site of the PFSF will not, or cannot, be adequately protected against ground water contamination due to facility design, its location, contaminants it will generate, and the nature of the soils and bedrock of the area.

Staff Response:

The Staff does not oppose the admission of this contention.

Castle Rock Contention 9. Regional and Cumulative Environmental Impacts.
The Application fails to adequately discuss the regional and cumulative environmental impacts of the proposed PFSF, as required by 10 C.F.R. §§ 72.98(b) & (c) and 72.100, and NEPA.

Staff Response:

The Staff opposes the admission of this contention, on the grounds that it lacks the requisite regulatory and factual basis. In this contention, Castle Rock asserts that the Applicant's Environmental Report fails to adequately consider the "cumulative" impacts of the proposed ISFSI in conjunction with a number of hazardous sites located "near" the site, in support of which it cites 10 C.F.R. § 72.122(e).[76] However, Castle Rock does not limit its contention to sites in the immediate vicinity of the ISFSI or even within five miles thereof (*see* SAR at 7.6-2), but argues that any hazardous site located in the whole of Tooele County must be considered to be "near" the site (Castle Rock Contentions at 43). Further, it seeks to require consideration

---

[76] 10 C.F.R. § 72.122 provides:

> (e) *Proximity of sites.* An ISFSI or MRS located near other nuclear facilities must be designed and operated to ensure that the cumulative effects of their combined operations will not constitute an unreasonable risk to the health and safety of the public.

of the cumulative impact of numerous non-radiological hazardous sites in the county -- thus expanding upon the explicit language in § 72.122(e) which requires an evaluation only of the cumulative effects of nuclear facilities near the ISFSI (*Id.* at 42-43, 44).

Castle Rock's attempt to expand § 72.122 beyond the requirements explicitly stated therein constitutes an impermissible challenge to the regulation, and is unsupported as a matter of law. Further, its effort to define the term "near" to include the entirety of Tooele County[77] -- which is a vast governmental unit, extending approximately 100 miles from east to west and 70 miles from north to south -- contravenes the normally accepted meaning of the term "near." Thus, the term "near" is defined as "closely related or intimately associated," or "not far distant in time, place, or degree." Webster's New Collegiate Dictionary (1977), at 767. Nor has Castle Rock provided any reason to believe that an ISFSI located at this site could have any appreciable "cumulative" effect in conjunction with any other nuclear facilities located elsewhere in Tooele County -- of which the closest appears to be the Envirocare low level radioactive and mixed waste disposal site, located some 25 miles away (*see* SAR at 7.6-2). Moreover, while Castle Rock contends that the potential impacts of other facilities must be evaluated, the Applicant has addressed the potential impact of such facilities on its proposed facility (*e.g.*, SAR §§ 2.2, 8.2.4; ER § 5.1.2) -- and Castle Rock has pointed to no specific language or section of the Applicant's discussion which it may believe to be deficient, as is required pursuant to 10 C.F.R. § 2.714(b)(2)(ii).

---

[77] *See* "Official Highway Map" of the State of Utah, attached as Exhibit 1 to the "NRC Staff's Response to Request for Hearing and Petition to Intervene Filed by the Confederated Tribes of the Goshute Reservation and David Pete," filed September 18, 1997.

Finally, Castle Rock cites 10 C.F.R. §§ 72.98(b) and (c), 10 C.F.R. § 72.100, and the National Environmental Policy Act (NEPA) in support of this contention (Castle Rock Contentions at 41). However, the cited regulations do not address the concern raised in this contention, and NEPA does not require any evaluation of impacts beyond those which are reasonably foreseeable. Thus, it has been stated:

> NEPA's requirement that environmental effects of a proposed agency action be described is subject to a rule of reason. An agency need not foresee the unforeseeable. *Scientists' Institute for Public Information [Inc.] v. AEC*, 481 F.2d 1079, 1092 (D.C. Cir. 1973).

Louisiana Power and Light Co. (Waterford Steam Electric Station), LBP-82-100, 16 NRC 1550, 1571 (1982), *aff'd*, ALAB-732, 17 NRC 1076, 1090 (1983). Castle Rock has not provided any reason to foresee that licensing of the proposed ISFSI will result in cumulative impacts with any other facilities located in Tooele County, and the contention therefore lacks the requisite factual basis.[78] For these reasons, the contention should be rejected.

Castle Rock Contention 10. Retention Pond.
The Application, including the ER, is defective and therefore raises public health and safety risks because it does not adequately address the potential of overflow and groundwater contamination from the retention pond and the environmental hazards created by such overflow.

Staff Response:

The Staff does not oppose the admission of this contention.

---

[78] The Staff notes that, in a different context, the Commission has considered, on the merits, a contention which asserted that a nuclear power reactor's discharge of radioactive effluents into the Mississippi River would have a "synergistic effect" in combination with various chemical pollutants in the river. *See Louisiana Power and Light Co.* (Waterford Steam Electric Station), LBP-82-100, 16 NRC 1550, 1568-1571 (1982), *aff'd*, ALAB-732, 17 NRC 1076, 1090 (1983).

Castle Rock Contention 11. Radiation and Environmental Monitoring. The Application poses undue risk to the public health and safety and fails to comply with 10 C.F.R. § 72.22, § 72.24 and § 72.126 because it fails to provide for adequate radiation monitoring necessary to facilitate radiation detection, event classification, emergency planning, and notification, including systematic baseline measurements of soils, forage, and water either near the PFSF site, or at Petitioners' adjoining lands.

Staff Response:

The Staff opposes the admission of this contention on the grounds that it fails to provide sufficient information to show that a genuine dispute exists with the applicant. 10 C.F.R. § 2.714(b)(2)(iii).

In this contention, Castle Rock asserts that the Application fails to provide for radiation monitoring adequate to protect the health of the public and workers nearby (Castle Rock Contentions at 45). As support for this assertion, Castle Rock specifies seeming deficiencies with the Applicant's discussion of "Background Radiological Characteristics" in Chapter 2 of the ER and "Effluent and Environmental Measurements and Monitoring Program" in Chapter 6 of the ER (*Id.* at 46). With respect to Chapter 2, Castle Rock, in claiming that the Applicant has taken no radiological samples of vegetation, ignores the Applicant's reference to the Commission's 1993 "Final Environmental Impact Statement to Construct and Operate a Facility to Receive, Store, and Dispose of 11e.(2) Byproduct Material Near Clive, Utah," NUREG-1476, which the Applicant uses to specify average radiation levels in area vegetation. *See* ER § 2.10. With respect to ER Chapter 6, Castle Rock states that the Applicant makes the unsupported claim that there are no credible scenarios that radioactive contaminated effluents will be released, thus necessitating effluent monitoring. Castle Rock, however, ignores the Applicant's entire preceding discussion regarding the integrity of the storage system. *See* ER § 6.2. Moreover,

Castle Rock ignores the discussion in ER Chapter 5, "Environmental Effects of Accidents," in which postulated accidents are evaluated with references to the SAR. *See* ER at 5.1-1, *et seq.*

Castle Rock raises an issue concerning the retention pond, which will collect surface runoff from the site and allow "these effluents" to move into the surrounding subsoils and to the low-level radioactive waste storage facility. Castle Rock does not show by facts or otherwise any reason to believe that the retention pond will release radioactive effluents into the subsoils or that the low-level waste holding cell, located in the cask transfer building, will release radiation to the surrounding area, necessitating monitoring. These claims do not provide any reason to believe a deficiency exists in the Application. Therefore, these issues should not be considered in the proceeding.

Finally, Castle Rock takes issue with the Applicant's statement in the SAR that 10 C.F.R. § 72.126(c), which requires the means to measure effluents, is not applicable to its operations since there are no effluents (Castle Rock Contentions at 46-47). Castle Rock claims: "PFS ignores the language of § 72.126(c), which states that 'effluent [monitoring] systems <u>must</u> be provided.'" (*Id.*; emphasis in original). However, Castle Rock ignores the language of § 72.126(c), which states that "<u>[a]s appropriate for the handling and storage system</u>, effluent systems must be provided" (*Id.*, emphasis added). Thus, no basis has been provided to support OGD's belief that the Applicant's handling and storage system will require effluent monitoring. *See, e.g.*, SAR at 7.6-3. Castle Rock has not demonstrated that a genuine issue of material fact exists with respect to this contention, and it therefore should be rejected.

Castle Rock Contention 12. Permits, Licenses and Approvals.
The Application violates NRC regulations and NEPA because the ER fails to address adequately the status of compliance with all Federal, State, regional and local permits, licenses and approvals required for the proposed PFSF facility. See, e.g., 10 C.F.R. §§ 51.45(d) and 51.71(d).

Staff Response:

The Staff does not oppose the admission of this contention.

Castle Rock Contention 13. Inadequate Consideration of Alternatives.
The Application violates NRC regulations and NEPA because the ER fails to give adequate consideration to alternatives, including alternative sites, alternative technologies, and the no-action alternative. See 10 C.F.R. § 51.45(c).

Staff Response:

The Staff does not oppose the admission of this contention, to the extent that it is limited to the discussion in the ER regarding siting alternatives and the no action alternative. The Staff opposes the admission of Castle Rock's issue pertaining to the Applicant's failure to consider "legislation moving through Congress at the present time which would address the stated concerns of PFS" (Castle Rock Contentions at 52). Nowhere does Castle Rock provide any support for its claim that NEPA requires the Applicant to include an analysis of the prospect of pending legislation. Speculation regarding the resolution of issues pending in another forum are not required to be considered under NEPA. *See Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-82-45, 15 NRC 1527, 1528-30 (1982) (litigation pending in other forums which may some day have an impact do not need consideration under NEPA). Therefore, this issue is not appropriate for litigation in this proceeding. In addition, Castle Rock sets forth what it believes are several costs of the proposed action that the Applicant should have considered. Included in this list is Castle Rock's assertion

that aspects of the proposed action are contrary to "Congress's mandate"-- presumably a reference to the NWPA. For the reasons set forth in the Staff's response to Utah Contention A, issues pertaining to the authority of the Commission to license this facility constitute an impermissible attack on the Commissions' regulations and are not a proper subject for litigation in this proceeding. Finally, Castle Rock does not set forth what "alternative technologies" the Applicant has failed to discuss, and therefore, this issue lacks the requisite basis and should be rejected.

> **Castle Rock Contention 14. Inadequate Consideration of Impacts.**
> The Application violates NRC regulations and NEPA because the ER fails to give adequate consideration to the adverse impacts of the proposed PFSF, including the risk of transportation accidents, the risks of contamination of human and livestock food sources, the risks of contamination of water sources (including ground water contamination arising from leaching of contaminated soils), the risks of particulate emissions from construction and cement activities and similar risks. 10 C.F.R. § 72.100.

Staff Response:

In this contention, Castle Rock asserts that the Applicant's Environmental Report fails to give adequate consideration to various potential impacts resulting from licensing of the ISFSI. However, while Castle Rock alleges that the Environmental Report's treatment of these matters is "general and abstract" or is not "meaningful" (Castle Rock Contentions at 53), it fails to point to any specific language or analysis which it contends is inadequate, and it fails to provide any information which would support its claim that the Environmental Report's evaluation and conclusions with respect to these matters is deficient.

Similarly, while Castle Rock contends that the Applicant's socioeconomic analysis "totally fails to consider the loss of property values, economic opportunities and other business

and economic losses" that will be created by "the mere existence of the PFSF" (*Id.*), it failed to provide any information which would indicate that those purported impacts are reasonably foreseeable. Nor does Castle Rock's assertion that it "intend[s] to offer evidence with respect to the true costs of the proposed facility" satisfy its obligation to provide at least some showing, as required by 10 C.F.R. § 2.714(b)(2)(ii) and (iii), of a "concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing," or "sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact." Accordingly, Contention 14 lacks adequate basis and should be rejected.

Castle Rock Contention 15. Cost-Benefit Analysis.
The Application violates NRC regulations and NEPA because the ER does not contain a reasonable and legitimate comparison of costs and benefits. 10 C.F.R. § 51.45(c).

Staff Response:

The Staff opposes the admission of this contention on the grounds that it does not provide information sufficient to show that a genuine dispute exists with the Applicant on a material issue of fact. *See* 10 C.F.R. § 2.714(b)(2)(iii).

In this contention, Castle Rock contends that the Applicant's cost-benefit analysis is "over simplistic and fails to account for the true environmental, safety, social and economic costs" (Castle Rock Contentions at 53). As support for its claim, Castle Rock asserts that the Applicant fails to consider losses to property values, economic and business opportunities, and that the Applicant has failed to provide its financial arrangements with the Goshutes. However, Castle Rock has not provided sufficient information by facts or expert opinion to show that a genuine

dispute exists with the Applicant concerning its discussion of the cost benefit analysis. Castle Rock's expressed intention to offer evidence with respect to the true costs at a later date fails to satisfy its obligation to provide sufficient basis for the admission of the contention at this time. Therefore, this contention should be rejected.

> **Castle Rock Contention 16. Impacts on Flora, Fauna and Existing Land Uses.** The Application violates NRC regulations and NEPA because the ER does not adequately address the impact of the proposed PFSF upon the agriculture, recreation, wildlife, endangered or threatened species, and land quality of the area. See 10 C.F.R. § 72.100(b).

Staff Response:

The Staff does not oppose the admission of this contention, limited to the ER discussion regarding the Pohl's milkvetch. The Staff opposes the admission of the remaining issues associated with this contention on the grounds that they constitute an attack on the Commission's regulations defining the term "region," and do not provide sufficient facts or expert opinion to show that a genuine issue of material facts exists. *See* 10 C.F.R. § 2.714(b)(iii); 10 C.F.R. § 2.758 (Commission's regulations are not subject to attack in licensing proceedings).

In this contention, Castle Rock first asserts that the word "regional" should be interpreted to refer to all of northwestern Utah and, therefore, the impact analysis is too narrow (Castle Rock Contentions at 54). Castle Rock, however, has not provided sufficient information to show why the Applicant's discussion of regional impacts is too narrow. In addition, Castle Rock's bare assertion ignores the Commission's definition of a region. *See* 10 C.F.R. § 72.3 (region is "the geographical area surrounding and including the site, which is large enough to contain all the features related to a phenomenon or to a particular event that could potentially impact the safe or environmentally sound construction, operation or decommissioning" of an ISFSI).

Therefore, this issue constitutes an impermissible attack on the Commission's regulations and is not an appropriate issue for litigation.

In addition, Castle Rock asserts that the ER does not provide sufficient facts concerning the 26 different species listed to determine the extent of impacts on those species (Castle Rock Contentions at 54). As support for this claim, Castle Rock cites examples of four species that it believes have not been adequately discussed in the ER (*Id.* at 54-55). Except for Castle Rock's discussion of the Pohl's milkvetch, Castle Rock does not show by facts or expert opinion any dispute with the Applicant that small green parsley has not been documented to occur within five miles of the ISFSI site or that the pocket gopher could occur within the five mile radius. (Castle Rock mentions the peregrine falcon but does not address it.) Instead, Castle Rock claims that the Applicant must conduct a survey to definitively determine the existence of these species and that relying on "previously written, general literature searches" is inadequate (*Id.* at 54). Castle Rock does not reference any requirement that a survey be performed and does not explain why the data relied upon by the Applicant is in error or otherwise inadequate. For these reasons, this contention should be admitted as limited to the Applicant's discussion of the Pohl's milkvetch.

> **Castle Rock Contention 17. Inadequate Consideration of Land Impacts.** The Application violates NRC regulations and NEPA because the ER does not adequately consider the impact of the facility upon such critical matters as future economic and residential development in the vicinity, potential differing land uses, property values, the tax base, and the loss of revenue and opportunity for agriculture, recreation, beef and dairy production, residential and commercial development, and investment opportunities, all of which have constituted the economic base and future use of Skull Valley and the economic interests of Petitioners, or how such impacts can and must be mitigated. See e.g., 10 C.F.R. §§ 72.90(e), 72.98(c)(2) and 72.100(b).

Staff Response:

The Staff does not oppose the admission of this contention.

Castle Rock Contention 18. Impacts on Public Health.
The Application violates NRC regulations and NEPA because the ER does not adequately consider the impact of the proposed PFSF upon the production of the agricultural products for human consumption by Petitioners, their tenants and others in the area. See 10 C.F.R. § 72.98(b).

Staff Response:

The Staff opposes the admission of this contention on the grounds that it does not provide information sufficient to show that a genuine dispute exists with the applicant on a material issue of fact. See 10 C.F.R. § 2.714(b)(2)(iii).

As the basis for this contention, Castle Rock claims that the ER fails to consider the impacts on the regional population associated with potential contamination of plants or animals destined for human consumption and that the ER does not contain a detailed discussion of the current ranching, farming and livestock production activities (Castle Rock Contentions at 58). The regulation cited by Castle Rock provides that the extent of regional impacts must be determined "on the basis of potential measurable effects" on the environment. 10 C.F.R. § 72.98(b). Castle Rock has not shown by facts or expert opinion any reason to believe that the proposed ISFSI activities will have measurable effects on the farming, ranching, and livestock activities. In addition, Castle Rock has not shown by facts or expert opinion any reason to believe that contamination of plants or animals in the food chain is a plausible or potential impact associated with this type of facility. Therefore, this contention lacks the requisite basis and should be rejected.

Castle Rock Contention 19. Septic Tank.
The Application violates NRC regulations and NEPA because the ER does not adequately consider the impact of a septic tank system on the ground water and ecology of the area and the related potential of this system to injure Petitioners. See 10 C.F.R. §§ 72.98(b) and 72.100(b).

Staff Response:

The Staff opposes the admission of this contention on the grounds that it lacks basis. While Castle Rock expresses concern with respect to the planned construction and use of a septic tank system (Castle Rock Contentions at 58), it does not point to any language or discussion in the application, environmental report or safety analysis which it believes may be defective, contrary to the requirements of 10 C.F.R. § 2.714(b((ii)-(iii). Nor is any information provided from external sources which would provide a basis for any concern over this aspect of the instant ISFSI application, which might support the admission of this contention. Accordingly, this contention should be rejected.

Castle Rock Contention 20. Selection of Road or Rail Access to PFSF Site.
The Application violates NRC regulations and NEPA because it fails to describe the considerations governing selection of either the Skull Valley road or the rail spur access alternative over the other and the implications of such selection in light of such considerations. See 10 C.F.R. §§ 51.45(c) and 72.100(b).

Staff Response:

The Staff does not oppose the admission of this contention.

Castle Rock Contention 21. Exact Location of Rail Spur.
The Application violates NRC regulations and NEPA because it fails to describe in detail the route of the potential rail spur, property ownership along the route, and property rights needed to construct and operate the rail spur. See 10 C.F.R. § 72.90(a).

Staff Response:

The Staff does not oppose the admission of this contention, which asserts that the location of any rail spur which the Applicant proposes to build must be identified and the environmental impacts of constructing and utilizing such a spur must be evaluated, assuming the rail spur alternative is selected by the Applicant.

Castle Rock Contention 22. Road Expansion Authorizations.
The Application violates NRC regulations and NEPA because it fails to describe adequately the nature and ownership of right-of-way that would permit PFS's contemplated improvements of the Skull Valley Road and what permits and approval from, or agreements with, the owner or owners thereof are needed for such improvements. See 10 C.F.R. § 72.90(a).

Staff Response:

The Staff does not oppose the admission of this contention insofar as it asserts that the Applicant has not identified any governmental permits or approvals which may be necessary for it to construct enhancements to the Skull Valley Road. *See, e.g.,* ER, § 9.4. However, Castle Rock has provided no information to support its assertion that the Applicant is "demonstrably incorrect" in stating that such road enhancements could occur entirely "within the existing right-of-way" (Castle Rock Contentions at 62). Accordingly, while Castle Rock states that it "desire[s] an opportunity to present evidence to this effect at a hearing" (*Id.*), this aspect of the contention must be rejected for failing to provide a "concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing," and sufficient information to show a genuine dispute of fact, as required by 10 C.F.R. § 2.714(b)(ii) and (iii).

Castle Rock Contention 23. Existing Land Uses.
The Application violates NRC regulations and NEPA because it fails to describe with particularity, using appropriate maps, land use patterns and ownership as to lands in the vicinity of the proposed PFSF and along the 24 mile access route, including without limitation, homes, outbuildings, corrals and fences, roads and trails, pastures, crop producing areas, water wells, tanks and troughs, ponds, ditches and canals. See 10 C.F.R. §§ 72.90(a) & (c), 72.98(b).

Staff Response:

The Staff opposes the admission of this contention, in that it consists of little more than Castle Rock's personal view of what applicable Commission requirements for an environmental report ought to be. *Peach Bottom, supra,* 8 AEC at 20-21. While Castle Rock cites 10 C.F.R. §§ 72.90(a) and (c), and 72.98(b), those regulations do not require, as suggested by Castle Rock, that ISFSI applications must "describe with particularity, using appropriate maps, land use patterns and ownership," including such property-specific details as "homes, outbuildings, corrals and fences, roads and trails, pastures, crop producing areas, water wells, tanks and troughs, ponds, ditches and canals" or "grazing patterns" (Castle Rock Contentions at 23-24).[79]

Contrary to Castle Rock's understanding, 10 C.F.R. § 72.90(c) requires consideration of design basis external events that could affect the ISFSI, and is inapplicable to the matters (*e.g.*, houses and grazing patterns) listed in this contention. Further, while § 72.90(a) requires an evaluation of "site characteristics that may directly affect the safety or environmental impact of the ISFSI," it also does not require a listing of the matters described in the contention. Finally, while 10 C.F.R. § 72.98(b) requires an evaluation of "regional" impacts, this does not

[79] The extent to which the proposed ISFSI may be expected to affect local water wells is a matter appropriate for consideration, and is addressed in the Applicant's Environmental Report. *See* ER, § 4.2.4. Castle Rock has not challenged the adequacy of that discussion in this contention.

require a detailed property-by-property evaluation, as asserted by Castle Rock. Accordingly, this contention should be rejected.

> **Castle Rock Contention 24. (Incorporation by Reference).**
> Petitioners Castle Rock and Skull Valley Co. by this reference adopt in its entirety each and every contention filed by the State of Utah and incorporate each herein by this reference.

Staff Response:

The Staff opposes the admission of this contention on the grounds that it is not actually a contention itself, but merely incorporates other contentions by reference. As such, Contention 24 fails to present a litigable issue for adjudication in this proceeding. *Consumers Power Co.* (Big Rock Point Plant), LBP-80-4, 11 NRC 117, 122 (1980). Further, Contention 24 fails to provide a "concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing," or any references to sources or documents on which the petitioner intends to rely to establish those facts or expert opinion at hearing. As such, the contention fails to satisfy the requirements of 10 C.F.R. § 2.714(b)(2) and must be rejected.

4. <u>The Confederated Tribes of the Goshute Reservation</u>

In their statement of contentions, the Confederated Tribes and David Pete filed a total of seven contentions, two of which seek to adopt certain contentions filed by other petitioners in this proceeding. Although the Staff believes that the Confederated Tribes and Mr. Pete have not established their standing to intervene and their contentions therefore need not be considered, the Staff here presents its evaluation of their contentions.

Confederated Tribes Contention A. Decommissioning Plan Deficiencies. PFS has not provided reasonable assurance that the ISFSI can be cleaned up and adequately restored upon cessation of operations.

Staff Response:

The Staff opposes the admission of this contention on the grounds that it (a) constitutes an impermissible attack upon the Commission's regulations, (b) does not show that a genuine dispute exists by reference to the license application, and (c) fails to set forth facts or expert opinion to support the underlying assumptions of the assertions contained in the basis statements. *Peach Bottom, supra,* 8 AEA at 20-21; 10 C.F.R. § 2.714(b)(iii).

The Confederated Tribes make four separate assertions, which the Staff considers to be bases, for the contention. The Tribes first assert that the Applicant has not fully considered cost factors associated with the "relative unavailability of disposal sites" and that no information has been provided regarding "the consideration being offered to the Skull Valley Band for permission to locate this facility on the Band's Reservation" (Tribe Contentions at 2). The Commission's requirements concerning the preliminary decommissioning plan are located at 10 C.F.R. § 72.30 (a). That regulation states that the plan must contain sufficient information regarding proposed practices and procedures for disposal of residual radioactive materials following removal of spent fuel. The "unavailability of disposal sites" does not need to be considered in the decommissioning plan. Therefore, because the Tribes have not shown that the Applicant is required to discuss the ultimate availability of disposal sites at this initial licensing stage, this basis is not adequate to support the contention. Further, the Tribes do not explain why it is necessary to include the "consideration" that is to be paid to the Skull Valley Band as part of the decommissioning plan.

The Confederated Tribes next state that the application fails to include a specific plan for disposal of the stored radioactive materials "or how much such disposal will cost" (Tribe Contentions at 3). The Commission's regulations, however, do not require the Applicant to consider disposal of the spent fuel as part of its proposed decommissioning plan. 10 C.F.R. § 72.30(a) (decommissioning plan is to include proposed practices and procedures for disposal of residual radioactive materials "after all spent fuel or high-level radioactive waste has been removed"). Therefore, this basis is not adequate to support the contention.

The Confederated Tribes next assert that the Applicant does not provide specific information to define the amount of funds required for decommissioning, and, thus, the Applicant should be required to "more adequately explain the derivation of its anticipated costs to demonstrate that its estimates are rational and accurate" (Tribe Contentions at 3). The Tribes, however, do not specify with supporting facts or expert opinion why the Applicant's cost estimate is alleged to be deficient. In addition, the Tribes cite to, among other things, the requirements in 10 C.F.R. Part 70 (*Id.*). However, ISFSIs are excluded from the general requirements of Part 70. *See* 10 C.F.R. § 70(b)(1). Therefore, this basis is not adequate to support the contention.

Finally, the Confederated Tribes claim that the Applicant's description of the decommissioning process is not adequate in that it does not include "full details of decommissioning and dismantlement of the ISFSI" (Tribe Contentions at 3). The Tribes state that the Applicant does not explain whether it intends to leave buildings standing "that may have been radioactively contaminated" (*Id.*). The Tribes, however, do not show that a genuine

dispute exists by reference to the license application and by indicating with specificity what processes the Applicant has failed to address.

As to the assertion that the Applicant has not stated whether it intends to leave buildings standing that have been contaminated, the Tribes do not address the Applicant's discussion regarding decontamination of the Canister Transfer Building.[80] The Tribes do not show by facts or expert opinion that a genuine dispute exists with respect to the Applicant's discussion of its decommissioning processes. Further, decommissioning activities are not required to include the removal and disposal of nonradioactive structures and materials beyond that necessary for license termination. *See* Statement of Consideration, "General Requirements for Decommissioning," 53 Fed. Reg. 24,018, 24,019 (June 27, 1988). Therefore, this basis is not sufficient to support the contention. Since none of the Confederated Tribes' stated bases are sufficient to support this contention, the contention should be rejected.

Confederated Tribes Contention B. Lack of Protection Against Worst Case Accidents.
PFS has violated both NRC regulations and NEPA requirements by not adequately dealing with certain reasonably foreseeable accidents and failing to fully evaluate their potential impacts on health and the environment, to protect against them in an adequate manner, or to provide adequate emergency response measures.

Staff Response:

In this contention, the Confederated Tribes assert that the Applicant's emergency plan fails to adequately consider the potential consequences of low probability worst-case accidents,

---

[80] *See* LA, Appendix B, Chapter 6 ("Decommissioning Facilitation"). The Applicant states that, with respect to the Canister Transfer Building, "decontamination can be performed by wiping down surfaces or stripping the coating, without the need to use more aggressive methods (*e.g.* abrasive blasting, scabbling) that require removal of surface concrete." *Id.* at 6-3.

including a potential terrorist attack, contrary to the requirements of 10 C.F.R. § 70.22; that it has failed to obtain "commitments from local emergency responders"; and that it has failed to provide plans for handling the impacts of "natural disasters such as wildfires" (Tribe Contentions at 4).

The Staff opposes the admission of this contention, except in one limited respect, as set forth below. First, the assertion that the Applicant must comply with 10 C.F.R. § 70.22 is in error, since that section of the regulations does not apply to ISFSIs. *See* discussion *supra*, at 41-46. Second, the assertion that the Applicant is required to consider the consequences of various worst-case accidents ignores the Commission's determination, in adopting 10 C.F.R. § 72.32, that such accidents have been considered and are reflected in its emergency planning regulations for ISFSIs, and thus need not be considered individually in site-specific ISFSI applications.[81] Third, the assertion that the Applicant is required to obtain "commitments from local emergency responders" is not based on any regulatory requirement applicable to ISFSIs, and ignores the Commission's explicit determination that "arrangements . . . (such as letters of agreement)" are not required. Statement of Consideration, *supra*, 60 Fed. Reg. at 32,435.

Finally, while the Confederated Tribes assert that the Applicant has not adequately considered the effects of natural disasters such as wildfires, and provide references to wildfire occurrences in the area, they have not shown any reason to believe that events other than

---

[81] *See* discussion *supra*, at 42-47; Statement of Consideration, "Emergency Planning Licensing Requirements for Independent Spent Fuel Storage Installations (ISFSI) and Monitored Retrievable Storage Facilities (MRS)," 60 Fed. Reg. 32,430, 32,435 (June 22, 1995); *see also*, *Public Service Co. of New Hampshire* (Seabrook Station, Unit 1), CLI-90-2, 31 NRC 197, 215, 217 (1990) (Commission's emergency planning regulations for power reactors render unnecessary any consideration of specific accident sequences and their potential does consequences).

wildfires have been inadequately considered. Accordingly, the Staff opposes the admission of this contention with respect to natural disasters other than wildfires, but does not oppose the admission of this contention limited to its assertion that the Applicant has not adequately considered the effects of wildfires on its facility. In all other respects, the contention should be rejected.

> **Confederated Tribes Contention C. Inadequate Assessment of Costs Under NEPA.**
> PFS has not adequately described or weighed the environmental, social, and economic impacts and costs of operating the ISFSI. Indeed, there is no adequate benefit-cost analysis which even demonstrates a need for the ISFSI. On the whole, Petitioners contend that the costs of the project far outweigh the benefits of the proposed action. See, e.g., *Public Service Co. of New Hampshire,* 6 NRC 33, 90 (1977).

Staff Response:

The Staff opposes the admission of this contention on the grounds that it (a) constitutes an impermissible attack upon the Commission's regulations, (b) does not show that a genuine dispute exists by reference to the license application, and (c) fails to set forth facts or expert opinion to support the underlying assumptions of the assertions in the basis statements. 10 C.F.R. §§ 2.714(b)(iii), 2.758(a).

The Confederated Tribes make six separate assertions in support of this contention. The Tribes first assert that the Applicant fails to "discuss the environmental impacts caused by the storage of a large amount of radioactive waste, for which no realistic disposal options currently exist" (Tribe Contentions at 5). The Staff opposes this basis because it is constitutes an impermissible attack upon the Commission's regulations at 10 C.F.R. § 51.61, which provide that "no discussion of the environmental impact of the storage of spent fuel at an ISFSI beyond

the term of the license . . . is required in an environmental report submitted by an applicant." Therefore, this basis should be rejected.

The Confederated Tribes next state that the Applicant fails to "discuss the environmental impacts cause (sic) by creating an ISFSI without an adequate decommissioning plan for the facility" (Tribe Contentions at 5). This basis does not state why the Tribes consider the decommissioning plan to be inadequate and, therefore, it should be rejected.

The Confederated Tribes state that the Applicant fails to "discuss the environmental impacts resulting from severe low probability events which may cause the release of discharges which exceed legal limits" (*Id.*). The Tribes do not specify why they believe the Applicant's discussion of postulated accidents (ER § 5.1.2) and the impacts of accidents on the surrounding population (ER § 5.1.3) are deficient. Nor do the Tribes provide a description of the accident that they believe the Applicant has failed to address, along with supporting facts or expert opinion as to why that accident should be analyzed. Therefore, this basis is inadequate.

The Confederated Tribes state that the Applicant fails to "discuss the environmental impacts stemming from underestimating the costs associated with decommissioning the project." (Tribe Contentions at 5). However, the Tribes fail to show through facts or expert opinion why they consider the decommissioning costs to have been "underestimated." Therefore, this basis is inadequate.

The Confederated Tribes state that the Applicant fails to "present a complete or adequate assessment of the potential environmental impacts of the ISFSI on ground and surface water" (Tribe Contentions at 5). However, the Tribes ignore the Applicant's discussion of the effects

on hydrological resources in the ER (*See* ER §§ 4.1, 4.2.4). For this reason, this basis should be rejected.

The Confederated Tribes claim that the ISFSI will have "a dramatic economic and sociological impact on the minority community residing on the Skull Valley Reservation." (Tribe Contentions at 6). They cite to a 1987 study by the United Church of Christ which states that "race proved to be the most significant among variables tested in association with the location of commercial hazardous waste facilities." (*Id.*). The Tribes further state that no attempt has been made to avoid or mitigate the disparate impact of the proposed facility on the minority community (*Id.*). The Tribes, however, do not state what the purported impact will be and do not address the Applicant's consideration of Environmental Justice issues, contained in Chapter 7 of the ER. This basis is therefore not adequate to support this contention.

Finally, the Confederated Tribes state that no assessment of the impacts upon Indian religious ceremonies or visits to the Skull Valley burial ground has been made (Tribe Contentions at 6). Again, the Tribes have not demonstrated that a material dispute exists with the Applicant by showing with specific facts or expert opinion any reason to believe there will be impacts to Indian religious ceremonies or burial grounds. 10 C.F.R. § 2.714(b)(iii). This basis, thus, is not adequate to support this contention. Therefore, this contention should be rejected.

Confederated Tribes Contention D. Inadequate Discussion of No-Action Alternative.

PFS has failed to satisfy the requirements of NEPA because it does not adequately discuss the alternatives to the proposed action.

Staff Response:

The Staff opposes the admission of this contention, on the grounds that it fails to provide any reason for its assertion that the Applicant has failed to discuss the no-action alternative. *See* 10 C.F.R. § 2.714(b)(iii) (sufficient information must be provided to show a genuine dispute exists with the applicant).

In a one paragraph discussion, the Confederated Tribes assert that the Applicant has failed to satisfy NEPA in that it has "failed to discuss the no-action alternative" (Tribe Contentions at 7). However, the Applicant has provided a description of the "No Build Alternative," at section 8.1.2. of the ER. The Tribes' assertion is thus in error; and, further, they have not indicated any reason to believe the Applicant's discussion of the matter is deficient. Accordingly, this contention should be rejected.

Confederated Tribes Contention E. Failure to Give Adequate Consideration to Adverse Impacts on the Historic District.
PFS has failed to comply with NEPA in that it has not adequately discussed the impacts upon the historic district and the archeological heritage of the area.

Staff Response:

The Staff opposes the admission of this contention on the grounds that it is altogether lacking in basis. The Confederated Tribes have not provided any facts or expert opinion to support their assertion that the Applicant's Environmental Report (ER) fails to address in an appropriate manner potential impacts on "the historic district and the archeological heritage of the area." The only information provided to support this contention is their reference to the Pony Express Trail, located some ten miles south of the Skull Valley Reservation (Tribe Contentions at 7-8). No reason has been provided, however, to suggest that the ER must

consider potential construction and/or operational impacts at such a distant location, or that the Pony Express Trail will be impacted in any manner by this facility. *See* discussion *supra*, at 63-64 (Utah Contention W). For example, the Commission has concluded, in adopting 10 C.F.R. § 72.32, that significant offsite radiological consequences are unlikely to occur in the event of an accident at an ISFSI (*see* discussion *supra*, at 42-46). In the absence of such information, the contention lacks the basis required by 10 C.F.R. § 2.714(b)(2)(ii), and should be rejected.

Confederated Tribes Contention F. Failure to Adequately Establish Financial Qualifications.
PFS has failed to demonstrate that it is financially qualified to build and operate the ISFSI.

Staff Response:

The Staff does not oppose the admission of this contention, limited to the matters raised in the supporting statements of the basis.

Confederated Tribes Contention G. (Incorporation by Reference).
The [Petitioner] hereby adopts and incorporates by reference the following Contentions and the Bases stated by Castle Rock Land & Livestock, L.C.:

> 1. Absence of NRC Authority. The Application is defective because NRC does not have authority to license a large-scale, off-site facility for the long-term storage of spent nuclear fuel such as the proposed ISFSI.
>
> 2. Non-Compliance with Regulations. PFS's Application is defective because it seeks a license for an ISFSI pursuant to 10 C.F.R. Part 72. However, the proposed storage installation is not an ISFSI and is otherwise not licensable under 10 C.F.R. Part 72.
>
> 3. Application for Permanent Repository. The proposed PFSF is properly characterized as a de facto permanent repository, and

the Application fails to comply with the licensing requirements for a permanent repository.

4. Inadequate Financial Qualifications. The Application does not provide assurance that PFS will have the necessary funds to cover estimated construction costs, operating costs, and decommissioning costs, as required by 10 C.F.R. §72.22(e).

5. Regional and Cumulative Environmental Impacts. The Application fails to adequately discuss the regional and cumulative environmental impacts of the proposed PFSF, as required by 10 C.F.R. §§ 72.98(b) & c), NEPA.

Staff Response:

The Staff opposes the admission of this contention on the grounds that it is not actually a contention itself, but merely incorporates other contentions by reference. As such, Contention G fails to present a litigable issue for adjudication in this proceeding. *Consumers Power Co.* (Big Rock Point Plant), LBP-80-4, 11 NRC 117, 122 (1980). Further, Contention G fails to provide a "concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing," or any references to sources or documents on which the petitioner intends to rely to establish those facts or expert opinion at hearing. As such, the contention fails to satisfy the requirements of 10 C.F.R. § 2.714(b)(2) and must be rejected.[82]

---

[82] The Staff notes that petitioners may be permitted to adopt contentions filed by others, but that procedure does not result in the acceptance or creation of a separate contention for the adopting party. *See, e.g., Sequoyah Fuels Corp.* (Gore, Oklahoma Site), 40 NRC 9, 15 (1994); *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-82-91, 16 NRC 1364 (1982); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1083 (1982); *but see Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1453-54 (1982) (request denied).

Confederated Tribes Contention H. (Incorporation by Reference).
The [Petitioner] hereby adopts and incorporates by reference the Contentions and the Bases stated by the State of Utah including without limit the following:

> A. Statutory Authority. Congress has not authorized NRC to issue a license to a private entity for 4,000 cask, away-from reactor, centralized, spent nuclear fuel storage facility.
>
> B. License Needed for Intermodal Transfer Facility. PFS's application should be rejected because it does not seek approval for receipt, transfer, and possession of spent nuclear fuel at the Rowley Junction Intermodal Transfer Point, in violation of 10 C.F.R. §72.6 c)(1).

Staff Response:

The Staff opposes the admission of this contention for the reasons set forth in response to Confederated Tribes Contention G, *supra*.

5. The Skull Valley Band of Goshute Indians

In their statement of contentions, the Skull Valley Band of Goshutes present a single contention for adjudication in this proceeding, as follows:

Skull Valley Goshute Contention.
The License Application for the Private Fuel Storage Facility filed by Private Fuel Storage, LLC is meritorious and should be granted.

Goshute Contentions, at 2. In support of this contention, they cite the PFS license application, and state that they are "greatly interested and affected by the success, or lack thereof, of the license application and siting of the proposed facility" and that they have no dispute with the Applicant. *Id.* Further, inasmuch as they support the license application, they assert that they are not required to provide further bases in support of their contention, citing the Appeal Board's

decision in *Nuclear Engineering Co.* (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737 (1978).

Staff Response:

The Staff agrees with the assertion of the Skull Valley Band of Goshutes that, as proponents of the license, they are not required to state further bases in support of their contention. The Appeal Board addressed this question in *Sheffield* (ALAB-473, *supra*), stating, in *dictum*, as follows:

> Because of our determination on the standing question [that the petitioner had not shown a potential injury in fact], we need not decide the correctness of the Licensing Board's additional ruling that the petition also failed to meet the contentions requirement contained in 10 CFR 2.714(a). We are nonetheless constrained to note our belief that, in the case of a petitioner who supports the license application, <u>all that need be initially asserted in fulfillment of that requirement is that the application is meritorious and should be granted. Indeed, it would be patently unreasonable to expect more of such a petitioner in advance of his being informed of the basis of any opposition which might be filed to the application.</u>
> . . . Once, however, those issues have surfaced, the Licensing Board is entirely free to call upon any intervenors supporting the license application to take a position on them.

Id., 7 NRC at 743 n.5; emphasis added.[83] Accordingly, at this stage of the proceeding, no

---

[83] The Commission cited this ruling in *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64 (1994), where it affirmed a Licensing Board's determination to grant intervenor status to a petitioner who supported an NRC Staff enforcement order against an NRC licensee and its parent company, applying the "outcome" test stated in Sheffield (*i.e.*, persons should be permitted to intervene in NRC adjudicatory proceedings if they "can show that they have a cognizable interest that may be adversely affected if the proceeding has one outcome rather than another."). CLI-94-12, 40 NRC at 69. It should be noted that the Commission did not address, in *Sequoyah Fuels*, the admissibility of contentions filed by petitioners who support a proposed order (or licensing action), inasmuch as the Licensing Board had separately admitted two of the petitioner's contentions and that issue was not then before the Commission. *See* CLI-94-12, *supra*, 40 NRC at 67.

further statement of basis appears to be required in support of the Skull Valley Goshutes' contention beyond their assertion that the license application provides the basis for their contention.[84]

CONCLUSION

For the reasons set forth above, the Staff submits that the Petitioners' contentions should be admitted to the extent and in the manner set forth above.

Respectfully submitted,

Sherwin E. Turk
Counsel for NRC Staff

Catherine L. Marco/SET
Catherine L. Marco
Counsel for NRC Staff

Dated at Rockville, Maryland
this 24th day of December 1997

[84] Upon the Licensing Board's determination of which contentions will be admitted for litigation in this proceeding, it would be appropriate for the Skull Valley Band of Goshutes to specify the issues on which they intend to participate.

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)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO CONTENTIONS FILED BY (1) THE STATE OF UTAH, (2) THE SKULL VALLEY BAND OF GOSHUTE INDIANS, (3) OHNGO GAUDADEH DEVIA, (4) CASTLE ROCK LAND AND LIVESTOCK L.C., ET AL., AND (5) THE CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION AND DAVID PETE" 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 24th day of December, 1997:

Office of the Secretary
ATTN: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

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

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)

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to JRK2@NRC.GOV)

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

Office of the Commission Appellate
Adjudication
Mail Stop: 16-G-15 OWFN
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Denise Chancellor, Esq.*
Fred G. Nelson, 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 Dep't 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)

Diane Curran, Esq.*
Harmon, Curran & Spielberg
2001 S Street, N.W., Suite 430
Washington, D.C. 20009
(E-mail copy to dicurran@aol.com)

Jay E. Silberg, Esq.*
SHAW, PITTMAN, POTTS &
TROWBRIDGE
2300 N Street, N.W
Washington, DC 20037-8007
(E-mail copy to jay_silberg
@shawpittman.com)

Jean Belille, Esq.*
Land and Water Fund of the Rockies
2260 Baseline Road, Suite 200
Boulder, CO 80302
(E-mail copy to landwater@lawfund.org)

Danny Quintana, Esq.*
Danny Quintana & Associates, P.C.
50 West Broadway
Fourth Floor
Salt Lake City, UT 84101
(E-mail copy to quintana
@Xmission.com)

Clayton J. Parr, Esq.*
PARR, WADDOUPS, BROWN
GEE and LOVELESS
185 S. State St., Suite 1300
P.O. Box 11019
Salt Lake City, UT 84147-0019
(E-mail copy to karenj@pwlaw.com)

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

Sherwin E. Turk

Sherwin E. Turk
Counsel for NRC Staff