

May 13, 1998

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 MOTIONS  
FOR RECONSIDERATION OF LBP-98-7,  
FILED BY THE APPLICANT, THE STATE  
OF UTAH AND OHNGO GAUDADEH DEVIA

INTRODUCTION

Pursuant to 10 C.F.R. § 2.730 and the Licensing Board's scheduling Order of May 1, 1998,<sup>1</sup> the NRC Staff ("Staff") hereby responds to the motions for reconsideration filed by Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS"), the State of Utah, and Ohngo Gaudadeh Devia ("OGD"),<sup>2</sup> concerning the Licensing Board's Memorandum and Order ruling

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<sup>1</sup> See "Order (Granting Motions to Extend Time for Filing Reconsideration Motions and Joint Status Report and to Exceed Page Limitation)," dated May 1, 1998, at 2.

<sup>2</sup> See (1) "Applicant's Motion for Reconsideration and Clarification," dated May 6, 1998 ("Applicant's Motion" or "App. Mo."); (2) "State of Utah's Motion for Clarification and Reconsideration of LBP-98-7," dated May 6, 1998 ("Utah's Motion" or "Utah Mo."); and (3) "Motion and Memorandum of Ohngo Gaudadeh Devia [OGD] Requesting Reconsideration of Contentions," dated May 5, 1998 ("OGD's Motion" or "OGD Mo.") (although dated and served on May 5, 1998, page one of OGD's Motion is dated April 29, 1998). On May 6, 1998, the NRC Staff also filed a motion for partial reconsideration of the Licensing Board's Order. See "NRC Staff's Motion for Partial Reconsideration of LBP-98-7," dated May 6, 1998 ("Staff's Motion" or "Staff Mo.").

on the admissibility of contentions in this proceeding.<sup>3</sup> The Staff's views with respect to each of those motions are set forth *seriatim* in the following discussion.

### DISCUSSION

#### A. Legal Standards Governing Motions for Reconsideration

A motion for reconsideration is appropriate to point out errors or deficiencies in the prior decision, and may elaborate upon or refine arguments previously advanced; it may not rely upon an entirely new thesis or include new arguments, unless they relate to a Board concern that could not reasonably have been anticipated. *Central Electric Power Cooperative, Inc.* (Virgil C. Summer Nuclear Station, Unit No. 1), CLI-81-26, 14 NRC 787, 790 (1981); *Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-418, 6 NRC 1, 2 (1977); *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-84-10, 19 NRC 509, 517-18 (1984).

At the same time, a motion which constitutes nothing more than a repetition of arguments previously presented does not present a basis for reconsideration. *Nuclear Engineering Co.* (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 5-6 (1980). Rather, the motion should show there is some decision or some principle of law that would have a controlling effect and that has been overlooked, or that there has been a misapprehension or overlooking of the facts. *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-94-31, 40 NRC 137, 140 (1994). *Cf. Philadelphia Electric Co.*

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<sup>3</sup> "Memorandum and Order (Rulings on Standing, Contentions, Rule Waiver Petition, and Procedural/Administrative Matters)," LBP-98-7, 47 NRC \_\_\_ (Apr. 22, 1998) ("Decision").

(Limerick Generating Station, Units 1 and 2), LBP-83-25, 17 NRC 681, 686 n.5, 687 (1983) (a motion for reconsideration should cast new light on information which has been previously presented, or point out facts that were overlooked or misunderstood).

B. The State of Utah's Motion

In its Motion, the State of Utah seeks clarification by the Licensing Board of the rationale for its ruling dismissing 16 Utah contentions in whole or in part, and their supporting bases. In addition, the State seeks reconsideration and/or clarification of the Licensing Board's rejection of (1) Utah Contention J (Inspection and Maintenance of Safety components, Including Canisters and Cladding); (2) Utah Contention W (Other Impacts Not Considered); and (3) Utah Contention CC (One Sided Cost-Benefit Analysis). The Staff's views with respect to these matters are as follows.

1. With respect to the State's request for clarification of the Licensing Board's rationale for rejecting various contentions in whole or in part, the Staff believes that in numerous instances, the Licensing Board's Decision amply describes the basis for its rulings on contentions. In other instances, however, the basis for the Licensing Board's rulings is difficult to discern due to the absence of supporting analysis, and this is further complicated where the Board's statement of conclusions employs the term "and/or." In such instances, the Staff believes that further elucidation of the Licensing Board's decision is appropriate and could serve to assist the State (and ultimately, the Commission) in understanding the rationale for the Licensing Board's conclusions. Accordingly, the Staff does not oppose the State's motion for

reconsideration, to the extent that it seeks further elucidation of the rationale supporting the Licensing Board's Decision.<sup>4</sup>

2. With respect to Utah Contention J (Inspection and Maintenance of Safety components, Including Canisters and Cladding) (Utah Mo. at 6-10), the State's argument essentially seeks to rebut statements contained in the Applicant's response to the contention, concerning NRC regulatory requirements for canister inspection and repair (*see, e.g.*, Utah Mo. at 7, 8, 9). These arguments do not appear to have been presented by the State in its statement of contentions,<sup>5</sup> or in its written reply to the Applicant's response, filed on January 16, 1998; nor were these matters raised in oral argument at the prehearing conference (*see* Tr. at 202-05, 208-10). Accordingly, it is impermissible for the State to raise these arguments for the first time in a motion for reconsideration.

3. With respect to Utah Contention W (Other Impacts Not Considered) (Utah Mo. at 10-15), the contention had presented very little supporting basis, beyond its attempt to incorporate other contentions. *See* Utah Contentions at 162-64. The Licensing Board admitted a small portion of the contention pertaining to the Rowley Junction intermodal transfer point

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<sup>4</sup> The Staff is aware, of course, that further elucidation of the reasons supporting the Licensing Board's conclusions will require the expenditure of additional time and resources by the Board. At the same time, however, the Staff does not believe that such an additional effort will result in significant delay to the proceeding, since the parties are already in receipt of the Board's rulings as to which contentions will be litigated, and the commencement of litigation need not await receipt of the Board's further elucidation of its Decision. Further, there is no reason to believe that litigation in this proceeding will be concluded more promptly in the absence of further elucidation by the Licensing Board.

<sup>5</sup> *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") at 63-71.

(ITP),<sup>6</sup> and excluded all other portions of the contention. In its Motion, the State essentially argues that the Licensing Board's decision is flawed insofar as it excluded most portions of this contention but admitted certain other contentions which are referred to in the basis for this contention. However, this argument fails to present sufficient grounds for reconsideration, since the contention was inadmissible due to its failure to indicate any portions of the Applicant's Environmental Report that are deficient. See 10 C.F.R. § 2.714(b)(2)(ii); Staff Response to Contentions, at 63-64. In view of the absence of any supporting basis in this contention, there was no reason for the Board to have admitted this contention based only on its reference to other contentions which were separately ruled upon by the Licensing Board,

4. With respect to Utah Contention CC (One Sided Cost-Benefit Analysis) (Utah Mo. at 16-20), the State presents a considerable amount of new argument concerning the legal requirements for an Environmental Report to describe the "no action" alternative, beyond that which was presented in its statement of contentions, or in its Reply of January 16, 1998. However, the State fails to address the central flaws in its contention -- *i.e.*, its failure to point to specific deficiencies in the Environmental Report, and the lack of sufficient factual basis in this contention beyond that which was asserted in support of other contentions which were ruled upon separately by the Board. See Staff Response to Contentions, at 70-71; Tr. at 739. Accordingly, this aspect of the State's Motion should be denied.

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<sup>6</sup> The Staff's motion for reconsideration, filed on May 6, 1998, seeks reconsideration of the admission of the ITP portion of this contention (Staff Mo. at 1 n.1). In the Staff's view, the entire contention should have been excluded. See also, "NRC Staff 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," dated December 24, 1997 ("Staff Response to Contentions"), at 14-19.

For these reasons, the Staff submits that the State's motion for reconsideration of the Licensing Board's rulings on the admissibility of specific contentions, set forth in the Board's Decision, should be denied.

C. OGD's Motion

In its Motion, OGD seeks reconsideration of the Licensing Board's rejection of (1) OGD Contention B (Emergency Plan Fails to Address the Safety of Those Living Outside of the Facility); (2) OGD Contention J (Permits, Licenses and Approvals Required for the Facility); and (3) OGD Contention N (There May Be a Leak That Contaminates the Present Water System).<sup>7</sup> The Staff's views with respect to these matters are as follows.

1. With respect to OGD Contention B (Emergency Plan) (OGD Mo. at 2-3),<sup>8</sup> OGD asserts that the Licensing Board "apparently" dismissed Contention B because "it determined the EP [Emergency Plan] is adequate under the relevant regulations" (OGD Mo. at 2-3). This assertion is incorrect. The Licensing Board did not declare the EP to be adequate, but rather, reached no determination on the merits of the contention. *See* LBP-98-7, slip op. at 128-29.<sup>9</sup> While OGD asserts that 10 C.F.R. § 72.32 requires a "plan that includes a 'commitment to' and

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<sup>7</sup> OGD also asserts that the Decision lacks a sufficient explanation of the rationale underlying the Licensing Board's conclusions. *See* OGD's Motion at 2 n.1.

<sup>8</sup> *See* "Ohngo Gaudadeh Devia's Contentions Regarding the Materials License Application of Private Fuel Storage in an Independent Spent Fuel Storage Installation," dated November 24, 1997 ("OGD Contentions").

<sup>9</sup> The Licensing Board reached certain conclusions concerning the adequacy of the contention as pleaded, including a determination that Contention B failed to establish a genuine dispute with the applicant or challenge the PFS application (Decision at 128-29). Indeed, as stated in the Staff's response to this contention, OGD did not point to any specific language or section of the EP it considered deficient. *See* Staff Response to Contentions, at 79.

a 'means to' promptly notify" offsite response organizations and request offsite assistance" (OGD Mo. at 3; emphasis in original), a reading of that regulation shows that it does not mandate an offsite emergency plan. See 10 C.F.R. § 72.32(a)(8) and (15). On the contrary, as the Staff stated in its response to contentions, the Commission's ISFSI emergency planning regulations do not include an offsite component, since such measures are not required. See Staff Response to Contentions, at 43-48, 79.<sup>10</sup> Further, while OGD asserts that PFS must comply with the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 *et seq.*, OGD does not show that this statute requires PFS to develop an offsite emergency plan -- nor does the statute impose such a requirement.<sup>11</sup>

In sum, OGD's Motion essentially reiterates the statements contained in Contention B, and does not present any reason to believe that the Licensing Board failed to appreciate those assertions or that reconsideration is required.

2. With respect to OGD Contention J (Permits, Licenses and Approvals Required for the Facility) (OGD Motion at 4), OGD asserts that the Licensing Board rejected this

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<sup>10</sup> See 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 (1995).

<sup>11</sup> Pursuant to the Emergency Planning and Community Right-to-Know Act of 1986, the individual States are required to establish emergency response commissions, which then appoint local emergency planning committees; these committees, in turn, are required to prepare comprehensive emergency response plans. See 42 U.S.C. §§ 11001(a)-(c), 11003(a). Facilities subject to the requirements of the statute are required to provide information, notification, and certain reports to the local emergency planning committees in their districts. See 42 U.S.C. §§ 11003(d), 11004, 11022, 11023. The statute does not require covered facilities to engage in offsite emergency planning. The Commission has indicated that the existence of certain reporting requirements in 10 C.F.R. Part 72 does not release NRC-licensed facilities from the statute's reporting requirements. See 10 C.F.R. § 72.32(a)(8), at n.11.

contention “based on the contention’s reference to a trust responsibility and the potential for credible accidents” (OGD Mo. at 4). This assertion is incorrect. The Licensing Board did not find the lack of a trust responsibility, but rather found that this assertion “lacks litigable basis” (LBP-98-7, slip op. at 135) -- *i.e.*, the assertion fails to create a litigable contention. This ruling was correct. *See* Tr. at 512-13. Further, the Licensing Board did not reach a merits determination as to the potential for credible accidents, but merely addressed the admissibility of the contention as pleaded. (*Id.*). Apart from reflecting this misunderstanding of the Licensing Board’s Decision, OGD’s Motion merely reiterates the statements contained in the contention, and fails to present any reason why reconsideration of this ruling is appropriate.

3. With respect to OGD Contention N (There May Be a Leak That Contaminates the Present Water System), OGD asserts that the Licensing Board “focuse[d] again on the trust responsibility owed tribal members by the federal government” (OGD Mo. at 5). OGD, however, does not contest the Licensing Board’s treatment of this issue (*Id.*), but argues instead that the application fails to consider adequately the potential for contamination and drawdown of the local water supply.

In its Motion, OGD presents new bases in support of the contention, consisting of (a) a reference to earlier affidavits describing local water usage, (b) a recent Staff request for additional information (RAI), and (c) a reference to 10 C.F.R. § 72.100 (OGD Mo. at 5-6). OGD’s assertion of these new bases in support of its Contention N does not present acceptable grounds for reconsideration, however, in that these matters were not asserted previously before the Board. In Contention N, OGD asserted that PFS had “failed to address the possibility of a leak occurring that might contaminate the present water system that members of the community

rely upon," and that while the application "admits that several wells are going to have to be built" to meet the facility's demand, the application failed to address the potential for lowering of the present water table (OGD Contentions at 27). OGD, however, did not set forth any factual support for its assertions that a leak may occur that might contaminate the water system, nor did it describe (or reference any documents describing) local water usage. Rather, OGD's prior statement of basis essentially consisted only of a reference to the trust responsibility of federal agencies to Indian tribes (OGD Contentions at 27).<sup>12</sup> Accordingly, the Licensing Board correctly concluded, *inter alia*, that OGD had failed to provide a sufficient factual basis in support of this contention (LBP-98-7, slip op. at 138).

OGD's present reference to the affidavits filed by OGD members who supported OGD's petition for leave to intervene -- initially filed on September 12, 1997 -- fails to present an acceptable ground for reconsideration. First, those affidavits were not referenced in OGD's contention, and no indication was provided by OGD that any support for the contention could be found in those documents. *See* OGD Contentions, at 27.<sup>13</sup> Further, those affidavits do not support the admission of this contention, in that no facts or expert opinions were presented in the affidavits which would support a litigable contention; rather, at most, the affidavits assert that the affiants use the local water supply, that water resources are scarce on the Skull Valley

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<sup>12</sup> To be sure, during oral argument at the Prehearing Conference on January 28, 1998, OGD asserted that "PFS' discussion of its potential water use in the ER at 4.2.4 is unacceptably vague and does not provide a basis for assessing potential impact such as draw down of wells" (Tr. at 361).

<sup>13</sup> The affidavits were refiled in support of OGD Contention O, pertaining to matters other than water usage, and were not cited in support of the instant contention. *See* OGD Contentions, at 23-24 and 30; OGD Exhibits 16, 17, 18, and 19

Reservation, and that the affiants feared contamination by the accidental release of radioactive material from the proposed facility.<sup>14</sup> No indication was provided to support the affiants' belief that the facility would adversely affect their water supply. Further, nowhere did OGD address the Applicant's statements in § 4.2.4 of its Environmental Report (ER), that the extent of drawdown of the aquifer "cannot be estimated until the wells are drilled, developed, and pump-tested," and that "future site water wells will be located and developed such that its drawdown influence will have no impact on any public, domestic, or irrigation water supply wells in Skull Valley." ER § 4.2.4, at 4.2-4.

Similarly, OGD's reference to the Staff's RAI, dated April 1, 1998, does not support the admission of this contention. First, the contention was filed on November 24, 1997, more than four months prior to the issuance of the RAI; the contention plainly did not reference the RAI, nor could it have done so, and it is impermissible for OGD to raise this matter for the first time in a motion for reconsideration. Further, the existence of an RAI does not support a claim that the application is deficient, any more than the existence of an investigation could do so.<sup>15</sup>

OGD's reference to 10 C.F.R. § 72.100 (OGD Mo. at 5-6) fails to support reconsideration. First, this argument is raised for the first time in the instant Motion, and therefore is not an appropriate subject for reconsideration. Second, OGD does not set forth any facts or expert opinion to support its assertion that the water supply could become contaminated

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<sup>14</sup> See Affidavit of Lester Wash, at 2 ¶ 7; Affidavit of Garth J. Bear, at 2 ¶ 5; Affidavit of Abby Bullcreek, at 2 ¶ 8; and Affidavit of Margene Bullcreek, at 2 ¶ 8.

<sup>15</sup> See, e.g., *Louisiana Power & Light Co.* (Waterford Steam Electric Station, Unit 3), CLI-86-1, 23 NRC 1, 5 (1986); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Plant, Units 1 and 2), LBP-93-9, 37 NRC 433, 466 (1993).

by the release of radioactive material from this facility, and it fails to specify any deficiency in the Applicant's statement that no releases are anticipated during normal operations, or its discussion of potential accidents. See SAR § 6.5 and Ch. 8. Thus, OGD's reference to 10 C.F.R. § 72.100 fails to show the existence of a genuine dispute with the Applicant.

For these reasons, OGD's motion for reconsideration of the Licensing Board's Decision should be denied.

**D. The Applicant's Motion**

In its Motion, the Applicant seeks reconsideration and/or clarification of the Licensing Board's admission of (1) Utah Contention B (License Needed for Intermodal Transfer Facility); (2) Utah Contention E/ Castle Rock 7/ Confederated Tribes F, Subpart 7 (Financial Assurance); (3) Utah Contention E/ Castle Rock 7/ Confederated Tribes F, Subpart 10 (Financial Assurance); (4) Utah Contention H, Subparts 3-7 (Inadequate Thermal Design); (5) Utah Contention V (Transportation-Related Radiological Environmental Impacts); (6) Utah Contention Z (No Action Alternative); (7) Utah Contention DD, Subparts 1 and 3 (Ecology and Species); (8) Castle Rock Contention 17, Subparts b and e (Land Impacts); and (9) a portion of OGD Contention O (other hazardous sites). The Staff's views with respect to these matters are as follows.

1. With respect to Utah Contention B (License Needed for Intermodal Transfer Facility) (App. Mo. at 2-5), the Staff has previously filed its own motion for reconsideration of the admission of this contention. For the reasons set forth in the Staff's motion for

reconsideration, the Staff believes that the Licensing Board erred in admitting Contention B (and other related contention subparts), and that reconsideration of this matter is appropriate.<sup>16</sup>

2. With respect to Utah Contention E/ Castle Rock 7/ Confederated Tribes F, Subpart 7 (Financial Assurance) (App. Mo. at 5-6), the Staff believes that the request for reconsideration should be denied. Here, PFS' application does not commit to securing a sufficient number of commitments to fund construction of the proposed ISFSI -- as had occurred in the *LES* case, cited by the Applicant (App. Mo. at 6)<sup>17</sup> -- but, rather, PFS indicates only that "[n]o construction will proceed unless Service Agreements committing for a significant quantity of spent fuel storage have been signed. The nominal target is 15,000 MTU of storage commitments." Lic. App. § 1.6, at 1-5; emphasis added. This statement fails to indicate the economic value of the storage commitments to be sought by PFS, nor does it establish a requirement that any specific quantity of storage commitments be obtained prior to the commencement of construction. In these circumstances, PFS' application cannot clearly be said to satisfy the Commission's financial assurance requirements, such that the contention should be rejected at this time. *See LES, supra*, 46 NRC at 306-07.

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<sup>16</sup> The Staff notes that the Applicant contends it could serve as either a "contract carrier" or a "private carrier" in transporting spent fuel to its ISFSI site. While the Staff agrees that PFS could serve as a contract carrier on behalf of another licensee (*see* Staff Mo. at 5-6), it is not clear that PFS could serve as a private carrier, except with respect to its own licensed material. Thus, it is not clear that PFS could act as a "private carrier" in the transportation of spent fuel to the ISFSI site, since PFS does not plan to take receipt of the spent fuel until it arrives at the site. This issue, however, does not require resolution at this time, inasmuch as PFS could readily serve as a contract carrier on behalf of another (*e.g.*, the reactor licensee).

<sup>17</sup> *See Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294, 304, 307 (1997).

3. With respect to Utah Contention E/ Castle Rock 7/ Confederated Tribes F, Subpart 10 (Financial Assurance) (App. Mo. at 6-9), the Applicant seeks reconsideration of two portions of the contention, concerning funding to cover the cost of spent fuel disposal and the costs associated with transportation accidents (other than on-site transportation) (*Id.* at 7). Upon consideration of the Applicant's arguments concerning these matters, including its reference to the Price-Anderson Act, 42 U.S.C. § 2210, *et seq.*, and 10 C.F.R. §§ 140.91 and 961.11, the Staff supports this aspect of the Applicant's Motion. *See also* Staff Response to Contentions, at 50 and 79-80.

4. With respect to Utah Contention H, Subparts 3-7 (Inadequate Thermal Design) (App. Mo. at 9-11), the Applicant seeks clarification that the litigation of these contention subparts will involve "only site-specific issues -- i.e., whether the PFSF site conditions fall within the envelope of the cask vendors' designs," and will not involve litigation of generic issues encompassed by the Commission's generic rulemaking proceeding for certification of the HI-STORM and TranStor casks (*Id.* at 10). The Staff agrees that litigation of these subparts should properly exclude issues encompassed within the generic rulemaking -- and that the Licensing Board's Decision is consistent with this view. *See* LBP-98-7, slip op. at 59-60 and n.11. Accordingly, the Staff does not oppose the Applicant's request for explicit clarification of this matter.

5. With respect to Utah Contention V (Transportation-Related Radiological Environmental Impacts) (App. Mo. at 11-12), the Applicant asserts that the required evaluation of transportation-related environmental impacts is limited by 10 C.F.R. § 72.108 to "the region" of the ISFSI (*Id.* at 12). The Staff believes the Applicant's interpretation of the Commission's

requirements is incorrect, in that (a) 10 C.F.R. § 72.108 constitutes a siting regulation under 10 C.F.R. Part 72, Subpart E ("Siting Evaluation Factors"), rather than an environmental impact analysis regulation, and (b) nothing in § 72.108 purports to reduce the Commission's responsibility under the National Environmental Policy Act (NEPA) (or the Applicant's parallel duty) to evaluate the reasonably foreseeable environmental impacts associated with the proposed licensing action. *See* Staff Response to Contentions, at 96-97. Further, the Staff believes that proper application of 10 C.F.R. Part 51, Table S-4 (referred to in the Applicant's Motion at 12 n.8), requires that transportation impacts be included in the discussion of potential impacts, without limiting such consideration to those impacts which occur within the region of the proposed ISFSI.

6. With respect to Utah Contention Z (No Action Alternative) (App. Mo. at 13), the Applicant requests that the Licensing Board reconsider its inclusion of the "cross-country transportation" and "sabotage" bases in this contention.

The Staff concurs with the Applicant that an environmental review is not required to include consideration of sabotage -- with respect to either the proposed facility, alternative sites or, as alleged here, the no-action alternative -- in that the potential for sabotage is not a reasonably foreseeable impact, is not readily quantifiable and, at least to some extent, is encompassed within the consideration of accidents. *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-875, 26 NRC 251, 269 (1987); *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 698-701 (1985). Accordingly, this aspect of the contention should be excluded.

With respect to cross-country transportation, the no action alternative would avert the transportation of spent fuel to the proposed ISFSI and, accordingly, would avert any environmental impacts associated with that transportation. Even if those impacts are found to be insignificant, the Staff believes that this issue should not be excluded from the contention at this time.

7. With respect to Utah Contention DD, Subparts 1 and 3 (Ecology and Species) (App. Mo. at 13-15), the Applicant seeks clarification that the two subparts are limited to the specific species identified therein. Although the Staff believes that the Licensing Board's admission of this contention reflects this intent, the Staff does not oppose the Applicant's request for explicit clarification of this matter.

8. With respect to Castle Rock Contention 17, Subparts b and e (Land Impacts) (App. Mo. at 15-19), the Applicant requests reconsideration of the Licensing Board's admission of two subparts pertaining to the Environmental Report's discussion of (a) the population in the Salt Lake Valley, and (b) potential impacts on a nearby national wilderness area. The Staff has reviewed the bases for this contention, as presented by its proponent, and fully concurs with the Applicant's view that the petitioner failed to present any specific facts in support of these assertions, as was required to provide sufficient basis to support the admission of these issues for litigation.<sup>18</sup> No basis whatsoever was provided to support Castle Rock's concern that an area larger than that evaluated in the Environmental Report should have been considered, nor were any potential impacts specified. Accordingly, although the Staff did not oppose the admission

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<sup>18</sup> See "Contentions of Petitioners Castle Rock Land & Livestock, L.C., [*et al.*], on the License Application for the Private Fuel Storage Facility," dated November 24, 1997, at 56-57.

of this contention as a whole (*see* Staff Response at 118-19), the Staff supports the Applicant's Motion to exclude these particular matters from the contention.

9. With respect to the contested portion of OGD Contention O (other hazardous sites) (*Id.* at 19-20), the Applicant requests reconsideration of the Licensing Board's admission of certain portions of the contention, insofar as the contention (a) merely recited the names of two alleged hazardous waste facilities (the North and South Utah Test and Training Ranges) but failed to provide supporting documentation, and (b) alleged the existence of disparate impacts resulting from sites located on a map attached to OGD's contentions (OGD Contentions, Exhibit 20), but failed to provide supporting information concerning certain specified sites.

The Staff concurs with the Applicant's view of these matters, insofar as it relies upon the absence of information explaining the map attached to OGD's contentions (OGD Exhibit 20). However, OGD Exhibits 25 and 26, attached to its Contentions, appear to list the hazardous materials authorized to be located at the two test ranges, so that sufficient information appears to submitted these references. Accordingly, the Staff supports one aspect of the Applicant's motion for reconsideration concerning OGD Contention O.<sup>19</sup>

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<sup>19</sup> Notwithstanding the above conclusion, the Staff notes that OGD Contention O failed to provide any basis to support its assertion that the licensing of this facility would cause the "environmental justice" population in the vicinity of the site to "suffer more environmental degradation," in view of the other hazardous materials sites referenced in the contention (except with respect to the Dugway Proving Ground sheep kill referenced in OGD Exhibit 28). Indeed, while the contention asserts that a number of hazardous waste sites are located within 35 miles of the Skull Valley Reservation, a review of OGD Exhibit 20 discloses that all of the referenced sites are located outside Skull Valley -- and with one exception, they all appear to be located at a distance of approximately 20 miles or more from the Reservation. Accordingly, the Staff submits that the portion of OGD Contention O that references other hazardous materials sites (except the Dugway Proving Ground) should have been excluded. *See* Staff Response to Contentions, at 96-97.

CONCLUSION

In accordance with the foregoing discussion, the Staff submits that the Licensing Board should resolve the motions for reconsideration filed by the Applicant, the State of Utah and OGD in the manner set forth above.

Respectfully submitted,



Sherwin E. Turk  
Catherine L. Marco  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 13th day of May 1998

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )

PRIVATE FUEL STORAGE L.L.C. )

(Independent Spent )  
Fuel Storage Installation) )

Docket No. 72-22-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO MOTIONS FOR RECONSIDERATION OF LBP-98-7, FILED BY THE APPLICANT, THE STATE OF UTAH AND OHNGO GAUDADEH DEVIA," 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 13th day of May, 1998:

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