

May 6, 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
)	
(Private Fuel Storage Facility))	ASLBP No. 97-732-02-ISFSI

APPLICANT'S MOTION FOR RECONSIDERATION AND CLARIFICATION

I. INTRODUCTION

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") hereby moves for reconsideration and clarification of certain limited aspects of the Memorandum and Order (Rulings on Standing, Contentions, Rule Waiver Petition, and Procedural/Administrative Matters), LBP-98-7, issued by the Atomic Safety and Licensing Board ("Board") on April 22, 1998. Specifically, Applicant requests reconsideration of the admission of Utah Contention B; part of Utah Contention E/Castle Rock 7/Confederated Tribes F, subpart 7 (as renumbered by the Board); part of Utah Contention V; part of Utah Contention Z; Castle Rock Contention 17, subparts b and e; and part of OGD's Contention O and basis 5 thereto. In addition, Applicant requests reconsideration and clarification with respect to parts of Utah Contention E/Castle Rock 7/ Confederated Tribes, subpart 10 (as renumbered by the Board) and parts of Utah Contention S/Castle Rock 7. Finally, Applicant requests clarification with respect to Utah Contention H, subparts 3 to 7 and

Utah Contention DD, subparts 1 and 3 (as renumbered by the Board). Each of these requests are discussed below.

II. LEGAL DISCUSSION

A. Reconsideration of Admission of Utah Contention B

The Applicant requests the Board to reconsider its admission of subparts 1 and 4 of Utah Contention B. Memorandum and Order at 56-58. As admitted, subpart 1 asserts that the Rowley Junction intermodal transfer operation must be licensed as an ISFSI under 10 C.F.R. Part 72 because “the Rowley Junction operation is not merely part of the transportation operation but a de facto interim spent fuel storage facility at which PFS will receive, handle, and possess spent nuclear fuel.” Id. at App. A at 1.

In admitting this subpart, the Board identified as a genuine legal/factual issue “whether the PFS scheme for operation of the Rowley Junction ITP [Intermodal Transfer Point] will cause the materials delivered there to remain within the possession and control of an entity or entities that comply with the terms of the general license issued under section 71.12 or will be handled in such a way as to require specific licensing under Part 72.” Id. at 58. For support, the Board cited the State’s assertion that “PFS will be receiving and handling spent fuel at ITP using PFS owned and operated equipment” and the prehearing transcript at 144-162. Id. Among the items discussed in the transcript was whether it made any difference if PFS employees operated the ITP, unloading, handling and transferring the casks, or if PFS owned the ITP building and crane. Tr. at 144-45, 154, 158-59, 161.

The Applicant respectfully submits that the material issue is not who operates or owns the ITP, but what operations occur there. The NRC licensing requirements are determined by the activities being performed there and not by who is performing them. 10 C.F.R. Part 72 licenses and regulates the storage of spent fuel in ISFSIs while 10 C.F.R. Part 71 licenses and regulates spent fuel transportation. Their applicability to a particular set of activities does not change based on who is performing the activities.¹

Thus, transportation is licensed under 10 C.F.R. Part 71, even if it is performed by an entity that also owns and operates an ISFSI licensed under 10 C.F.R. Part 72. The general license provisions of 10 C.F.R. Part 71 specifically provide that:

A general license is hereby issued to any licensee of the Commission 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.

10 C.F.R. § 71.12(a) (emphasis added). Accordingly, if PFS decides that it will transport the spent nuclear fuel and own and operate the ITP at Rowley Junction (as well as owning and operating the Private Fuel Storage Facility licensed under Part 72), it would not change the fact that the transportation operations, including the intermodal transfer operations, are licensed under 10 C.F.R. Part 71. Even if PFS did not transport the spent

¹In dismissing subparts 2 and 3 of Utah Contention B, the Board has already correctly determined that the activities performed at the ITP -- which solely involve spent fuel in sealed transportation casks -- concern the transportation and not the storage of spent fuel. The Board found that those parts of Contention B should be dismissed because they "impermissibly challenge the Commission's regulations or rulemaking-associated generic determinations, including the provisions of 10 C.F.R. Part 71 governing the transportation of spent fuel from reactor sites to the PFS facility." Memorandum and Order at 57.

fuel to the ITP, or from the ITP, but just owned and operated the ITP, its activities at the ITP would still be licensed under 10 C.F.R. Part 71 because the activities would be an integral part of transporting spent fuel, not storing it.² Accordingly, the Applicant requests the Board to deny admission of Utah Contention B, subpart 1.

By the same token, Utah Contention B, subpart 4 (which asserts that it is important to provide for the ITP “the regulatory protections that are afforded by compliance with 10 C.F.R. Part 72, including a security plan, an emergency plan, and radiation dose analyses”) must also be dismissed because there is no regulatory basis to apply 10 C.F.R. Part 72 requirements to transportation activities licensed and regulated under 10 C.F.R. Part 71.³ Moreover, 10 C.F.R. Part 71 provides a comprehensive regulatory scheme for the operations performed at the ITP, which includes physical protection, emergency planning and response, and radiation protection. The Commission has established extensive regulations in Part 73 specifically for the physical protection of

² If ITP operations are licensed under Part 71 when a common, contract, or private carrier performs them, then those same operations are still licensed under Part 71, even if the originating utility or PFS performs them. The regulations applicable to ITP operations would not somehow “convert” to Part 72 just because PFS happens to also own and operate an ISFSI, anymore than the regulations would “convert” to Part 50 because the operations were performed by the utility that owns and operates the originating reactor. Moreover, PFS could provide transportation services to licensed utilities as a private or contract carrier under 10 C.F.R. § 70.20a.

³The Memorandum and Order, at 58 n. 10, cited the NRC Staff’s “apparent belief that it may, in the context of acting on the PFS license, exert regulatory authority relative to PFS activities at Rowley Junction.” The Staff clearly stated that it would notify the Board and the parties if it determined that additional measures “beyond those specified in Commission and/or DOT regulations should apply to operations conducted at” Rowley Junction. Staff Responses to Contentions at 19 n.29 (emphasis added).

spent fuel operations licensed under Part 71. See 10 C.F.R. § 73.37.⁴ Emergency planning and response for operations licensed under Part 71 is addressed through the regulations of the Department of Transportation and the Federal Emergency Management Agency (“FEMA”). See 49 C.F.R. § 171.15; 49 C.F.R. Part 172, Subpart G; 44 C.F.R. Part 351. See also 49 Fed. Reg. 12,335, 12,336 (1984). Radiation protection for operations licensed under Part 71 are addressed through strict requirements on radiation levels from casks and conveyances in both the NRC and DOT regulations. See 10 C.F.R. § 71.47 (external radiation standards); 49 C.F.R. § 173.441 (radiation level limitations).

Thus, the Board should dismiss Utah Contention B in its entirety.

B. Reconsideration of Admission of Part of Utah Contention E/Castle Rock 7/Confederated Tribes F, Subpart 7

Utah Contention E/Castle Rock 7/Confederated Tribes F, as admitted, contends that “the Applicant has failed to demonstrate that it is financially qualified to engage in the Part 72 activities for which it seeks a license,” as detailed in the ten subparts to the contention. Memorandum and Order, App. A at 1-3. Subpart 7 of the contention as admitted contends that:

The applicant must document an existing market for the storage of spent nuclear fuel and the commitment of sufficient number of Service Agreements to fully fund construction of the proposed ISFSI. The applicant has not shown that the commitment of 15,000 MTUs is sufficient to

⁴ This regulation requires, among other things, escorts having continuous observation of the shipment, capability to communicate with local law enforcement and a communications center, procedures for coping with safeguards emergencies, and preshipment notification to both the NRC and state governors. See 10 C.F.R. § 73.37.

fund the Facility including operation, decommissioning and contingencies.

Id. at App. A at 3.

The Applicant requests the Board to reconsider the admission of that portion of subpart 7 which claims that the “applicant must document an existing market for the storage of spent nuclear fuel.” The Applicant stated in the License Application (at page 1-5) that “[n]o construction will proceed unless Service Agreements committing for a significant quantity of spent fuel storage have been signed,” and that the “nominal target is 15,000 MTU of storage commitments.” In analogous circumstances, the Commission in Louisiana Energy Services, L.P. (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294 (1997) rejected an argument by the intervenor CANT that LES was not financially qualified because it would “not be able to market its enriched uranium” 46 NRC at 308. As stated by the Commission, “if CANT is correct and the project proves a failure in the marketplace, the lack of economic success will have no adverse effect on the public health and safety or the common defense and security” because “LES will not build or operate” the facility. Id.

Thus, as in LES, the documenting of “an existing market” is irrelevant to the NRC health and safety issues involved in this licensing proceeding. If significant commitments are not obtained due to the lack of an existing market, the project will not proceed.

C. Reconsideration and Clarification of Parts of Utah Contention E/Castle Rock 7/Confederated Tribes F, Subpart 10⁵

The Applicant also requests reconsideration and clarification of parts of subpart 10 of Utah Contention E/Castle Rock 7/Confederated Tribes F, which provides as follows:

The Application does not provide assurance that PFS will have sufficient resources to cover non-routine expenses, including without limitation the costs of a worst case accident in transportation, storage, or disposal of the spent fuel.

Memorandum and Order, App. A at 3.

First, the Applicant requests reconsideration of this subpart to the extent it requires consideration of Applicant's financial qualifications with respect to any aspect of the "disposal of the spent fuel." As explained in Applicant's Answer to Confederated Tribes Contention A (pages 625-626), Congress has provided a statutory means for nuclear utilities to pay DOE for the disposal of spent nuclear fuel. Accordingly, this issue is beyond the scope of this proceeding, as recognized by the Board's rejection of Confederated Tribes' Contention A. See Memorandum and Order at 141.

Second, the Applicant requests clarification of subpart 10 to the extent that it requires consideration of costs for transportation accidents. This subpart of the contention should be limited to accidents in transporting spent fuel on the site of the

⁵ The language of subpart 10 of this contention is identical to that of Castle Rock Contention 7, subpart c. The Board also consolidated Castle Rock Contention 7, subpart c with Utah Contention S. Therefore, Applicant makes the same request for reconsideration and clarification as set forth in the text above with respect to Utah Contention S/Castle Rock 7 (Board Contention number 13) as well.

ISFSI. The cleanup or mitigation of transportation accidents off the site of the ISFSI, and the costs thereof, are outside the scope of 10 C.F.R. Part 72. See 10 C.F.R. §§ 72.22(e), 72.30(a). Rather, as discussed above with respect to Utah Contention B, the transportation of spent fuel is governed by 10 C.F.R. Part 71 and Department of Transportation regulations, which address responses to road and rail accidents involving releases of radioactive material. See 49 C.F.R. §§ 174.750 (rail incidents involving leakage), 177.843 (contamination of motor vehicles), 177.854 (road accidents).

Further, compensation for costs associated with radiological accidents for off-site transportation would be covered by the Price-Anderson Act and any challenge to the adequacy of that coverage is beyond the scope of this hearing.⁶ The Price-Anderson insurance agreements for nuclear power plants cover shipments of nuclear materials from a reactor facility “to any other location” until the material is removed from “the transporting conveyance for any purpose other than the continuation of its transportation.” 10 C.F.R. § 140.91, App. A, Art. III as amended, definition of “insured shipment.” The insurance agreements also cover shipments of nuclear materials “to the [reactor] facility from” any location except another nuclear facility covered by Price-Anderson. Id. Thus, shipments of spent fuel from reactors to the proposed ISFSI and from the proposed ISFSI to reactors will be covered by Price-Anderson.

⁶ See Florida Power and Light Company (Turkey Point Units Nos. 3 and 4), Commission Memorandum and Order, 4 AEC 787, 788 (1972); Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9 NRC 291, 323 (1979).

Similarly, shipments of spent fuel from the ISFSI to a DOE interim storage or ultimate disposal site will also fall under Price-Anderson financial protection. Under the Standard Contract between DOE and each utility, DOE will be responsible for the transportation of spent fuel to the DOE interim storage or repository site, whether that transportation originates at a reactor site or an ISFSI. 10 C.F.R. §§ 961.11, Art. I, Art. IV.B.1 and 2. Any third-party liability that might arise as a result of such shipments would be covered by Price-Anderson. The Price-Anderson Act specifically provides coverage to all DOE contractors and “any other person who may be liable for public liability” involved in “nuclear waste activities,” which include “activities . . . involving the . . . transportation . . . of . . . spent nuclear fuel. . . .” 42 U.S.C. §§ 2014(t) and (ff) (citing 42 U.S.C. § 2210(d)).

Therefore, because the off-site transportation of nuclear waste is governed by 10 C.F.R. Part 71 and DOT regulations, and because Price-Anderson provides coverage for off-site transportation accidents involving spent fuel, there is no basis for a contention concerning financial assurance for the “worst case accident in transportation” The Applicant, therefore, requests that the Board clarify this contention to exclude consideration of off-site transportation accidents.

D. Clarification of Utah Contention H, Subparts 3 to 7

The Applicant requests clarification of subparts 3 to 7 of Utah Contention H based on the Board’s ruling on Utah Contention C, subpart 1. See Memorandum and Order at 59-60 and n. 11. The Board held there that “rulemaking-associated generic

determinations” made in the “separate cask design approval process” for the certification of HI-STORM and TranStor cask designs are not subject to challenge in this proceeding.⁷ Id. Thus, generic issues concerning the storage cask systems are to be addressed in the rulemaking proceeding for certifying the cask designs with site-specific issues considered in this proceeding. Contention H raises both generic and site specific issues concerning the adequacy of the thermal design of the HI-STORM and TranStor storage cask systems to be used at the Private Fuel Storage Facility (“PFSF”). Accordingly, the Applicant requests clarification that only site-specific issues -- i.e., whether the PFSF site conditions fall within the envelope of the cask vendors’ designs -- are to be considered in this proceeding in accordance with the Board’s ruling on subpart 1 of Utah Contention C.

Subparts 6 and 7 of Contention H (premised on basis 2 set forth at pages 56-59 of the State’s Contentions) clearly encompass generic issues that are being addressed in the rulemaking for certifying the HI-STORM and TranStor storage cask systems. As reflected on pages 56-59 of the State’s Contentions, the State is specifically questioning the capability of the concrete structures of the HI-STORM and TranStor storage cask systems to meet NRC recommended generic requirements. These are issues to be considered in the rulemaking for the certification of the storage cask systems and are being addressed there as documented in the Request for Additional Information correspondence

⁷ The Topical Safety Analysis Reports for both the HI-STORM and the TranStor storage cask systems to be utilized by PFS have been submitted to the NRC and are actively undergoing Staff review in parallel with this proceeding. See SAR at 4.1-1.

referenced at pages 56-59 of the State's Contentions. Accordingly, the Applicant requests clarification that the issues to be considered under subparts 6 and 7 in this proceeding are limited to those pertaining to whether the PFSF site conditions fall within the envelope of the vendors' designs and exclude generic issues to be addressed in the rulemaking concerning the certification of the HI-STORM and TranStor storage cask systems.

Subparts 3 to 5 of Contention H may also be read to challenge, at least in part, the adequacy of generic thermal analyses and methodologies developed by the cask vendors and used in the Topical Safety Analysis Reports for the HI-STORM and TranStor storage cask systems. See Applicant's Answer at 109-110. These very analyses and methodologies are being reviewed by the Staff as part of the rulemaking for the certification of the cask designs. Accordingly, the Applicant requests clarification that the issues to be considered under subparts 3 to 5 in this proceeding are limited to those pertaining to whether the PFSF site conditions fall within the envelope of the vendors' designs and exclude generic issues to be addressed in the rulemaking concerning the certification of the HI-STORM and TranStor storage cask systems.

E. Reconsideration of Admission of Part of Utah Contention V

The Applicant requests the Board to reconsider its admission of Utah Contention V so as to exclude transportation across the country to and from the PFSF. As admitted, the contention provides as follows:

The Environmental Report ("ER") fails to give adequate consideration of the transportation-related environmental impacts of the proposed ISFSI in that PFS does not satisfy the threshold conditions for weight specified in 10 C.F.R. § 51.52(a) for use of Summary Table S-4, so that the PFS

must provide "a full description and detailed analysis of the environmental effects of transportation of fuel and wastes to and from the reactor" in accordance with 10 C.F.R. § 51.52(b).

Memorandum and Order, App. A at 8 (emphasis added).

The Applicant requests the Board to limit this contention to exclude aspects that relate to transportation across the country to and from the proposed ISFSI because, as recognized by the Board in denying admission of Utah V, Subpart 1 (see Memorandum and Order at 82, 84-85; Applicant's Answer at 295-297), the consideration of the environmental impacts of transportation across the country is an impermissible challenge to the applicable Commission regulations. The Commission expressly considered in promulgating 10 C.F.R. Part 72 the extent to which the environmental impacts of transporting spent fuel to and from the ISFSI are to be considered, and concluded that such impacts are to be evaluated only "within the region" (10 C.F.R. § 72.108) where the ISFSI will be located. See Applicant's Answer at 295-297.⁸ Thus, this contention, as admitted, should be limited to exclude discussion of transporting spent fuel across the country as being an impermissible challenge to the Commission's regulations.

⁸ Further, as the Board recognized in ruling on the other various subparts of Utah Contention V, the analysis of radiological environmental impacts of such shipments within the region of the ISFSI can be evaluated using the NRC's generic determination of the environmental impacts of shipping spent fuel in Summary Table S-4 in 10 C.F.R. Part 51, subject to resolution of the weight threshold issue set forth in Contention V as admitted.

F. Reconsideration of Admission of Part of Utah Contention Z

The Applicant requests the Board to reconsider its admission of Utah Contention Z (which contends that PFS did not adequately discuss the NEPA “no action” alternative) to exclude two of the asserted bases for the contention -- consideration of cross-country transportation and sabotage. See State’s Contentions at 169. As the Board has already recognized in its ruling on the admission of other contentions, neither are the proper subject of litigation in this proceeding in evaluating environmental impacts under NEPA. See Memorandum and Order at 81-82 (ruling on Utah U, basis 4), 83-85 (ruling on Utah V, subparts 1, and 4.c). See also Applicant’s Answer at 291-292, 295-297, 309.

The Applicant requests the Board to exclude consideration of cross-country transportation for the same reasons as set forth above with respect to Utah Contention V. With regard to sabotage, the “environmental report for a facility need not include the environmental effects from the risk of sabotage.” Applicant’s Answer at 291-92 (citing Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 697 (1985)). Thus, this contention, as admitted, should be limited to exclude discussion of sabotage as being beyond the scope of NEPA. See Memorandum and Order at 81-82, 83-85; Applicant’s Answer at 291-292, 309.

G. Clarification of Utah Contention DD, Subparts 1 and 3

The Applicant requests clarification of Utah Contention DD, subparts 1 and 3 (as renumbered by the Board) which contend that the Applicant failed to adequately assess potential impacts on the ecology and species in the region as follows:

1. The License Application fails to address all possible impacts on federally endangered or threatened species, specifically the peregrine falcon nest in the Timpie Springs Waterfowl Management Area.

* * * * *

3. The License Application has not adequately identified plant species that are adversely impacted or adequately assessed the impact on those identified, specifically the impact on two high interest plants, Pohl's milkvetch and small spring parsley.

Memorandum and Order, App. A at 9.

The Applicant requests that the Board clarify that subparts 1 and 3 of this contention are limited to the specific species identified in the two subparts. This requested clarification is consistent with the Board's ruling admitting Castle Rock Contention 16, subpart b. See Memorandum and Order at 93, 119-120. The Board explicitly placed a caveat on the admitted portion of Castle Rock 16, subpart b -- which was a broadly written challenge to the adequacy of the Environmental Report ("ER") with specific examples -- to limit its admission to three of the four species specifically named in the contention (i.e., small spring parsley, Pohl's milkvetch and pocket gopher). Id. at 120.⁹ The Board consolidated the admitted portions of Castle Rock 16 with the admitted portions of Utah DD, but did not place similar caveats on its admission of subparts 4(c) and 4(g) of Utah DD to expressly limit them to the specific species set forth in the

⁹ Although subpart b identified a fourth species, the basis for the contention only discussed and provided a factual basis for three of the four species. See Castle Rock Contentions at 54-55.

contention.¹⁰ To remove any potential confusion, the Applicant requests the Board to expressly clarify that the scope of each subpart as admitted is limited to the species specifically named in the respective subparts.

H. Reconsideration of Castle Rock Contention 17, Subparts b and e.

The Applicant requests that the Board reconsider its admission of Castle Rock Contention 17, subparts b and e. Castle Rock Contention 17 claims that the Environmental Report ("ER") did not adequately consider the impacts of the proposed ISFSI in various respects. Subparts b and e specifically contend that:

b. the ER paints a misleading picture of the area population by ignoring a majority of the Salt Lake Valley;

* * * * *

e. the ER fails to discuss the impact of placing a spent fuel storage facility near a national wilderness area.

Memorandum and Order, Appendix A at 10-11.

The Applicant requests the Board to reconsider its admission of subpart b of this contention because (i) the Applicant evaluated the impacts on population out to a radius of 50 miles from the proposed ISFSI in accordance with NRC practice and guidance, and (ii) Castle Rock has provided no reason to believe that the construction or operation of the ISFSI would have any measurable effect on the population of the Salt Lake Valley more

¹⁰ Subpart 4(c) was renumbered as subpart 1 and subpart 4(g), together with part of Castle Rock 16 subpart b, was renumbered as subpart 3 of the contention as admitted.

than 50 miles from the site of the ISFSI. Although Castle Rock asserted that the Applicant “understat[ed] the size of the potentially impacted population” by “drawing a 50-mile radius around the proposed PFSF site,” Castle Rock Contentions at 57, it provided no basis or support whatsoever to support that claim.

NRC regulations require the ER to contain “a description of the environment affected” and “the impact of the proposed action on the environment.” 10 C.F.R. § 51.45 (emphasis added). The siting factors in Part 72 require the ER to address “the potential regional impact . . . of the ISFSI . . . on the basis of potential measurable effects on the population or the environment.” 10 C.F.R. § 72.98(b) (emphasis added). Here, the Applicant evaluated the impacts on population out to a radius of 50 miles in accordance with NRC guidance. See ER at 2.2-5 to 6, Figures 2.2-2 and 3 (population distribution out to 50 miles from the ISFSI); NUREG-1567, Standard Review Plan for Spent Fuel Dry Storage Facilities App. B, § B.4.2.2 (Draft, Oct. 1996) (requiring presentation of population density within 50 miles). Moreover, in discussing the standing to intervene of Petitioner Scientists for Secure Waste Storage, the Board observed that Salt Lake City, “more than 50 miles from the PFS site,” was “well beyond the range within which we have found impacted health, safety, or environmental interests.” Board Memorandum and Order at 41 (emphasis added).¹¹

¹¹ Moreover, the 50 mile presumption regarding petitioner standing frequently used in reactor cases does not apply to materials license cases. Sequoyah Fuels Corporation (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994). See also Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 248-49 (1993) (rejecting presumption of 50-mile radius for the evaluation of environmental impacts, despite its past use in the determination of petitioner standing,

Neither in its pleadings nor in oral argument did Castle Rock provide any basis for believing that the Applicant's ISFSI would have any impact on the population in the Salt Lake Valley more than 50 miles away. See Castle Rock Contentions at 56-58. While in its reply, Castle Rock asserted that the ISFSI might have an impact on nearby ranching and agricultural operations, and that the traffic to and from the ISFSI might have an impact on the use of Skull Valley Road, it said nothing about any impact occurring more than 50 miles from the site. See Castle Rock Reply at 48-50. At the hearing, the Board and the parties discussed the size of the region that the Applicant must characterize in its ER, but Castle Rock again provided no factual basis to suggest that the ISFSI would have any impact on populations more than 50 miles away. See Tr. at 639-644

Thus, Castle Rock has provided no basis to show that the NRC's 50 mile guidance is inapplicable here or that the construction or operation of the ISFSI would have any discernible effect on the population of the Salt Lake Valley more than 50 miles from the site of the ISFSI. Accordingly, upon reconsideration, the Board should deny admission of this subpart of Castle Rock 17.

The Applicant also requests the Board to reconsider its admission of subpart e of this contention because (i) the Applicant evaluated -- directly contrary to Castle Rock's claim in subpart e -- the impacts on recreational activities and the Deseret Peak National Wilderness Area (the only national wilderness area near the PFS site), and (ii) Castle Rock

and requiring petitioner to demonstrate the potential for offsite accident consequences extending out to 50 miles from the plant).

provided no reason to believe that the ISFSI would have any greater impact on the wilderness area or the activities that take place there than as evaluated by the Applicant.

The Applicant's ER identifies Deseret Peak and the Deseret Peak National Wilderness Area (located six miles from the ISFSI site) as regional scenic features. ER at 2.9-4. The ER recognizes that off-road vehicle use, dispersed camping, and hunting activities take place in the area around the ISFSI site and it specifically addresses the impact that the ISFSI and the traffic on Skull Valley Road might have on the view from the wilderness area. Id. at 2.2-3, 4.2-7. By contrast, Castle Rock has not indicated that the ISFSI would have any impact on the Deseret Peak National Wilderness Area. In its contention, Castle Rock asserted that the ER "fails to recognize or mention the proximity to, and impacts upon, recreational uses in the nearby Deseret Peak National Wilderness Area" and that the ER "fails to consider the devastating impact (and logic) of placing [an ISFSI] 'next door' to a . . . national wilderness area." Castle Rock Contentions at 56, 58. Yet Castle Rock never stated or even alluded to what those impacts might be. See id. Furthermore, Castle Rock never mentioned the wilderness area either in its reply to the Applicant's response to its contentions or at the oral hearing. See Castle Rock Reply at 48-50; Tr. at 634-44.

Accordingly, because (contrary to Castle Rock's claim) the Applicant did evaluate the impact of the ISFSI on Deseret Peak National Wilderness Area and because Castle Rock has provided no specific basis for believing that anything the Applicant has done is

inadequate, the Board should reconsider and deny the admission of this subpart of Castle Rock 17.

I. Reconsideration of Admission of Part of OGD Contention O

The Applicant requests the Board to reconsider its admission of that part of OGD's Contention O which addresses those facilities for which OGD provides no supporting documentation for alleged environmental degradation. As admitted, the relevant portion of the contention 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.

Memorandum and Order, Appendix A at 12.

OGD's contentions (at pages 32-34) identify documentary support (Exhibits 21 to 28 to the Contentions) for the alleged hazardous wastes from seven of the nine facilities identified in the contention. Nowhere, however, does OGD identify any hazardous wastes or other harmful substances that it claims are located at the two remaining facilities, the North and South Utah Test and Training Ranges ("UTTRs"). Nor does it provide any documentary support to show hazardous wastes or other harmful substances at either of these two facilities. Accordingly, the Board should exclude both UTTRs from

consideration under this contention for lack of factual basis and delete them from the contention.

The Memorandum and Order at 139 stated that the "disparate impact matters" outlined in basis five of the contention (together with other bases) were accepted as support for the contention. One aspect of basis five, however, should be excluded. Basis five claims that within Tooele County there are nine Toxic Release Inventory (TRI) sites, six Comprehensive Environmental Response, Compensation, and Liability (CERCLA) sites, two National Pollutant Discharge Elimination System (NPDES) sites, and forty Resource Conservation Recovery Act (RCRA) sites, and it attaches a map (Exhibit 20 to the Contentions) which identifies the location of these sites. OGD Contentions at 32-33. However, neither the text of basis five nor the map identifies the names of the sites or the alleged hazardous wastes or harmful substances that are located at the sites. Accordingly, the Board should exclude these sites from consideration under this contention for lack of factual basis.

Respectfully submitted,



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Dated: May 6, 1998

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Applicant's Motion for Reconsideration and Clarification," dated May 6, 1998, were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 6th day of May 1998.

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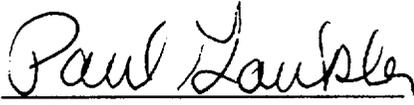
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