

October 30, 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 SURREPLY TO STATE OF UTAH'S REPLY TO APPLICANT'S AND STAFF'S RESPONSES TO LOW RAIL CONTENTIONS

In accordance with the Atomic Safety and Licensing Board's ("Board") Order of October 29, 1998, Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") files this surreply to the "State of Utah's Reply to Applicant's and Staff's Responses to Low Rail Contentions" ("State's Reply") on the issue of good cause for the State's late filing of its Low Rail contentions. In its reply, the State argues that it has good cause for the late filing because, according to the State, the original application reflected that "PFS originally intended to use truck transportation along Skull Valley Road as the sole means of transporting spent fuel from the main railroad line to the Private Fuel Storage Facility ("PFSF") and considered rail transport to be merely 'optional.'" State's Reply at 2. (emphasis added). This argument totally lacks merit. The original application filed by PFS in June 1997 treated heavy haul truck transport and rail transport as co-equal alternatives and the State was fully on notice at that time of the necessity to file contentions related to the rail spur alternative. Indeed, another petitioner, Castle Rock did file such conten-

tions,¹ and the State itself recognized that the spent fuel casks could travel from the main rail line to the PFSF “on trucks or railcars.”²

The original application makes clear at many places that heavy haul transport and rail transport were both being equally considered for transporting spent fuel casks to the site. Indeed, this equal treatment of transport by road or rail appears on the very first page of the License Application, which states as follows:

One of two alternatives will be selected for transport between the railroad main line and the PFSF site. The shipping cask will either be off-loaded at an intermodal transfer point at the railroad main line and loaded onto a heavy haul tractor/trailer for transporting to the PFSF, or the shipping cask will be transported via a new railroad spur connecting the PFSF directly to the railroad main line.

LA, Rev. 0 at 1-1. Virtually identical language appears in the Safety Analysis Report (“SAR”) and the Environmental Report (“ER”). The SAR similarly states that:

Due to the proximity of the PFSF to the railroad mainline, the shipping cask will either be off-loaded at an intermodal transfer point near Timpie, Utah, and loaded onto a heavy haul tractor/trailer for transporting to the PFSF, or transported via a new railroad spur connecting the PFSF directly to the Union Pacific mainline.

SAR, Rev. 0 at 1.1.-2. Similar language identifying the two alternatives appears in at least five other places in the SAR. See SAR, Rev. 0 at 1.4-1, 3.1-3, 4.5-1, 4.5-3 to 4.5-5, and 5.1-3 to 5.1-4.

¹ 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 PFSF (“Castle Rock Cont.”), dated Nov. 21, 1997, at 59-61, Contention 20 (“Selection of Road or Rail Access to PFSF Site”) and Contention 21 (“Exact Location of Rail Spur”).

² See State of Utah’s Contentions on the Construction and Operating License Application by Private Fuel Storage, LLC for an ISFSI (“State Cont.”), dated Nov. 23, 1997, at 77.

The original ER likewise makes clear that two alternatives are being considered for the transport of spent fuel casks from the main rail line to the PFSF. Sections 4.3 and 4.4 describe the environmental effects of the construction and operation of “Skull Valley Road Transport Alternative” and “The Railroad Spur Alternative,” respectively. Further, the introduction to Section 4.3 states as follows:

Two means of cask transport from the railroad mainline to the PFSF are under consideration, heavy haul tractor/trailer via Skull Valley Road or rail transport via a new rail spur. This section describes the heavy haul transportation alternative via Skull Valley Road. Section 4.4 describes the railroad spur alternative.

ER, Rev. 0 at 4.3-1.

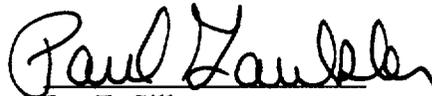
Thus, the LA, SAR and ER are clear that heavy haul transport was not viewed as the “sole means” of transporting spent fuel to the PFSF, as claimed by the State,³ but that heavy haul transport and rail were both being fully considered for transporting spent fuel to the PFSF. Similarly, the State’s claim that the ER’s description of the environmental impacts of the proposed rail corridor was minimal, “consist[ing] of a few pages” (State’s Reply at 2) is likewise without merit. The ER described the environmental impacts of the rail corridor fully and in equal depth as those for the heavy haul transport option.⁴

³ State’s Reply at 2. The State refers to Section 2.1.2 of the ER, Rev. 0, which states that “[a]n optional rail line from Timpie to the PFSF is also being considered” and Section 4.4 at 4.4-1 which states that “[a] new railroad spur may be constructed.” This language does not support the State’s assertion that heavy haul transport was viewed as the “sole means” of transport, particularly in light of the numerous other references in the LA, SAR and ER cited above – totally ignored by the State – which show heavy haul and rail to be co-equal alternatives being considered for transporting spent fuel to the PFSF.

⁴ The length of ER description for the rail transport option was about six pages, compared to about nine pages for the Skull Valley road option. However, since the rail line as proposed in the original application would have run parallel to Skull Valley Road, the ER description of impacts for the rail spur refers back to that for the heavy haul transport option. See, e.g., ER, Rev. 0 at 4.4-2 (“Environmentally sensitive areas

Therefore, the State's claims that it should be excused for not having filed contentions regarding the rail spur alternative as set forth in the original application clearly lacks merit. As noted earlier, Castle Rock did file contentions regarding the rail spur alternative which belies the State's attempt to recast the original application. Similarly, the State in its initial contentions, though arguing that the rail spur alternative was not feasible (see State Cont. at 10-11, 133-34), fully recognized that the Application called for the transport of spent fuel to the PFSF "on trucks or railcars." State Cont. at 77 (emphasis added); see also State Cont. at 10 ("PFS identifies two alternatives of shipping spent fuel to the ISFSI."). Thus, the Board should conclude that the State lacks good cause for the late filing of Contention HH and subparts (a), (b), and (c), of Contention II as set forth in Applicant's Answer to the State's Low Corridor rail contentions.

Respectfully submitted,



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... and species discussed in Section 4.3.2 will require the development of similar construction mitigation techniques described in that section" of the ER.).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Applicant's Surreply to State of Utah's Reply to Applicant's and Staff's Responses to Low Rail Contentions" 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 30th day of October 1998.

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