

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of:	)	Docket No. 72-22-ISFSI
	)	
PRIVATE FUEL STORAGE, LLC	)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel	)	
Storage Installation)	)	September 29, 1998

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**STATE OF UTAH'S CONTENTIONS RELATING TO  
THE LOW RAIL TRANSPORTATION LICENSE AMENDMENT**

The Applicant submitted a significant license amendment dated August 28, 1998 to account for a proposed new rail transportation corridor and a proposed change in the location of the Rowley Junction intermodal transfer point ("ITP"). The State received a copy of the Applicant's license amendment on August 31, 1998.

The amendment describes a proposed new rail line which would originate off the Union Pacific mainline at the intersection of Interstate 80 and Low.<sup>1</sup> The new railroad would parallel the south side of Interstate 80 in a southeast direction for approximately 3 miles, turn due south for

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<sup>1</sup> Low is located off Interstate 80 approximately 17 miles west of Rowley Junction. See Utah Highway map attached as Attachment 1 to NRC Staff's Response to Request for Hearing and Petition to Intervene Filed by the Confederated Tribes of the Goshute Reservation and David Pete

approximately 26 miles, then turn east for approximately 3 miles where it would terminate at the ISFSI. Environmental Report ("ER") Rev.1 at 2.1-3. The Applicant intends to construct the railroad on public lands and the Applicant has applied to the U.S. Bureau of Land Management ("BLM") for a 200 foot right-of-way to accommodate the proposed 32 mile route. ER Rev. 1 at 2.1-3, 4.4-1.

In the license amendment, the Applicant proposed a change in the location of the Rowley Junction ITP 1.8 miles to the west of the location described in the initial license application. Safety Analysis Report ("SAR"), Rev. 2 at 3.1-3. The ITP would still be located next to the Union Pacific mainline and in close proximity to Interstate 80 and the industrial salt plant. ER Rev 1 at 4.7-5 & 6. The facilities at the ITP remain the same as in the initial license application, *i.e.*, rail sidings off the Union Pacific mainline, a building housing a 150 ton gantry crane and a tractor/trailer yard. SAR Rev. 2 at 4.5-3.

The State has reviewed the license amendment and now files additional contentions based on the amendment. The States also amends the basis for admitted Contention B relating to Rowley Junction.

**Contention HH. The Low Rail Corridor and Fire Hazards**

**CONTENTION:** The Applicant's Environmental Report fails to give

*Correct*

approximately 26 miles, then turn east for approximately 3 miles where it would terminate at the ISFSI. Environmental Report ("ER") Rev.1 at 2.1-3. The Applicant intends to construct the railroad on public lands and the Applicant has applied to the U.S. Bureau of Land Management ("BLM") for a 200 foot right-of-way to accommodate the proposed 32 mile route. ER Rev. 1 at 2.1-3, 4.4-1.

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The State has reviewed the license amendment and now files additional contentions based on the amendment. The States also amends the basis for admitted Contention B relating to Rowley Junction.

**Contention HEAVY HAUL. The Low Rail Corridor and Fire**

**Hazards**

**CONTENTION:** The Applicant's Environmental Report fails to give

adequate consideration to the potential for fire hazards and the impediment to response to wild fires associated with constructing and operating the Applicant's proposed rail line in the Low corridor.

**Basis:** The ER must consider the environmental effects of the proposed action. 10 CFR § 51.45(c). The ER must also address the regional environmental effects of the proposed action. 10 CFR § 72.10(b). The Applicant's proposed movement of casks by locomotive in the Low rail line corridor presents a new wildfire ignition source. This is a serious matter in an area that is prone to wildfires.

There is a history of wildfires moving south to north through Skull Valley along the eastern side of the Cedar Mountains. See Affidavit of David Schen, attached hereto as Exhibit 1. Also fires are often known to cross the Cedar Mountains from the west into the western edge of Skull Valley. *Id.* at ¶ 7. The Applicant's proposed rail corridor will run south along the eastern edge of the Cedar Mountains for a distance of 26 miles from Interstate 80 to the northwestern side of the Skull Valley Reservation. The vegetation in this area is primarily desert shrub and grass land. Vegetation includes native grasses, sage brush and Utah juniper, and introduced species such as June grass (cheat grass) and crested wheat grass. Due to frequent and recurring wild fire and a history of heavy grazing, the primary vegetation is June grass. Fuels in this plant

community dry in early June and ignite very easily. Id. at ¶ 8. There are few, if any, irrigated areas in the vicinity of the rail line that would interrupt a fire caused by the Applicant's use of the rail line. Id. at ¶ 9. Thus, construction, operation and activities associated with the rail line will introduce a new potential fire source into an area that already has a high potential for wildfires. Id. at ¶ 7.

First, various activities that will take place because of the Applicant's rail transportation system will introduce new sources of igniting wildfire. During construction of the rail line, activities such as welding, grinding of rail and the presence of fuel for the operation of machinery will present potential fire hazards. Id. at ¶ 10. Most of these activities will not cease once construction is completed because on-going track maintenance will create similar hazards. Id. When the transportation corridor is in active use, a wildfire could start, for example, from sparks caused by friction or from the train exhaust stack. A fire could also be caused from a hot brake shoe sheering off the locomotive or rail carriage wheels. Id. at ¶ 11.

The ER is woefully deficient in its discussion of fire hazards posed by the new railroad and it does discuss, at all, the potential for starting wildfires. There is no mention of the potential for the operation of the rail line to ignite wildfires or how the Applicant will respond if it is responsible for causing a

wildfire. The sum and substance of the Applicant's discussion about wildfires appear to be a statement that to reduce the potential for fires the Applicant's rail corridor will be 40 feet wide and cleared of vegetation and the rail line will be constructed to an elevation that will be close to grade. ER Rev. 1 at 4.4-9. It should be noted that the Applicant must rely on whatever width of right-of-way the BLM will grant it to cross public lands. Given the Applicant's plan to clear 776 acres of vegetation, there is no certainty that BLM will grant the Applicant the width it requests. See ER Rev. 1 at 4.4-1. Furthermore, a 40 foot wide corridor may not be sufficient to prevent sparks from being thrown beyond the cleared corridor. The ability of fire fighting equipment to cross the Applicant's rail line is discussed below.

Second, the ER fails to evaluate, or even mention, the increased risk of wildfires caused by an increase of human activity near the railroad. Presently, access to the west side of Skull Valley is poor but the railroad will be accompanied by more developed access. Usually, rail lines have an access road alongside to facilitate maintenance. In addition, improved points of access to the west side of Skull Valley may be developed during construction of the rail line. Thus, the improved access to the west side of Skull Valley may result in an increase in the occurrence of human caused fires. Schen Affidavit at ¶ 12.

Third, the Applicant's proposed rail line will create an impediment to

fighting wild fires. As mentioned above, current access to the west side of Skull Valley is poor. Id. at ¶ 13. Typically in this area responders use four-wheel drive vehicles and drive cross country to fight wild land fires. Hand crews may also be used but generally, heavy equipment is not used because of the damage it may cause to the fragile ecosystem. The four-wheel drive vehicles carry a water tank containing 200-300 gallons of water. The vehicles will have difficulty directly crossing the rail line. Even if the rail line is constructed close to existing grade, fire fighting vehicles will be unable to climb up the vertical grade and profile of the rail, especially given the gross weight of the vehicle and water tank and also because the vehicle will be unable to get any traction from the ballasted rail bed. Id. Thus, the rail line will cause response vehicles to detour to a constructed rail crossing instead of being able to follow a fire cross country. This is likely to significantly delay wildfire responses, thus increasing the risk that wildfires will spread.

In addition, responders to fires will be put at increased risk because of the potential for collisions with trains in the dense smoke of a range fire. Id. at ¶ 14. Furthermore, the presence of hazardous material such as spent nuclear fuel may further endanger responders as well as impede their fire fighting activities around such hazardous material because firefighters will be reluctant to pursue a wildfire in the vicinity of a train load of spent nuclear fuel casks. If

firefighters are aware that high level nuclear waste is within the perimeter of the fire they will err on the side of caution and personal safety and back off until the subject area specialist ascertains that the hazardous cargo is contained and fire fighter safety guaranteed. *Id.* at ¶ 15. This will be likely be the case whether or not the spent nuclear fuel in the transportation cask will be at risk if it is engulfed by a wildfire. *Id.* The ER fails to address these additional risks.

To be complete, the Environmental Report must address how activities in the Low rail corridor may cause the potential to ignite wildfires, what mitigation measures the Applicant intends to take, and how the presence of high level nuclear waste affects fire fighting efforts. The ER must also analyze how the 26 mile north-south rail line may impede fire fighting activities.

#### **Contention II. Costs and effects associated with the Low Rail Corridor**

**Contention:** The Low Corridor License Amendment does not comply with 10 CFR § 72.100(b) or NEPA, including 10 CFR § 51.45(c), and 40 CFR § 1508.25 because it fails to evaluate, quantify and analyze the costs and cumulative impacts associated with constructing and operating the rail line on the regional environment.

**Basis:** NRC regulations require Applicant to define the potential effects of the ISFSI on the region. In particular, 10 CFR § 72.100(b) requires an evaluation of "the effects on the regional environment resulting from

construction, operation, and decommissioning of the ISFSI...." Moreover, 10 CFR § 51.54(c) requires an analysis in the environmental report of "other benefits and costs of the proposed action." Furthermore, Council on Environmental Quality ("CEQ") regulations require that an Environmental Impact Statement consider cumulative impacts. 40 CFR § 1508.25(c).

"Cumulative impact" is defined in 40 CFR § 1508.7 as:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

CEQ regulations further require that "cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement." Id. § 1508.25(a)(2).

The Low Rail Corridor is being constructed solely to move spent nuclear fuel casks from the Union Pacific mainline at the junction of Interstate 80 and Low across public lands to the Skull Valley reservation. The rail corridor has no other independent utility other than to serve the Applicant's ISFSI. Thus, the Low Rail Corridor is inextricably part of the Applicant's ISFSI project and as such must be evaluated under the criteria in 10 CFR §§ 72.100(b) and 51.54(c) and CEQ regulations.

The Low Corridor License Amendment is wholly without discussion of the direct and indirect costs or cumulative impacts associated with the construction and operation of the rail line. Rather the amendment describes only the indirect benefits of the rail line, *e.g.*, the rail line will provide "opportunities for further Band economic development projects." ER Rev. 1 at 7.2-3.

There are numerous costs and cumulative impacts associated with the Low Rail Corridor that must be evaluated and quantified, including the following:

1. The operation of the rail line creates an increased risk of fire in an area that is prone to range fire. *See* Contention HH above, whose basis is incorporated herewith by reference. The ER fails to quantify the costs associated with fires ignited as a result of activities occurring in the rail corridor. Nor has the Applicant evaluated the cumulative impacts that these newly introduced fire hazards pose to the Skull Valley area.
2. There is the potential that endangered, threatened and candidate endangered species may be found in the Low Corridor, *e.g.*, Ute Ladies-Tresses, Least Chub, Spotted Frog, Peregrine Falcon, Bald Eagle and Mountain Plover ER Rev. 1, Table 2.3-2. These species, other sensitive species, and their food base may be impacted by construction activities, noise levels and operation of

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2. There is the potential that endangered, threatened and candidate endangered species may be found in the Low Corridor, e.g., Ute Ladies-Tresses, Least Chub, Spotted Frog, Peregrine Falcon, Bald Eagle and Mountain Plover ER Rev. 1, Table 2.3-2. These species, other sensitive species, and their food base may be impacted by construction activities, noise levels and operation of

the railroad. Furthermore, some wildlife species will be permanently driven out of the area either because of destruction of habitat or from noise and other activities associated with construction, operation, and maintenance of the railroad. ER Rev. 1 at 4.4-4. Noise levels from construction and operation of the railroad may also disrupt mating and breeding activities. Furthermore, the railroad may act as an artificial barrier to the traditional range of some wildlife. For example, the railroad will probably cut off winter feeding range for wild horses and it may disrupt other established wildlife migration patterns for mule deer and pronghorn antelope. *Id.* None of these costs associated with the railroad has been quantified, nor the cumulative impacts sufficiently analyzed in the ER.

3. No account has been taken of the visual impact the railroad will have on the nearby BLM Cedar Mountains Wilderness Study Area ("WSA") or other locations in Skull Valley. The Cedar Mountains WSA is located parallel to and to the west of the Applicant's rail line. See 2 Utah BLM Statewide Wilderness Final Environmental Impact Statement at "Cedar Mountains WSA" Map 2 (showing WSA boundaries) (November 1990) attached hereto as Exhibit 2. In some places the WSA boundary is less than two miles from the railroad. *Cf.* Exh. 2 and License Application, Rev. 1, Fig. 1-1. Moreover, the Applicant has not quantified the costs associated with noise levels from construction activities

and operation of the railroad on wilderness and recreational areas. The railroad will be visible from the WSA and other recreation areas in Skull Valley and noise from the operation of the rail line will be heard, thus destroying the solitary values associates with wilderness areas.

4. Clearing and grubbing activities prior to railroad construction will destroy as much as 776 acres of acres of vegetation. ER Rev. 1 at 4.4-3. This vegetation provides habitat for a variety of wildlife species. Id. The Applicant claims it will be able to revegetate a significant amount (621 acres) of vegetation destroyed during construction, with a permanent loss of 155 acres of vegetation. Id. The area of habitat destruction is located in a sensitive, slow growing, xeric environment. Such areas, notoriously sensitive to environmental impacts, are difficult to restore. The ER is inadequate because it fails to demonstrate how the Applicant plans to carry out revegetation of 621 acres in such an sensitive and slow growing environment. Any discussion of revegetation efforts must also show where and how the Applicant will obtain access to needed water.

5. The ER states that the rail line will cross the Hastings Trail and Donner-Reed Trail. ER Rev. 1 at 2.9-3. Thus, two significant historical resources may be lost where the rail line crosses these two pioneer trails. The ER does not quantify or otherwise evaluate this loss as a cost of obtaining a license to store

spent nuclear fuel on the Skull Valley reservation.

6. The Applicant's 26 mile long north-south railroad along Skull Valley will impede recreational users and ranchers from their established ability to cross Skull Valley from east to west (or west to east). While the ER mentions that the proposed rail line will cross several roads, it is unclear whether there will be constructed rail crossings for all roads, including dirt jeep trails. Moreover, the presence of the railroad nonetheless disrupts recreational activities such as off road vehicle use and hunting and it will also disrupt ranching activities. ER Rev. 1 at 4.4-8. Once again, the ER fails to quantify the costs or evaluate the cumulative impacts associated with the railroad – this time as they relate to recreational users and ranchers.

None of the above-mentioned costs and impacts have been adequately quantified and evaluated (if at all) by the Applicant in its Environmental Report and thus the ER is deficient to meet the requirements of NEPA.

**Contention B-1. License Needed for Intermodal Transfer Facility**

**CONTENTION:** 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), in that 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. Because the ITP is an interim spent fuel storage facility, it is important to provide the public with the regulatory protections that are afforded by compliance with 10 CFR Part 72, including a security plan, an emergency plan, and radiation dose analyses.<sup>2</sup>

**BASIS (as amended):** Initially the Applicant intended to locate an intermodal transfer point at Rowley Junction and either construct a rail line along Skull Valley Road or move casks from Rowley Junction by heavy haul truck along Skull Valley Road to the ISFSI. License Application, Rev. 0 at 1-1. In its recent license amendment, the Applicant retains two alternatives for shipping casks to the ISFSI: one by rail, the other by intermodal transfer from rail to heavy haul truck. The location of the rail line has changed from Rowley Junction to Low, but the Intermodal Transfer Point remains at Rowley Junction--albeit 1.8 miles to the west of the initial site.<sup>3</sup> For all intents and

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<sup>2</sup> The wording of this contention is as admitted by the Board. LBP-98-7 at 56-58, App. A at 1. The "Basis" is amended to account for proposed changes at the ITP as a result of the Applicant's license amendment dated August 28, 1998. Contention B-1 is supported by the Declaration of Dr. Marvin Resnikoff, attached hereto as Exhibit 3.

<sup>3</sup> Although the Low railroad is the Applicant's professed preferred alternative for transporting the casks to the ISFSI (ER Rev. 1 at 2.1-3), many things need to happen before the Applicant may build and use the railroad. For this option to be viable, the Applicant must acquire a 776 acre (*i.e.* 32 mile long 200 foot wide) right-of-way across public lands from the U.S. Bureau of Land Management ("BLM"). ER Rev. 1 at 4.4-1. This major federal action will require BLM to prepare an EIS as well as comply with other procedures under the Federal Land Policy Management Act, 43 USC §§ 1701 to 1784. Consequently, the vitality of the Rowley

purposes, the factual and legal issues raised by the State and admitted by the Board in Contention B remain unchanged.

Like the original application, the proposed ITP consists of a "rail siding off the Union Pacific Railroad mainline, a 150 ton gantry crane, and a tractor/trailer yard area." SAR Rev. 2 at 4.5-3. The crane is single-failure proof, and housed in a weather enclosure. *Id.* At the ITP, spent fuel casks will be transferred from railroad cars to heavy-haul tractor/trailer trucks for transport along Skull Valley Road to the ISFSI. *Id.* at 4.5-4. The ITP would still be located next to the Union Pacific mainline and in close proximity to Interstate 80 and the industrial salt plant. ER Rev. 1 at 2.1-3, 4.4-1.

The Applicant's operations at Rowley Junction are not merely a part of the transportation operation. Cask receipt, handling and transfer mechanisms will be the same as proposed at the originally proposed ITP. The Applicant will be receiving and handing hundreds of tons of spent nuclear fuel at a fixed location, using fixed equipment that is owned and operated by the Applicant for the purpose of facilitating the onsite storage of spent fuel at the ISFSI.

Under the current license amendment, the ITP will still receive a substantial number of spent nuclear fuel casks. On average, the Applicant

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Junction ITP as an integral of the Applicant's ISFSI operation still remains, at least until completion of the BLM approval process.

expects the Rowley Junction ITP to receive two shipments per week, with each shipment consisting of 1-3 transportation casks. See letter dated September 21, 1998, with attachment, from John Donnell, Private Fuel Storage to Glenn Carpenter, BLM, attached hereto as Exhibit 4. Thus, between 100-300 casks annually will be shipped to the Rowley Junction ITP. When the shipments come into Rowley Junction, the Applicant must offload each cask from the rail car using its gantry crane located at the ITP onto a heavy haul truck for transport along Skull Valley Road. It is doubtful that a heavy haul truck could perform more than one cask shipment due to the time required to load the cask onto the truck at the ITP, the vehicle's slow speed, and the time required to be spent at the ISFSI before the truck can be released for a return shipment. See SAR Table 5.1-2.

Neither the initial application nor the recent license amendment discusses the number of heavy haul trucks that will be available to transport the casks, the mechanical reliability of these units, and their performance under all weather conditions.<sup>4</sup> SAR Rev. 2 at 4.5.4.2 states that the maximum weight of the loaded shipping cask will be 142 tons and require the use of overweight trailers. The tractor/trailer is 12 feet wide and travels at "low speeds." Given

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<sup>4</sup> Without such an explanation, a worse case scenario should be assumed.

the special design features, size and probable costs of these units (see SAR Fig. 4.5-4), it should be assumed that the Applicant will only have one unit available to transport casks from Rowley Junction ITP to the ISFSI.

Given the operational constraints on the ITP associated with the anticipated slow speeds and long travel distances (24 miles one-way) required for heavy haul transport from the transfer point to the proposed ISFSI, the anticipated number of shipments (100 to 300 casks annually, requiring 100 to 300 one-way heavy haul trips), and the anticipated use of a public highway (with no available heavy haul routing alternatives), a queuing of casks at the intermodal transfer point awaiting heavy haul transport is apparent. During the projected lifetime of the facility a large number of casks will be transported through Rowley Junction, and at least part of the time, a cask or casks will be present at Rowley Junction, thus making Rowley Junction a storage facility for nuclear materials.

Another factor that may significantly contribute to the queuing of casks at Rowley Junction is the fact that PFS intends to return defective or contaminated casks to the originating utility. Thus, there are likely to be heavy haul trucks going in both directions, necessitating greater use of cranes and more coordination of transfer operations.

As a result, the ITP will constitute a de facto interim spent fuel storage

facility, as defined in 10 CFR § 72.3, at which PFS will receive, handle, and possess spent nuclear fuel for extended periods of time. Accordingly, PFS should not be granted a license unless it includes possession of spent nuclear fuel at the ITP.

Moreover, Part 72 licensing is necessary in order to protect the public health and safety. The ITP is stationary in nature, including the construction and installation of a facility and heavy equipment, the continuous presence of spent fuel arriving at or departing from the ITP, and the potential long-term storage of some of the fuel. Because of the stationary nature of the ITP, it is important to provide the public with the regulatory protections that are afforded by compliance with 10 CFR Part 72. For instance, PFS should have a security plan that protects the site from intruders according to NRC standards. There should also be an emergency plan to protect workers and the public in the event of an accident at the ITP. PFS should also provide assurance that the ITP is designed in a way that protects public health and safety, using appropriate structures, equipment, and protective measures. The SAR and the recent license amendment fail to address these concerns. In the absence of such measures, the ITP poses an unacceptable safety and health risk to workers and the public.

**The State Satisfies the Commission's Late-Filing Criteria.**

The State submits that it satisfies the criteria under 10 CFR. § 2.714(a)(1) for late-filing the two new contentions and a contention with an amended basis:

First, the State has good cause for late filing, because the license amendment on which it relies only became available when PFS provided it to the State on August 31, 1998. Since that time the State has worked with State agencies and experts in reviewing the information and developing contentions based on the amendment. During the past month, the State's time and resources have also been consumed in reviewing informal discovery material and responding the Applicant's discovery requests. The State submits that, given the need to review the material and work with experts to evaluate it and prepare contentions, and given the other competing demands of litigation, it is reasonable to submit these contentions within thirty days of receiving the material.

Second, the State has no means, other than this proceeding, to protect its interests in the issues identified above.

Third, the State's participation in this proceeding can reasonably be expected to assist in developing a sound record. The State is represented by experienced counsel, and assisted by experts from State agencies as well as those whom the State has retained to provide expert assistance for this and other

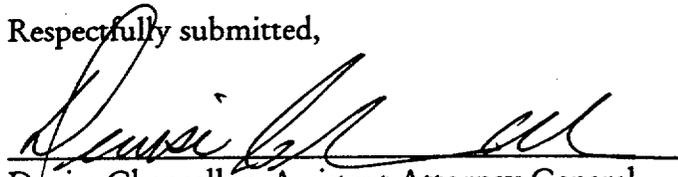
contentions. See Affidavit of David C. Schen (Exhibit 1) and Declaration of Dr. Marvin Resnikoff (Exhibit 3).

Fourth, there are no other parties who will represent the State's interests with respect to the issues raised in the above Contentions.

Finally, it is unlikely that admission of these contentions would broaden or delay the proceeding significantly, as the scope of issues submitted by the State and ruled on by the Board is quite broad already. Moreover, Contention B has already been admitted and Contention HH is similar to the fire issues admitted in Contention R. Moreover, other intervenors who have not yet received a copy of the license amendment will be entitled to file contentions after their review of the material. Thus, the State's filing now will not delay the proceeding. Furthermore, any delay is outweighed by the significance of this issue raised as a result of the new transportation corridor. Accordingly, the above Contentions satisfy the NRC's criteria for late consideration.

DATED this 29th day of September, 1998.

Respectfully submitted,



Denise Chancellor, Assistant Attorney General  
Fred G Nelson, Assistant Attorney General  
Diane Curran, Special Assistant Attorney General  
Connie Nakahara, Special Assistant Attorney General

*Corrected*

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DATED this 29th day of September, 1998.

Respectfully submitted,



Denise Chancellor, Assistant Attorney General  
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CERTIFICATE OF SERVICE

I hereby certify that copies of STATE OF UTAH'S CONTENTIONS  
RELATING TO THE LOW RAIL TRANSPORTATION LICENSE  
AMENDMENT were served on the persons listed below by electronic mail  
(unless otherwise noted) with conforming copies by United States mail first  
class, this 29th day of September, 1998:

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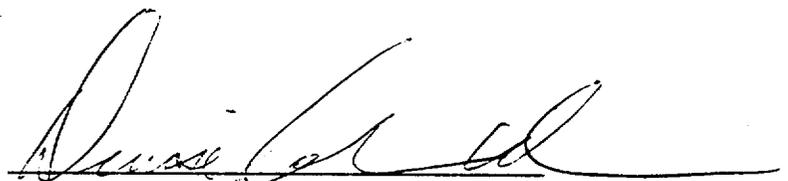
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