UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of: Private Fuel Storage, L.L.C., (Independent Spent Fuel Storage Installation)	)))))))	Docket No. 72-22

PETITION OF CASTLE ROCK LAND & LIVESTOCK, L.C., SKULL VALLEY CO., LTD, AND ENSIGN RANCHES OF UTAH, L.C. FOR NON-APPLICATION OR WAIVER OF COMMISSION REGULATIONS, RULES, AND GENERAL DETERMINATIONS

INTRODUCTION

Petitioners Castle Rock Land & Livestock, L.C., a Utah limited liability company, Skull Valley Co., Ltd., a Utah limited partnership, and Ensign Ranches of Utah, L.C., a Utah limited liability company (collectively, "Castle Rock") have petitioned to intervene in proceedings (the "Proceedings") regarding the application of Private Fuel Storage, L.L.C. ("PFS"), for a license (the "License") to store spent nuclear fuel at an alleged independent spent fuel storage installation ("ISFSI") at the Skull Valley Indian Reservation (the "Goshute Reservation") in Tooele County, Utah. Castle Rock timely filed a Petition to Intervene in the Proceeding, filed Contentions on November 21, 1997 (the "Contentions"), and is filing its reply with respect to its Contentions concurrently herewith.

In the responses of PFS and the staff (the "Staff") of the Nuclear Regulation Commission (the "Commission") to the Contentions, each assert that certain of the Contentions challenge 10 C.F.R. Part 72, 10 C.F.R. § 51.23, or the so-called Waste Confidence Decision. Although Castle Rock has generally disputed the characterization of such Contentions as attacks on

Commission regulations or the Waste Confidence Decision, Castle Rock files this petition for waiver (the "Petition") pursuant to 10 C.F.R. section 2.758(b) to seek (i) a determination that the Commission does not have authority to grant the License under 10 C.F.R. Part 72, and therefore 10 C.F.R. Part 72 is inapplicable to the Proceeding (or an exception permitting a challenge to the Commission's authority to license the proposed facility) and (ii) waiver of, or an exception permitting a challenge to, portions of 10 C.F.R. § 51.23 and the Waste Confidence Decision, as each applies to the Proceeding. Castle Rock requests that the Licensing Board consider this Petition on the merits and/or certify it to the Commission, as the Licensing Board deems appropriate.

Discussion

I. Standards Governing a Section 2.758(b) Petition.

The requirements for a petition for waiver are set forth in 10 C.F.R. § 2.758, which provides:

> (b) A party to an adjudicatory proceeding involving initial or renewal licensing subject to this subpart may petition that the application of a specified Commission rule or regulation or any provision thereof . . . be waived or an exception made for the particular proceeding. The sole ground for petition for waiver or exception shall be that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation would not serve the purpose for which the rule was adopted. The petition shall be accompanied by an affidavit that identifies the specific aspect or aspects of the subject matter of the proceeding as to which the application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted, and shall set forth with particularity the special circumstances alleged to justify the waiver or exception requested.
>
> . . .
>
> (c) If, on the basis of the petition, affidavit, and any response . . . the presiding officer determines that the petitioning party has not made a prima facie showing that the application of the specific Commission rule or regulation or provision thereof to a particular aspect or aspects of the subject matter of the proceeding would not serve the purposes for which the rule or regulation was adopted and that application of the rule or

> regulation should be waived or an exception granted, no evidence may be received on that matter . . . and the presiding officer may not further consider the matter.
> (d) If, on the basis of the petition, affidavit, and any response . . . ., the president officer determines that such a prima facie showing has been made, the presiding officer shall, before ruling thereon, certify directly to the Commission for determination the matter of whether the application of the Commission rule or regulation or provision thereof . . . should be waived or an exception made. The Commission may, among other things, on the basis of the petition, affidavits, and any response, determine whether the application of the specified rule or regulation (or provision thereof) should be waived or an exception made, or direct such further proceedings as it deems appropriate to aid in its determination.

10 C.F.R. § 2.758.[1] Thus, to the extent Castle Rock makes a prima facie showing that special circumstances unique to this Proceeding cause the questioned rule or regulation to not serve the purpose for which it was adopted, the presiding member of the Licensing Board should certify this Petition to the Commission for evaluation on the merits or such other proceedings as the Commission sees fit.[2]

---

[1] The Commission has held that special circumstances are present only if the petition properly pleads one or more facts, not common to a large class of facilities, that were not considered either explicitly or by necessary implication in the proceeding leading to the promulgation of the rule sought to be waived. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-88-10, 28 NRC 573, 596-97 (1988).

[2] Some Commission precedent might be read to suggest that the petition and supporting affidavit must indicate the presence of a significant safety problem related to the rule. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-88-10, 28 NRC 573, 597 (1988). However, this requirement appears to be unique to Seabrook Station--in which the rule sought to be waived (excepting utilities for the financial qualifications requirement) actually inhibited safety instead of enhancing it. With respect to Part I of this Petition the existence or non-existence of authority to license the PFSF should be determinative, regardless of whether any safety problems are evident. Nevertheless, failure to "waive" the rule, i.e. terminate the 10 C.F.R. Part 72 proceeding, would definitely create significant safety problems. There are serious transportation risks associated with a centralized storage facility. The fact that the PFSF is to be sponsored by a private entity with no prior operating history creates issues concerning the financial stability of PFSF and whether it will engage in shortcuts as revenues fall short. Finally, as explained in Part III, removing spent fuel from the facility and decommissioning will of necessity take decades, creating safety problems related to possibly

II. Licensing of the Proposed PFSF as an ISFSI under 10 C.F.R. Part 72.

A. Introduction.

Special circumstances unique to this Proceeding require certification of this Petition to the Commission and determination by the Commission that the Proceeding is not appropriately commenced under 10 C.F.R. Part 72. As is demonstrated by the attached affidavit and factual summary that follows, the Application seeks a license for a private, off-site facility storing 40,000 MTU of spent nuclear fuel for an indefinite period into the future. This is, to Castle Rock's knowledge, the first proceeding in which the Commission has been asked to approve an initial application for a private, off-site ISFSI since the enactment of the NWPA. Moreover, this Application relates to a proposed ISFSI designed to hold up to 40,000 MTU of spent nuclear fuel--an amount more than two and one-half times as large as the amount even the federal government is authorized to store on an interim basis. These special circumstances raise the question of whether 10 C.F.R. Part 72 is appropriately invoked in this Proceeding. As will be demonstrated below, the Commission does not have authority to license an off-site, private 40,000 MTU storage facility under 10 C.F.R. Part 72 or otherwise. Accordingly this Petition should be certified to the Commission and all requested relief should be granted.

B. Special Circumstances Unique to this Proceeding Cause Granting the License to Be Outside of the Commission's Authority.

The Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101 et seq. (the "NWPA") creates a comprehensive program for the interim storage and permanent disposal of spent nuclear fuel. Indiana Michigan Power Co. v. Dep't of Energy, 88 F.3d 1272, 1273 (D.C. Cir. 1996);

---

dwindling revenues from only partial occupancy and ongoing transport of spent fuel.

DOE Final Interpretation of Nuclear Waste Acceptance Issues, 60 Fed. Reg. 21793 (1995) (describing the NWPA as a "comprehensive framework for disposing of high level radioactive waste and spent nuclear fuel"). The comprehensive program outlined in the NWPA calls for interim storage of spent nuclear fuel to take place in a DOE-sponsored MRS, on the site of existing nuclear power plants and, to a limited extent, in DOE-initiated off-site and cooperative storage facilities, until such fuel is placed in a permanent repository. The NWPA expressly provides that its comprehensive scheme does not include the licensing of interim storage of spent nuclear fuel in private, off-site facilities. Contrary to the provisions of the NWPA, PFS seeks a license under 10 C.F.R. Part 72 for an off-site, private "ISFSI" to store up to 40,000 MTU of spent fuel for an extended, possibly permanent, period. Because licensing PFS to operate such a facility is fundamentally at odds with the comprehensive program outlined by Congress in the NWPA, no regulation, including 10 C.F.R. Part 72, may be interpreted to countenance the Application. Accordingly, 10 C.F.R. Part 72 should be deemed improperly invoked in the Proceeding and the Application should be dismissed.

The Commission's authority to license interim nuclear waste storage facilities is limited to the authority delegated to it by Congress, and the Commission may not use its discretionary power to act contrary to the manifest will of Congress. "It is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress." Davis County Solid Waste Management v. Environmental Protection Agency, 101 F.3d 1395, 1410 (D.C. Cir. 1996). Although an administrative agency has some discretionary authority to interpret statutes or promulgate regulations to carry out its statutorily mandated functions, an agency "cannot rely on its general authority to make rules necessary to carry out

its functions when a specific statutory directive defines the relevant function of [the agency] in a particular area. American Petroleum Institute v. Environmental Protection Agency, 52 F.3d 1113, 1119 (D.C. Cir. 1995); National Mining Ass'n v. Dep't of Interior, 105 F.3d 691, 694 (D.C. Cir. 1997). Moreover, a regulation may not be sustained "when that regulation is fundamentally at odds with the manifest congressional design." Western National Mutual Insurance Company v. Commissioner, 65 F.3d 90, 94 (8th Cir. 1995); Webb v. Hodel, 878 F.2d 1252, 1255 (10th Cir. 1989) (regulations are "entitled to no deference if they are inconsistent with congressional intent" or "if there are compelling indications that the regulations are wrong").

In determining whether an agency has exceeded its authority in interpreting a statute or promulgating regulations, a two step process is employed:

> First, we ask whether Congress has spoken unambiguously to the question at hand. If it has, then our duty is clear: We must follow that language and give it effect. If not, we consider the agency's action under the second step of Chevron, deferring to the agency's interpretation if it is reasonable and consistent with the statute's purpose.

Indiana Michigan Power Co. v. Dep't of Energy, 88 F.3d 1272, 1274 (D.C. Cir. 1996) (internal quotations and citations omitted). Amalgamated Transit Union, AFL-CIO v. Brock, 809 P.2d 909, 915 (D.C. Cir. 1987).

PFS proposes to construct and operate a Private Fuel Storage Facility (the "PFSF") at an away-from-reactor site located on the Goshute Reservation, in Tooele County, Utah. (See Affidavit of Bryan Allen ("Allen Affidavit") ¶ 3 ; Application of PFS (the "Application") 1.1). PFS seeks to have the proposed PFSF licensed as an ISFSI pursuant to 10 C.F.R. Part 72. (Allen Affidavit ¶ 3; Application 1.1; see also Notice of Opportunity for Hearing, 62 Fed. Reg. 41,099). The proposed PFSF is designed to store spent fuel containing up to 40,000 metric tons

of uranium ("MTU") from commercial reactors. (Allen Affidavit ¶ 4; Emergency Plan ("EP") 1.1). The proposed PFSF is designed to store spent fuel for up to 40 years, at which time, PFS asserts all of the spent fuel will have been transferred off-site, and the facility will be ready for decommissioning. (Allen Affidavit ¶ 4; EP 1.1). As required by 10 C.F.R. Part 72, PFS has applied for only a twenty year license; nevertheless, the Application states that PFS intends to file an application for license renewal for an additional 20 year term, if necessary. (Allen Affidavit ¶ 4; EP 1.1).

Under the Atomic Energy Act of 1954, as amended (the "AEA"), Congress authorized the predecessor of the Commission, the Atomic Energy Commission, to license the private use of special nuclear material. (See Section 53(a) of the Atomic Energy Act of 1954, codified as 42 U.S.C. § 2073). Congress did not include any provisions in the AEA expressly authorizing the Atomic Energy Commission or its successors to store, or license the storage of, spent nuclear fuel.

In 1980, the Commission promulgated 10 C.F.R. Part 72, related to licensing of the interim storage of spent nuclear fuel in ISFSIs. The Commission based its authority to license ISFSIs under 10 C.F.R. Part 72 primarily on Section 53(a) of the AEA. (See: Licensing Requirements for the Storage of Spent Fuel in an ISFSI, 45 Fed. Reg 74, 693 (November 12, 1980) (the "1980 Release"). As amended, Section 53(a) gives the Commission general authority to issue licenses for the transfer, acquisition, and possession of "special nuclear material," primarily for use in the development of civilian, commercial nuclear power. (42 U.S.C. § 2073; see also Senate Report No 1325 (1964), reprinted in 1964 U.S.C.C.A.N. 3111-3113). When Section 53(a) was passed in the 1950s, and then amended in the 1960s, Congress and the nuclear

energy industry anticipated that spent nuclear fuel would be reprocessed. (See House Report No. 97-491 (1982), reprinted in 1982 U.S.C.C.A.N 3792, 3793-94). Consistent with this expectation, Congress omitted from the AEA any language authorizing the Commission (or its predecessor agency) to license the interim or permanent storage of nuclear fuel.

Subsequent to the enactment of the AEA and promulgation by the Commission of 10 C.F.R. Part 72,[3] Congress definitively expressed its will with regard to storage of spent nuclear fuel in the NWPA. As stated by the District of Columbia Court of Appeals "[i]n the NWPA, Congress created a comprehensive scheme for the interim storage and permanent disposal of high-level radioactive waste generated by civilian nuclear power plants." Indiana Michigan Power Co. v. Dep't of Energy, 88 F.3d 1272, 1273 (D.C. Cir. 1996)(emphasis added). The Department of Energy ("DOE") agrees that the NWPA is the comprehensive Congressional plan for the disposal of nuclear waste. See DOE Final Interpretation of Nuclear Waste Acceptance Issues, 60 Fed. Reg. 21793 (1995) (describing the NWPA as a "comprehensive framework for disposing of high level radioactive waste and spent nuclear fuel"). The NWPA expressly provides that its purposes are:

> (1) to establish a schedule for the siting, construction, and operation of repositories . . . [for the disposal of radioactive waste and spent nuclear fuel];

---

[3] The Commission first promulgated 10 C.F.R. Part 72 prior to the enactment of the NWPA. Although the Commission did consider the question of private off-site, storage in an ISFSI at that time, (see 1980 Release, item 18), the Commission did not consider the effect of the NWPA (which had not been passed) on its authority to license storage of spent nuclear fuel in a 40,000 MTU private, off-site ISFSI. Part 72 of 10 C.F.R. was revised in 1988 to incorporate and reflect certain provisions of the NWPA, including those governing licensing of an MRS. (See Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive waste, 53 Fed. Reg. 31,651 (August 19, 1988). Again, the Commission did not consider the effect of the NWPA on its authority to license a private, off-site 40,000 MTU ISFSI in that release. (See Id.)

> (2) to establish the Federal responsibility, and a definite Federal policy, for the disposal of such waste and spent fuel . . . .

42 U.S.C. §10131(b)(emphasis added).

To implement this definite federal policy, the NWPA first instructs DOE to propose, obtain a license for, and construct a large scale permanent repository capable of permanently storing the nation's spent nuclear fuel. (42 U.S.C. 10131 et seq.) Aware of public concerns about the safety and feasibility of permanent disposal of spent nuclear fuel, Congress created several limitations on the construction and operation of a permanent repository. Congress limited the size of the first permanent repository to 70,000 MTU. (42 U.S.C. § 10134(d)). In addition, although Congress initially authorized the Commission to consider numerous sites for the proposed repository, in 1987, Congress directed the Commission to consider only a site located at Yucca Mountain, Nevada. (See 42 U.S.C. 10133; General Guidelines for the Recommendation of Site, 61 Fed. Reg. 66159 (1996)). Moreover, Congress conditioned construction of a repository at the Yucca Mountain site on, among other things: (1) the completion by DOE of the site characterizations for the Yucca Mountain Site; (42 U.S.C. § 10133); (2) a determination by DOE that the site is suitable for development as a repository; (Id.) (3) a recommendation of the site from DOE to the President of the United States; (Id.) (4) a recommendation by the President of such site to Congress; (42 U.S.C. § 10134(a)(2)(A)); (5) absence of a notice of disapproval from the Governor of the State of Nevada or, if the Governor does submit a notice of disapproval, passage a resolution of repository siting approval by Congress within ninety days. (42 U.S.C. § 10135(c)); and (6) licensing of the repository by the Commission under applicable guidelines. (42 U.S.C. § 10134(d)).

To deal with spent nuclear fuel prior to the completion of the repository, the NWPA provides for interim storage of such spent fuel in a DOE-operated monitored retrievable storage facility ("MRS"), on-site at nuclear power reactors, and by means of a DOE-sponsored off-site and cooperative storage program. (42 U.S.C. 10151 et seq.; 42 U.S.C. 10161 et seq.) To ensure that use of these interim methods does not continue indefinitely, the NWPA provides that: " (1) following the commencement of operation of a repository, the Secretary [of DOE] shall take title to the high-level radioactive waste or spent nuclear fuel as expeditiously as practical" and that "in return for the payment of fees . . . the Secretary [of DOE], beginning not later than January 31, 1998, will dispose of" the spent nuclear fuel. 42 U.S.C. § 10131(a)(5); see also 42 U.S.C. § 10155(e)(requiring any fuel stored under DOE-operated interim storage program to be removed within three years of the date a repository or monitored retrievable storage facility is available).

In response to political and safety concerns, Congress placed limitations on licensing and construction of an MRS similar to those placed on the permanent repository. First, and most significantly, DOE was not authorized to construct an MRS holding in excess of 15,000 MTU of spent nuclear fuel. (42 U.S.C. § 10168(d)(4)). Even with that comparatively limited capacity, Congress conditioned construction of such a facility on, among other things: (1) express Congressional approval, (42 U.S.C. § 10161(c)(2)); (2) mitigation payments to affected local government units, (42 U.S.C. §§ 10161(f)(2), 10167); (3) state and Indian tribe participation, including the right to disapprove, subject only to Congressional veto (42 U.S.C. §§ 10166(a), 10161(h)); and (4) appointment of a commission to evaluate the need for and effects of such a large centralized facility. (42 U.S.C. § 10163).

Interim storage outside of a DOE-sponsored MRS is governed by Part B of the NWPA, which explains that its purpose is:

> (1) to provide for the utilization of available spent nuclear fuel pools at the site of each civilian nuclear power reactor to the extent practical and the addition of new spent nuclear fuel storage capacity where practical at the site of such reactor, and
>
> (2) to provide, in accordance with the provision of this part, for the establishment of a federally owned and operated system for the interim storage of spent nuclear fuel at one or more facilities owned by the Federal Government with not more than 1,900 metric tons of capacity to prevent disruption in the orderly operation of any civilian nuclear power reactor that cannot reasonably provide adequate spent nuclear fuel storage capacity at the site of such reactor when needed.

42 U.S.C. § 10151(b)(emphasis added). Consistent with these purposes, Congress authorized the Commission and DOE to take such action as necessary to "encourage and expedite the effective use of available storage, and necessary additional storage, at the site of each civilian nuclear power reactor." 42 U.S.C. § 10152 (emphasis added). Moreover, in order to expedite interim on-site storage, the interim storage part of NWPA authorizes the Commission to establish procedures for licensing any technology approved by the Commission "for use at the site of any civilian nuclear power reactor." 42 U.S.C. § 10153; see also 42 U.S.C. § 10198 (directing DOE to enter into research partnerships to develop more efficient on-site storage technology).

With regard to the interim storage part's second purpose of providing for a DOE-operated interim storage facility, the NWPA states that "the Secretary shall provide . . . not more than 1,900 metric tons of capacity for the storage of spent nuclear fuel from civilian nuclear power reactors" through one or more of four enumerated methods (none of which involve off-site, private storage). 42 U.S.C. § 10155(a)(1). Because some of the enumerated methods could involve DOE-sponsored off-site storage, the NWPA mandates that, in selecting among the

methods, DOE "shall seek to minimize the transportation of spent nuclear fuel." (42 U.S.C. § 10155(a)(3)). Consistent with the NWPA's overall scheme of temporarily storing spent fuel on-site or at government-sponsored facilities until the establishment of a permanent repository, the NWPA provides that fuel stored by DOE under this Section 10155(a)(1) must be removed within three years of the date a repository or an MRS is available. (42 U.S.C. § 10155(e)). Finally, to clarify any ambiguity as to whether Congress's definitive and comprehensive program for the storage of spent nuclear fuel includes private, away-from-reactor interim storage, the NWPA provides:

> Notwithstanding any other provision of law, nothing in this chapter[4] shall be construed to encourage, authorize or require the private or Federal use, purchase, lease or other acquisition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government on January 3, 1983.

42 U.S.C. § 10155(h)(emphasis added).

The NWPA unambiguously denies the Commission authority to license a private, off-site 40,000 MTU facility under 10 C.F.R. Part 72, or otherwise. As stated above, in reviewing the validity of an agency's construction of a statute or promulgation of regulations, one first asks whether Congress "has spoken unambiguously to the question at hand." Indiana Michigan Power, 88 F.3d at 1274. In this case, neither the AEA nor the NWPA expressly authorizes the Commission to license private, off-site interim storage of spent nuclear fuel. Although the Commission's general licensing authority contained in 42 U.S.C. § 2073 conceivably could have been construed to implicitly authorize the Commission to license storage of spent nuclear fuel

[4] Note that Section 10155(h) applies to the "chapter"--i.e. the entire NWPA--not just the "section" or "part" in which it is located.

prior to the passage of the NWPA, the NWPA has since indisputably preempted such an interpretation.

In the NWPA, Congress expressly addresses, and sets forth its comprehensive program for, interim storage of spent nuclear fuel. With respect to interim storage, the NWPA directs the Commission and DOE to "encourage and expedite" the effective use of on-site storage capacity. (42 U.S.C. § 10151). It authorizes DOE to enter into research partnerships to develop more effective on-site storage technology and directs the Commission to license such on-site storage technology. (42 U.S.C. §§ 10153, 10198). Furthermore, anticipating the possibility that on-site storage may be inadequate, the NWPA directs DOE to provide 1,900 MTU of storage capacity and propose a DOE-operated MRS for an additional 15,000 MTU of spent nuclear fuel. (42 U.S.C. §§ 10155(a)(1), 101(b) et seq.). Finally, to make clear that Congress's comprehensive interim storage program excludes private, interim off-site storage, the NWPA expressly provides that nothing in the NWPA shall "be construed to encourage, authorize, or require . . . any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government." 42 U.S.C. § 10155(h).

Furthermore, licensing of a private, off-site, 40,000 MTU ISFSI is incompatible with Congress's desire to ensure that such a large capacity, centralized storage facility would be constructed only if strict safety, financial and political prerequisites were satisfied. In the NWPA, Congress restricted DOE to providing "not more than 1,900 metric tons of capacity" through the various DOE-sponsored or cooperative methods outlined in 42 U.S.C. § 10155 (emphasis added). The monitored retrievable storage facility authorized by Part C of the NWPA was to hold not more than 15,000 MTU of spent nuclear fuel, 42 U.S.C. § 10168(d)(4). Even

with a capacity less than one-half of the proposed PFSF, Congress made sure that a monitored retrievable storage facility could not be constructed absent, among other things: (1) express Congressional approval, (42 U.S.C. § 10161(c)(2)); (2) mitigation payments to affected local government units, (42 U.S.C. §§ 10161(f)(2), 10167); (3) state and Indian tribe participation, including the right to disapprove, subject only to Congressional veto (42 U.S.C. §§ 10166(a), 10161(h)); and (4) appointment of a commission to evaluate the need for and effects of such a large centralized facility. (42 U.S.C. § 10163). Even the proposed permanent repository -- the construction and licensing of which is subject to numerous approvals outlined above -- may not exceed 70,000 MTU of capacity. (42 U.S.C. § 10134(d)). Thus, even if it could be argued that Congress did not bar private, off-site ISFSIs per se when it passed the NWPA, Congress certainly did not place the extensive political, safety, and environmental prerequisites on construction and operation of the 15,000 MTU monitored retrievable storage facility and yet somehow give the Commission permission to license a private 40,000 MTU facility--almost 3 times the size of the MRS--without any such restrictions or prerequisites.

Legislative history regarding the question of interim private, off-site storage of spent nuclear fuel is indeterminate but, to the extent relevant, supports the determination that Congress intended to preclude private, off-site, 40,000 MTU ISFSIs. The official committee reports regarding the NWPA shed no light on Congress's intent with regard to private, large scale off-site storage.[5] See, e.g. House Report No. 97-491 (1982), reprinted in 1982 U.S.C.C.A.N

[5] Even if official committee reports did contain statements about the meaning of the NWPA, they would shed very little light on legislative intent. As explained by the Ninth Circuit Court of Appeals:

3792, 3793-94. There was some testimony mentioning off-site storage in the congressional hearings convened years before the NWPA was enacted. In general, however, the "remarks of a single legislator, even the sponsor, are not controlling in analyzing legislative history." Chrysler Corp. v. Brown, 441 U.S. 281, 311 (1979); see also Weinberger v. Rossi, 456 U.S. 25, 35 (1982)("One isolated remark by a single [congressman] . . . is insufficient to establish the kind of affirmative congressional expression necessary to evidence an intent . . . ."). To the extent isolated remarks of a legislator or witness at a hearing are relevant, in this case, such remarks reveal only that the question private, off-site storage was hotly contested. (See Statement of U.S. Rep. Butler Derrick Before the Subcommittee on Energy and the Environment Committee on Interior and Insular Affairs, 97th Cong.,, 1st Sess., on H.R. 1993, H.R. 2800, H.R. 2840, H.R. 2888, H.R. 3809 (1981) 315, 318 ("with regard to interim storage at spent nuclear fuel in away from reactor (AFR) storage pool, I remained opposed . . ."); Testimony of David Berrick, Environmental Policy Center, id., 334, 337 (acknowledging hot dispute about away from reactor storage)). One revealing fact is that, while some early versions of the numerous bills that were amalgamated into the NWPA contained provisions supporting private,

---

> The legislative history suffers from the usual infirmity, that it was not passed by both houses of Congress and signed into law by the President. For that reason, it is not the law. The staff person who wrote the House committee's legislative history might have represented accurately what all the House committee members meant to say in the bill but did not . . .. Alternatively, the staff person might have been assigned to write what some committee members wanted in the bill but did not get, or to throw a bone to some pro-privacy lobbying whose preferred language was rejected by the House committee . . . Legislative history need not be written with the same care, or scrutinized by those skeptical of the statute with the same care as statutory language. There is no way for a House or Senate member outside the relevant committee to vote against legislative history.

Puerta v. United States, 121 F.3d 1338, 1344 (9th Cir. 1997).

off-site storage (see, e.g. H.R. 6598, as reported from the Subcommittee on Energy Conservation and Power, July 8, 1982, § 135 (utilities permitted to enter into contracts with DOE only if pursing alternatives including off-site storage)), the bill passed by Congress and signed by the President contained no such provisions. To the contrary, the bill enacted into law as the NWPA provides that "nothing in this chapter is shall be construed to . . . authorize" private, off-site storage.

To the extent the NWPA is not interpreted to unambiguously and expressly prohibit private, off-site storage, the second step of the inquiry asks whether the Commission's licensing of an off-site ISFSI under 10 C.F.R Part 72 would be "reasonable and consistent with the statute's purpose." Indiana Michigan Power, 88 F.3d at 1274. PFS is applying to the Commission for a license to operate an off-site, private facility storing up to 40,000 MTU of spent nuclear fuel; moreover, PFS anticipates continually storing fuel at the PFSF even after a permanent repository is completed. Licensing such a facility is clearly not "reasonable and consistent" with both the language and purpose of the NWPA.

As detailed above, the NWPA establishes a comprehensive and exclusive program for the storage of spent nuclear fuel, which program speaks exclusively in terms of private on-site storage and DOE-initiated off-site storage. In direct conflict with this program, the proposed PFSF would be a private, off-site facility, storing 40,000 MTU of spent fuel. To the extent off-site storage is permitted by the NWPA, it must be sponsored by DOE and must be designed to minimize transportation of spent nuclear fuel; in contrast, the Application proposes to ship thousands of tons of spent nuclear fuel thousands of miles across the country to a private facility in a State that does not even contain a nuclear power facility. The scheme outlined in the

NWPA clearly contemplates elimination of most off-site storage within a few years of the completion of a permanent repository; in contrast, the Application seeks a twenty year initial permit and contemplates a twenty year renewal--even if a permanent repository is available. The NWPA places strict safety, financial, and political requirements on the licensing and construction of large, centralized facilities; in contrast, the Application seeks to bypass all but this licensing process for a facility two and one-half times the MRS authorized by Congress. Finally, the NWPA expressly provides that its comprehensive program shall not include any storage facility except one located on the site of a nuclear reactor or on a site owned by the federal government; in direct conflict with this provision, PFS seeks a license for a facility that is neither located on the site of a nuclear reactor nor owned by the federal government.

The proposed PFSF is "fundamentally at odds with the manifest congressional design," Western National, 65 F.3d at 94, and thoroughly "inconsistent with congressional intent" Webb, 878 F.2d at 1255, as set forth in the NWPA. A "regulation must be interpreted so as to harmonize with and further and not to conflict with the objective of the statute it implements." Emery Mining Corp. v. Secretary of Labor, 744 F.2d 1411, 1414 (10th Cir. 1984)(citation omitted); see also Id. ("where there is an interpretation of an ambiguous regulation which is reasonable and consistent with the statute, that interpretation is to be preferred"). Since the licensing of a private, off-site 40,000 MTU facility is clearly inconsistent with the intent of the NWPA and AEA, in order to be consistent with the NWPA and AEA, 10 C.F.R. Part 72 must be interpreted not to countenance the Application for the PFSF. Accordingly, 10 C.F.R. Part 72 must be deemed inappropriately invoked in this Proceeding, and the Proceeding must be terminated.

III. Special Circumstances Require Waiver or Reconsideration of The Waste Confidence Decision.

A. Waste Confidence Decision.

In 1984, the Commission initially promulgated, and in 1990 the Commission revised and affirmed, the so-called Waste Confidence Decision. (See Review and Final Revision of Waste Confidence Decision, 55 Fed. Reg. 38,474 (September 18, 1990)(the "1990 Release)). The substance of the Waste Confidence Decision has been incorporated into 10 C.F.R. § 51.23, which provides:

> The Commission has made a generic determination that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the license for operation . . . . of that reactor at its spent fuel storage basin or at either onsite or offsite independent spent fuel storage installations. Further, the Commission believes there is reasonable assurance that at least one mined geologic repository will be available within the first quarter of the twenty-first century, and sufficient repository capacity will be available within 30 years beyond the licensed life for operation of any reactor to dispose of the commercial high-level radioactive waste and spent fuel originating in reactors and generated up to that time.
>
> Accordingly,. . . within the scope of the generic determination in paragraph (a) of this section no discussion of any environmental impact of spent fuel storage . . . in independent spent fuel storage installations (ISFSI) for the period following the term of the . . . initial ISFSI license or amendment for which application is made, is required in any environmental report, environmental impact statement, environmental assessment or other analysis prepared . . . in connection with the issuance of an initial license for storage of spent fuel at an ISFSI, or any amendment thereto.

(10 C.F.R. §51.23). (The Waste Confidence Decision and Section 51.23 are collectively referred to as the "Confidence Decision"). With respect to the Waste Confidence Decision, the 1990 Release Provides:

> This would not, however, disturb the Commission's original commitment to review its Decision whenever significant and pertinent unexpected events occur. The Commission anticipates that such events as a major shift in national policy, a major unexpected institutional development, and/or new technical information might cause the Commission to consider reevaluating its Waste Confidence Findings . . . .

(Id.).

B. Review of the Generic Determination Regarding a Repository.

Significant and pertinent unexpected events have occurred that make reconsideration of the Waste Confidence Decision and 10 C.F.R. § 51.23 necessary as part of this Proceeding. At this time, the only site DOE can legally consider for a permanent repository is Yucca Mountain. (See 42 U.S.C. § 10133). In 1992, a 5.6 magnitude earthquake 8 miles from Yucca Mountain affected the Yucca Mountain site enough to cause $1 million worth of damages at the DOE field office and to raise serious questions about the geologic stability of the site. (See Allen Affidavit ¶ 5). Researchers recently found unexpected traces of radioactive chlorine-36 produced during the atmospheric bomb tests deep inside of Yucca Mountain, suggesting that there are fast pathways for carrying corrosive water down to the repository level. (See Allen Affidavit ¶ 6). Moreover, researchers at the nearby Nevada Testing Site have determined that plutonium from test explosions in the 1950's migrated into nearby ground water attached to very small mineral particles, suggesting that water contaminated at repository may quickly flow into, and contaminate, surrounding groundwater. (See Allen Affidavit ¶¶ 7, 8).

The Nuclear Waste Policy Act of 1997 (the "1997 NWPA"), which passed the Senate by a wide margin and is expected to do the same in the House, provides for the construction of a large, government sponsored, centralized interim spent fuel storage facility by 2003. (See Allen Affidavit ¶ 9). This facility will certainly displace the funding, and perceived need, for a permanent geological repository within the foreseeable future. In addition, the governor of Nevada, who has a right to veto the proposed repository, has publicly announced his opposition to a permanent repository in the State of Nevada. (See 42 U.S.C. 10135(c); (Allen Affidavit

¶ 10). Finally, DOE has repeatedly failed to meet mandatory deadlines with respect to the storage of spent nuclear fuel, and is about to fail to fulfill its statutory obligation to take possession of spent nuclear fuel subject to NWPA-mandated contracts on January 31, 1998. (See 42 U.S.C. § 10222(a)(5)(B); Northern States Power Co. v. Dep't of Energy, 1997 WL 705072 (D.C. Cir.) (November 14, 1997)). In fact, in the ongoing litigation concerning DOE's inability to timely assume possession of spent nuclear fuel, DOE has taken the position before the United States Court of Appeals for the District of Columbia that it is "uncertain[] as to when DOE will be able to begin spent fuel acceptance." Northern States Power Co., at *3. When the agency responsible for constructing the permanent repository has judicially admitted that it cannot determine when such a repository will be available, it (and other involved agencies) should be judicially estopped from taking a contrary position. Each of these events is significant, unexpected, casts doubt on the conclusion that "at least one mined geological repository will be available within the first quarter of the twenty-first century," and has occurred since the Commission's last formal review of the Waste Confidence Decision in 1990. The Commission has committed to review the Waste Confidence Decision whenever "significant and pertinent" events occur, and accordingly, must review the Waste Confidence Decision as part of this Proceeding.[6]

---

[6] In Northern States Power Co., DOE suggested that one reason for its failure to timely assume the spent nuclear fuel subject to NWPA contracts was that "[t]he Administration continues to believe that interim storage siting should not proceed until the Department has the benefit of the information resulting from the Yucca Mountain Project Viability Assessment." Norther States Power Co., 1997 WL 705072 at *3. The Administration and DOE recognize that the viability of the Yucca Mountain permanent repository is presently in doubt and desires to delay any decisions regarding interim storage until the viability assessment is complete. The Commission should similarly recognize the questionable status of the Yucca Mountain permanent repository and defer this Proceeding until the major document affecting the reasonableness of

C. Special Circumstances Require Waiver of the Analysis Limitations in the Confidence Decision.

Even if a permanent repository is constructed, because of the unprecedented size of the proposed PFSF, the repository will not be able to timely absorb the spent nuclear fuel to be stored therein at the end of the license period, or within a reasonable period thereafter. Thus, to the extent the Confidence Decision permits PFS to limit its environmental impact analysis to fewer than seventy-five years, permits PFS to assume that decommissioning will occur before year 2075, permits PFS to assume that all fuel stored in the proposed PFSF will timely be received by a permanent repository or other facility, or permits PFS to assume that at least limited amounts of spent fuel will not remain at the facility for forty years after termination of its license, the Confidence Decision must be waived for this Proceeding.

As outlined above, the proposed PFSF is designed to store up to 40,000 MTU of spent nuclear fuel from commercial reactors for up to 40 years, at which time PFS asserts that all of the spent fuel will have been transferred off-site, and the facility will be ready for decommissioning. The only site DOE can legally consider for a permanent repository is Yucca Mountain. (See 42 U.S.C. § 10133.) It is estimated that the proposed permanent repository, if constructed, will at the very earliest, be operational in year 2010. See Northern States Power Co. 1997 WL 705072 at *3. More realistic reports suggest that, if ever completed, the repository will not be operational until 2023. (GAO/T-RCED-93-58, Yucca Mountain Project Management and Funding Issues, statement of Jim Wells (1993)). A queue has been established for the first ten years of repository operation. (See Allen Affidavit ¶ 11). Seven thousand

---

the Waste Confidence Decision--the Yucca Mountain Viability Assessment--is complete.

MTU, of the total 70,000 MTU of spent nuclear fuel, to be stored at the repository will be government-generated spent nuclear fuel from the Navy Nuclear Propulsion Program and similar sources. (Id. ¶ 12). Once the repository is operating, it is projected to receive no more than 900 MTU of spent nuclear fuel per year. (Id. ¶ 11). Thus, even assuming that the permanent repository were constructed in 2010 and received only fuel from the PFSF, it would be year 2054 (44 years at 900 MTU) before the repository could receive all of the fuel stored at the proposed PFSF. If one factors in the existence of a queue for the first ten years of operation, the fact that a least 7,000 MTU of capacity at the repository is dedicated for federal government purposes, and the likelihood that fuel from numerous sources will compete for the repository's remaining 63,000 MTU of capacity, it becomes clear that the repository will not be able to absorb all of the fuel stored at the proposed PFSF until at least the last quarter of the twenty-first century--if at all.

This inability of the repository to timely absorb all spent fuel at the PFS will increase the costs of removing spent fuel, increase decommissioning costs, and create an extended (and possibly heightened) impact on the environment. Moreover, continued operation of the PFSF well beyond the planned date of decommission will have significant safety ramifications. PFS's proposed budget, service contracts (to the extent discernible from PFS's brief summary), and decommissioning plan do not provide funds for a super-extended operating or decommissioning period. A shortfall of funds could lead to shortcuts and related safety problems. (See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), 30 N.R.C. 121, 1989 NRC LEXIS 39 *29-30 (1989) (acknowledging a nexus between financing shortages and safety

problems). Also, the possibility of human error, cask degradation, and external events affecting the PFSF increase as decommissioning is delayed.

The unprecedented size of the proposed PFSF, combined with its private ownership, constitute special circumstances requiring waiver of the Confidence Decision in this Proceeding. The Confidence Decision concludes that "sufficient repository capacity will be available within 30 years beyond the licensed life for operation of any reactor" to dispose of the spent fuel generated therein. (See 10 C.F.R. § 51.23). Based on this determination, and the implicit assumption that said repository can timely received all fuel stored at a temporary facility, the Confidence decision further provides that "no discussion of any environmental impact of spent fuel storage . . . in independent spent fuel storage installations (ISFSI) for the period following the term of the . . . initial ISFSI license . . . is required." (10 C.F.R. § 51.23(b)). In this Proceeding, PFS is seeking a license for a purported ISFSI of unprecedented size and capacity--up to 40,000 MTU of spent nuclear fuel. The unique size, scope, and non-public nature of the proposed PFSF present special circumstances making application of the Confidence Decision inappropriate.

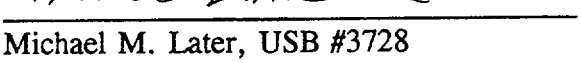
As explained and evidenced above, the proposed repository will not be able to receive all of the spent fuel stored at the proposed PFSF until year 2054 at the earliest, and more realistically, until the end of the twenty-first century. The above-described facts conclusively negate any generic finding that PFS will be able to remove all fuel from the facility and complete decommissioning at the end of this, or even a second, twenty year licensing period.

The possibility of an application for a 40,000 MTU private storage facility was not considered by the Commission when it issued the Waste Confidence Decision and raises serious

safety concerns. Accordingly, the Waste Confidence Decision and 10 C.F.R. § 51.23 should be waived in this proceeding, to the extent either permits PFS to limit its environmental impact analysis to fewer than seventy-five years, permits PFS to assume that decommissioning will occur before year 2075, permits PFS to assume that the PFSF will not continue to store at least limited quantities of fuel for forty years beyond expiration of its license, or permits PFS to assume that all fuel stored in the proposed PFSF will timely be received by a permanent repository.

Dated this 21st day of January, 1998.

Respectfully submitted,



Michael M. Later, USB #3728

PARR, WADDOUPS, BROWN, GEE & LOVELESS
Attorneys for Petitioners
185 S. State Street, Suite 1300
P.O. Box 11019
Salt Lake City, UT 84147-0019
Telephone: (801) 532-7840
Facsimile: (801) 532-7750
E-Mail: karenj@kimballparr.com

Certificate of Mailing

I hereby certify that I caused to be sent by E-Mail and U. S. Express Mail a copy of the foregoing Petition of Castle Rock Land & Livestock, L.C., Skull Valley Co., Ltd, and Ensign Ranches of Utah, L.C. for Non-Application or Waiver of Commission Regulations, Rules, and General Determinations to the following:

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
E-Mail: jrk2@nrc.gov

G. Paul Bollwerk, III, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
E-Mail: gpb@nrc.gov

James M. Cutchin
Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-Mail: jmc3@nrc.gov
(and U.S. Mail)

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
E-Mail: psl@nrc.gov

Office of the Secretary
ATTN: Rulemakings and Adjudications Staff
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(U. S. Mail only)

and also certify that I caused to be sent by E-Mail and Federal Express overnight courier service, a copy of the foregoing to the following:

Attn: Docketing & Services Branch
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Mail Stop: 016G15
11555 Rockville Pike One White Flint North
Rockville, MD 20852-2728
(original and two copies - Fed. Ex. only)

Sherwin E. Turk, Esq.
Catherine L. Marco, Esq.
Office of General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop: 0-15 B18
Washington, D.C. 20555
Fax: (301) 415-3725
E-Mail: set@nrc.gov; clm@nrc.gov

Jay E. Silberg, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street N.W.
Washingotn, D.C. 20037-8007
Fax: (202) 663-8007
E-Mail: jasilberg@shawpittman.com

Jean Belille, Esq.
Land and Water Fund of the Rockies
2260 Baseline Road, Suite 200
Boulder, Colorado 80302
Fax: (303) 786-8054
E-Mail: landwater@lawfund.org

and also certify that I caused to be sent by E-Mail and hand delivery, a copy of the foregoing to the following:

Danny Quintana, Esq.
Danny Quintana & Associates, P.C.
50 West Broadway, Fourth Floor
Salt Lake City, UT 84101
Fax: (801) 363-7726
E-Mail: quintana@Xmission.com

Denise Chancellor
Assistant Attorney General
Utah Attorney General's Office
P. O. Box 140873
Salt Lake City, UT 84114-0873
Fax: (801) 366-0292/0293
E-Mail: dchancel@state.ut.us

John Paul Kennedy, Sr., Esq.
1385 Yale Avenue
Salt Lake City, UT 84105
Fax: (801) 581-1007
E-Mail: john@kennedys.org

Connie Nakahara, Esq.
Utah Dept. of Environmental Quality
168 North 1950 West
P. O. Box 144810
Salt Lake City, UT 84114-4810
Fax: (801) 536-4401
E-Mail: cnakahar@state.ut.us

Dated this 21st day of January 1998.

DeAnn Thompson

DeAnn Thompson

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:	)	
Private Fuel Storage, L.L.C., (Independent Spent Fuel Storage Installation)	)	Docket No. 72-22

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

AFFIDAVIT OF BRYAN T. ALLEN

I, BRYAN T. ALLEN, being duly sown upon oath, depose and state as follows:

1. I have been engaged as counsel for Petitioners Castle Rock Land & Livestock, L.C., a Utah limited liability company, Skull Valley Co., Ltd., a Utah limited partnership, and Ensign Ranches of Utah, L.C., a Utah limited liability company in the above-caption proceeding and am an attorney licensed to practice in the State of Utah.

2. I have reviewed and am familiar with the application (the "Application") of Private Fuel Storage, L.L.C. ("PFS") for a license to store spent nuclear fuel at the Private Fuel Storage Facility ("PFSF") in the Skull Valley Indian Reservation (the "Goshute Reservation") in Tooele County, Utah.

3. Attached hereto as Exhibit A is a true and correct copy of Section 1.1 of the License Application of PFS which provides in part, that PFS proposes to construct and operate the PFSF at an away-from-reactor site located on the Goshute Reservation. Section 1.1 further

provides that PFS seeks to have the proposed PFSF licensed as an ISFSI pursuant to 10 C.F.R. Part 72.

4. Attached hereto as Exhibit B is a true and correct copy of Section 1.1 of the Emergency Plan (the "EP") submitted as part of the Application, which provides in part, that the proposed PFSF is designed to store spent fuel containing up to 40,000 metric tons of uranium from commercial reactors. Section 1.1 of the EP also provides that the proposed PFSF is designed to store spent fuel for up to 40 years, at which time spent fuel will have been transferred off-site, and the PFSF will be ready for decommissioning. Section 1.1 of the EP further provides that the Application is for a twenty year license; nevertheless, the PFS intends to file an application for license renewal for an additional 20 year term, if necessary.

5. Attached hereto as Exhibit C is a true and correct copy of Earl Lane, The Leftovers of a Nuclear Age, Newsday, August 4, 1997, at A07, which provides in part that in 1992, a 5.6 magnitude earthquake 8 miles from Yucca Mountain affected the Yucca Mountain site and caused one million dollars worth of damages at the DOE field office.

6. Attached hereto as Exhibit D is a true and correct copy of Earl Lane, The Leftovers of a Nuclear Age by Earl Lane, published in Newsday on August 3, 1997, at A04, which provides in part that researchers recently found unexpected traces of radioactive chlorine-36 produced during the atmospheric bomb tests deep inside of Yucca Mountain, suggesting that there are fast pathways for carrying water down to the repository level.

7. Attached hereto as Exhibit E is a true and correct copy of Keith Rogers, Plutonium Found In Water, Las Vegas Review-Journal, September 11, 1997, at 1A, which provides in part that researchers at the Nevada Test Site believe that plutonium from test

explosions in the 1950's migrated into nearby ground water attached to very small mineral particles.

8. Attached hereto as Exhibit F is an abstract to an work in progress by Annie B. Kersting and Joseph L. Thompson, entitled Near Field Migration of Radionuclide in the Subsurface at the Nevada Test Site, which provides:

> Our ability to characterize and mitigate contamination of radionuclides in the subsurface is limited by our understanding of the mechanisms and major pathways for transport. There is strong evidence that particles and colloids (< 1 um) are ubiquitous in groundwater and that they have the potential to enhance the transport of contaminants that strongly sorb to the solid phase. In order to investigate the migration of radionuclides via colloids we carried out a series of filtration experiments using groundwater pumped from wells downgradient from an underground nuclear test event. We analyzed unfiltered groundwater, colloidal material caught on a series of filter sizes, and the ultrafiltrate for gamma-emitting radionuclides and tritium. Tritium, ^{60}Co, ^{137}Cs, $^{152,154,155}Eu$ and Pu isotopes were detected in the unfiltered groundwater samples. Most of the activity was caught on the filters; the ultrafiltrate had only a few percent of the radionuclides other than tritium. The colloidal material consists of zeolites (mordenite), clays (illite), and cristobalite (SiO_2). These minerals are consistent with the lithology of the host aquifer (volcanic tuff). We conclude that radionuclides can and do bind to colloids that then may be transported significant distances in the saturated zone.

9. Attached hereto as Exhibit G is a true and correct copy of Section 205 of The Nuclear Waste Policy Act of 1997, 105th Cong., 1st Sess. Senate Bill 104, Version 4, as passed the United States Senate on April 15, 1997.

10. Attached hereto as Exhibit H is a true an correct copy of Kenneth J. Garcia et al., Fighting for Lethal Leftovers, San Francisco Chronicle, April 13, 1995, at A1.

11. Attached hereto as Exhibit I is a true and correct copy of DOE/RW-1457, Department of Energy Annual Capacity Report (OCRWM: March 1995), which in part describes the order in which spent nuclear fuel will be accepted at a proposed permanent repository for the disposal of spent nuclear fuel for the first ten years of operation In addition, the report

provides for spent nuclear fuel to be received at a rate of no more than 900 metric tons of uranium per year.

12. Attached hereto as Exhibit J is a true and correct copy of DOE, Summary of Public Scoping Comments Related to the Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High -Level Radioactive Waste at Yucca Mountain, Nye County, Nevada) (May 1997), which provides in part that 7000 MTU, of the total 70,000 MTU, of spent nuclear fuel to be stored at a proposed permanent repository for the disposal of spent nuclear fuel will be government-generated spent nuclear fuel from the Navy Nuclear Propulsion Program and similar sources.

Dated this 21st day of January, 1998.

Bryan T. Allen

SUBSCRIBED AND SWORN TO before me this 21st day of January, 1998

NOTARY PUBLIC
Residing at Salt Lake City

MY COMMISSION EXPIRES:

Sept 14, 2000

Notary Public
KATHLEEN McPOLIN
185 South State Street, Suite 1300
Salt Lake City, Utah 84111
My Commission Expires
September 14, 2000
State of Utah