

January 15, 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

PRIVATE FUEL STORAGE, LLC)

(Independent Spent)

Fuel Storage Installation))

Docket No. 72-22-ISFSI

NRC STAFF'S REPLY TO STATE OF UTAH'S
RESPONSE TO CASTLE ROCK'S NOTICE OF WITHDRAWAL

INTRODUCTION

Pursuant to the Atomic Safety and Licensing Board's "Order (Schedule for Replies to Responses to Notice of Withdrawal)" (Order), dated January 7, 1999, the staff of the Nuclear Regulatory Commission (Staff) replies to the January 5, 1999, "State of Utah's Response to Castle Rock's Notice of Withdrawal" (State's Response). For the reasons set forth below, the State's request that it be allowed to adopt most of the contentions and bases that had been submitted by Castle Rock Land and Livestock, L.C. and Skull Valley Company, Ltd. (Castle Rock) should be rejected.

BACKGROUND

On June 20, 1997, Private Fuel Storage L.L.C. (PFS or Applicant) applied for a license, pursuant to 10 C.F.R. Part 72, to receive, transfer and possess power reactor spent fuel and other radioactive material associated with spent fuel storage in an independent spent fuel storage installation, to be constructed and operated on the Skull Valley Indian Reservation in Tooele County,

Utah. On September 11, 1997, Castle Rock and the State of Utah submitted timely requests for hearing and petitions to intervene in the proceeding.¹ Thereafter, on November 21, 1997, Castle Rock submitted twenty-four contentions and their bases.² The State submitted its contentions on November 23, 1997.³ Thereafter, on December 19, 1997, the State filed a response to the other petitioners' contentions, in which it attempted to adopt Castle Rock's contentions as additional State contentions.⁴

By Memorandum and Order dated April 22, 1998, the Licensing Board admitted five intervenors, including the State and Castle Rock, as parties to the proceeding and approved 26 contentions for litigation. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 206-11 (1998). Of Castle Rock's 24 contentions, the Board admitted six in their entirety, and admitted five in part or with qualifications as noted by the Board. *Id.* at 211-25. The Licensing Board then consolidated various contentions; of Castle Rock's 11 admitted contentions, the Board admitted three contentions separately from those of other parties, *id.* at 257-58, and consolidated eight contentions and their related bases with contentions filed by the State and the Confederated Tribes of the Goshute Reservation (Confederated Tribes). *Id.* at 242-43. In

¹ *See* "Castle Rock Land and Livestock, L.C., Skull Valley Company, LTD., and Ensign Ranches of Utah, L.C. Request for Hearing and Petition to Intervene" (Sept. 11, 1997); "State of Utah's Request for Hearing and Petition For Leave to Intervene" (Sept. 11, 1997).

² *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 Private Fuel Storage Facility" (Nov. 21, 1997).

³ *See* "State of Utah's Contentions on the Construction and Operating License Application By Private Fuel Storage, LLC for an Independent Spent Fuel Storage Facility" (State's Contentions) (Nov. 23, 1997).

⁴ *See* "State of Utah's Response to Contentions . . ." (Dec. 19, 1997).

particular, as pertinent here, the Licensing Board rejected the State's attempt to incorporate Castle Rock's contentions by reference, on the grounds that the State had failed to address the late-filing factors of 10 C.F.R. § 2.714(a)(1). *Id.* at 182.

On December 21, 1998, Castle Rock submitted a notice that it is voluntarily and with prejudice withdrawing from the proceeding. "Notice of Withdrawal of Castle Rock Land and Livestock, L.C. and Skull Valley Company, LTD." (Dec. 21, 1998). On January 5, 1999, the Staff, PFS, and the State of Utah responded to Castle Rock's notice of withdrawal and addressed the impact of Castle Rock's withdrawal on the litigation of admitted contentions in the proceeding.⁵ On January 7, 1999, the Board issued its instant order, affording the parties an opportunity to reply to the responses to Castle Rock's notice of withdrawal that had been filed.

DISCUSSION

In its response to Castle Rock's notice of withdrawal, the State urges the Board to allow it to adopt most of Castle Rock's admitted contentions -- notwithstanding the fact that the Licensing Board previously rejected the State's attempt to adopt these contentions, nearly one year ago, for failing to satisfy the late filing standards in 10 C.F.R. § 2.714(a). *See* LBP-98-7, 47 NRC at 182. The Staff respectfully submits that the State's renewed attempt to adopt Castle Rock's contentions is egregiously late without good cause, fails to satisfy the Commission's late filing standards, and should be rejected.

⁵ *See* "NRC Staff's Response to Castle Rock's Notice of Withdrawal" (Staff's Response), (Jan. 5, 1999); "Applicant's Response to Notice of Withdrawal of Castle Rock Land and Livestock, L.C. and Skull Valley Company, LTD." (Jan. 5, 1999); and State's Response.

I. The State's Request to Adopt Non-Consolidated Contentions

With respect to Castle Rock's three non-consolidated contentions, the State wishes to adopt Castle Rock 17 (Inadequate Consideration of Land Impacts) and Castle Rock 20 (Selection of Road or Rail Access to PFSF Site). State's Response at 10-11. The State asserts that it has good cause for the late-filing of these contentions because, prior to Castle Rock's withdrawal of its contentions, the State had no reason to believe that Castle Rock would not pursue these contentions, "thereby protecting the State's interest in the issues." *Id.* at 11. The State also claims that the issues raised in the two contentions are of "grave concern" to the State and are within its expertise to litigate. *Id.* These assertions should be rejected.

The criteria to be considered when determining the admissibility of a late-filed contention are set forth in 10 C.F.R. § 2.714(a)(1)(i)-(v). *Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station)*, CLI-93-12, 37 NRC 355, 363 (1993). The five factors are:

- (1) Good cause, if any, for failure to file on time.
- (2) The availability of other means whereby the petitioner's interest will be protected.
- (3) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (4) The extent to which the petitioner's interest will be represented by existing parties.
- (5) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

10 C.F.R. § 2.714(a)(1). With respect to these factors, it has been long held that where a petitioner fails to show good cause for filing its contention late, the other four factors must weigh heavily in its favor in order for its petition to be granted. *See, e.g., Virginia Elec. Power Co. (North Anna Station,*

Units 1 and 2), ALAB-289, 2 NRC 395, 398 (1975). In addition to showing that a balancing of the five factors favors intervention, a petitioner must also meet the requirements for setting forth a valid contention. 10 C.F.R. § 2.714(c)(2). These same criteria apply to the late adoption of a withdrawing party's contentions. *See, e.g., Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 382 (1985).

Contentions were due to be filed in this proceeding on November 24, 1997.⁶ As the Licensing Board recently stated, the deadline for filing timely contentions in the instant proceeding "has long passed."⁷ Thus, as recognized by the Board, any contentions that might be proffered at this time or in the future must meet the five late-filing criteria of 10 C.F.R. § 2.714(a)(1). LBP-98-29, 48 NRC at ___, slip op. at 7.

It has long been held in Commission proceedings that one party may not demonstrate good cause for late intervention by seeking to substitute itself for a withdrawing intervenor on the grounds that it was somehow "lulled into inaction" by the other party's participation. *See Texas Utilities Elec. Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-88-12, 28 NRC 605, 609 (1988). Further, good cause does not exist where an existing party seeks to adopt the contentions of a withdrawing party on the grounds that it trusted the other party to vigorously pursue them. *South Texas*, ALAB-799, 21 NRC at 382. Indeed, a non-sponsoring intervenor assumes the risk that its interests may not be pursued by another intervenor. *Id.* at 383.

⁶ *See* "Memorandum and Order (Ruling on Motions to Suspend Proceeding and for Extension of Time to File Contentions)" (Oct. 17, 1997).

⁷ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-29, 48 NRC ___ (Nov. 30, 1998) ("Memorandum and Order (Ruling on Late-Filed Contentions Regarding August 1998 Low, Utah Rail Spur License Application Amendment)," slip op. at 7.

In light of these principles, it is clear that the State has no cognizable basis for its belief that Castle Rock would "vigorously pursue" Contentions 17 and 20, thereby protecting the State's interests. See State's Response at 11. Moreover, the State was well aware of this risk. The State, at the pre-hearing conference in January 1998, articulated a concern about the effect on contentions if a party were to drop out of the proceeding. See Tr. 88 (Jan. 27, 1998). Chairman Bollwerk then stated that "[t]he main advantage of incorporation by reference is that if the party does drop out . . . the contention is still there." Tr. 88-89.⁸ Thus, the State has been on notice for quite some time of the ramifications should Castle Rock withdraw from the proceeding. The State, therefore, has not demonstrated good cause for filing these contentions late.

In addition, the State asserts that the issues raised in these contentions are of vital concern to its interests. State's Response at 11-13. The State asserts that the Applicant's facility will shape "future potential land use and property values in Skull Valley, including commercial, residential, agricultural, recreational and wilderness uses and values"; that deficiencies exist in the Environmental Report relating to population description and growth, and the Deseret Peak National Wilderness Area; that its landholding interests in the area will not be protected if these contentions are dismissed; and that it has an interest, as the owner of the Skull Valley Road, in the Applicant's choice of transportation alternative and in environmental effects, traffic and noise, which are normally regulated by the State. *Id.* at 11-13.

The State's present expression of concern regarding these matters does not demonstrate good cause for seeking to file these contentions over a year late. Certainly, if these contentions are of such

⁸ See State's Response at 2 n.1.

importance to the State, it could and should have raised the issues sooner.⁹ The State's assertion that the contentions raise serious issues that it should be allowed to pursue does not establish good cause for its untimeliness, so as to warrant the substitution of one intervenor for another. *See South Texas, ALAB-799, 21 NRC at 384* (the assertion of serious concerns was not enough to warrant party substitution, in the context of the proceeding).

Inasmuch as the State has not demonstrated good cause for the late filing of its request to adopt Castle Rock's contentions, the other four factors must weigh heavily in its favor in order for its petition to be granted. *See North Anna, supra, 2 NRC at 398*. The Staff agrees generally with the State's assertion that the second and fourth factors weigh in the State's favor: No other means appear to exist whereby the State's interest will be protected; and the State's interest is unlikely to be represented by existing parties. These factors, however, are accorded less weight than the third and fifth factors.

The third factor, the extent to which the state's participation may reasonably be expected to assist in developing a sound record, weighs against the State. The State asserts that Dr. Marvin Resnikoff will be one of its experts regarding Castle Rock contention 20, and that the State will present "knowledgeable experts within State government whose jobs and expertise deal with projections and planning for land use, population dynamics, traffic and noise, environmental considerations, etc." State's Response at 13-14. The State also asserts that it will be assisted by experts from the Governor's Office of Budget and Planning, the State Tax Commission, the Utah Department of Transportation, and the State Department of Agriculture. *Id.* at 14. The State, however, has not indicated that Dr. Resnikoff has any expertise with respect to the issues raised by these contentions,

⁹ The State did not raise these matters initially, and the fact that it accepted the risk that the issues might never be raised or might be abandoned by another sponsoring party, cuts against the State's assertion of their importance.

has not identified any other experts by name, and has not summarized its witnesses' proposed testimony, as is required to make a favorable showing on this factor. *See, e.g., PFS, LBP-98-7, 47 NRC at 208.*¹⁰

Finally, the fifth factor, the extent to which the petitioner's participation will broaden the issues or delay the proceeding, weighs against the State's request. First, consideration of the contentions will certainly broaden the issues in the proceeding since the withdrawal of Castle Rock from the proceeding would otherwise cause its contentions to be dismissed. *See South Texas, ALAB-799, 21 NRC at 382.* Second, the litigation of these contentions will result in lengthier hearings as well as a need for additional effort and argument concerning these matters. Accordingly, a balancing of the factors weighs against the State's adoption of these contentions.¹¹

II. The State's Request to Adopt Castle Rock's Issues in the Consolidated Contentions.

With respect to the consolidated contentions, the State seeks to adopt those portions of Castle Rock's contentions that differ from the language of the State's contentions. State's Response at 5.

¹⁰ The State asserts that it was unable to identify specific individuals "on such short notice." State's Response at 15. This assertion, however, fails to address the State's decision to wait until this late date to seek to adopt Castle Rock's contentions.

¹¹ In addition, the State seeks to litigate subparts (b) and (e) of Castle Rock 17, pertaining to the Environmental Report (ER)'s discussion of the Salt Lake Valley population and potential impacts on the Deseret Peak National Wilderness Area. State's Response at 11-12. These two matters, however, were dismissed by the Board in its May 1998 ruling on motions for reconsideration. *See Private Fuel Storage* (Independent Spent Fuel Storage Installation), LBP-98-10, 47 NRC 288, 297-98 (1998). Further, the State has not provided any new information which would demonstrate the existence of a material dispute with the Applicant. While the State points to a newspaper article concerning population growth in a 10-county area close to the Wasatch Front, the State has not demonstrated that the ER's discussion is inadequate. *See ER § 2.2.3* (providing data and projections for the regional population (including Utah and the three closest Utah counties), and the population within 5 miles and 50 miles of the facility).

In particular, the State addresses Contention 3 (Financial Assurance, Utah E/ Castle Rock 7/ Con. Tribes F), Contention 11 (Hydrology, Utah O/ Castle Rock 8 and 10), and Contention 14 (Permits, Utah T/ Castle Rock 10, 12, and 22). *Id.* at 5-7.

A. The State Has Failed to Demonstrate Good Cause for Its Late Filing.

The State asserts that it has good cause for adopting these matters late because Castle Rock's notice of withdrawal constituted the first "formal notice" the State received that Castle Rock would not pursue these issues. *Id.* at 5. The State asserts that, until Castle Rock filed its notice, the State had no reason to know that Castle Rock would not vigorously pursue the matters it raised. *Id.* This assertion should be rejected. As set forth above, an intervenor's assertion that it relied upon another party's pursuit of its interests fails to demonstrate good cause for lateness. *South Texas, ALAB-799, 21 NRC at 382.* Further, the State fails to adequately address the issue of lateness, in that it nowhere discusses the fact that it could have attempted to adopt Castle Rock's contentions long ago, upon a proper showing of good cause and a balancing of the factors set forth in 10 C.F.R. § 2.714(a)(1). Having failed to make such a showing in its attempt a year ago to adopt these (and other) contentions, it ceased to make any effort to do so -- with the result that its present attempt is egregiously late.

The State also claims that it has good cause to adopt portions of Castle Rock's contentions on the grounds that: (1) Castle Rock's and the State's contentions have been consolidated and are "inextricably intertwined" (State's Response at 5); (2) the State has lead party status regarding the contentions, which it contends is "an interest equivalent to co-sponsorship" (*Id.* at 8); (3) its adoption of the contentions would preserve the status quo (*Id.* at 9); and (4) its adoption of Castle Rock's portion of the consolidated contentions is equivalent to the addition of new bases to an existing contention, for which a standard different from that set forth in 10 C.F.R. § 2.714(a)(1)(i) allegedly

applies. *See id.* at 7-8, citing *Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2)*, LBP-94-22, 40 NRC 37, 39 (1994). These assertions are without merit.

First, the State is incorrect in its assertion that Castle Rock's contentions are "inextricably intertwined" with the State's contentions, and that the consolidated contentions would need to be completely rewritten to parse out Castle Rock's portions. *See State's Response* at 5. On the contrary, the Staff reviewed the consolidated contentions and readily identified the language that is attributable solely to Castle Rock. *See Staff's Response* at 5. Rather than being "inextricably intertwined," the consolidated contentions may be redacted without difficulty, and all parties could simply remove Castle Rock's basis statements from their "litigation notebooks" or other documents.

In alleging that the contentions are intertwined, the State provides four purported examples: (1) paragraph five of Contention 14 (Permits), which refers to the need for a Utah Groundwater Discharge Permit (UGD Permit) and Utah Groundwater Protection Rules (UGP Rules) (*State Response* at 6); (2) Contention 11 (Hydrology), which it contends derives from Utah O except for portions of paragraph 2 (*Id.* at 6); (3) paragraphs 2 and 3 of Contention 3 (Financial Assurance) (*Id.*); and (4) paragraph 10 of Contention 3 (Financial Assurance) (*Id.* at 7). These concerns are without merit. With respect to Contention 14, only Castle Rock specifically mentioned the UGP Rules; further, if the State is correct that compliance with the UGP Rules is necessary to obtain a UGD Permit, there is no need to state this separately in the contention -- the State could simply address this as part of its case. With respect to Contention 11, the Staff agrees that Utah O addressed many of the issues raised by Castle Rock; however, a portion of paragraph 1 of the contention was raised solely by Castle Rock, concerning firefighting activities, and this portion of the contention should now be dismissed. *See Staff Response* at 5; *State's Contentions* at 101. With respect to paragraphs two and

three of Contention 3, these matters appear to have been raised by the Confederated Tribes, and the Staff agrees that they should not be dismissed from the contention upon Castle Rock's withdrawal. See State's Response at 6; Staff's Response at 5.¹² With respect to paragraph 10 of Contention 3, while the State points to its discussion of 10 C.F.R. Part 50 and Appendix C as guidance for financial assurance for a Part 72 facility (State's Response at 7),¹³ it nowhere mentioned non-routine expenses or the costs of a worst case accident (*see* Utah's Contentions at 27-31); accordingly, while the Staff now agrees with the State that this issue should remain as part of the contention, having been sponsored by the Confederated Tribes (*see* LBP-98-7, 47 NRC at 214-15), the State has not shown that it should be allowed to adopt the issue.¹⁴ Finally, with respect to the allocation of liability among spent fuel owners, that concern is already stated separately in paragraph 5 of the contention and need not be reiterated here. Thus, the State has not shown that these contentions are "inextricably intertwined."

Next, while the State asserts that it has good cause to adopt Castle Rock's issues at this time, on the grounds that the State's role as lead intervenor renders its interest equivalent to co-sponsorship (State's Response at 8), it has failed to provide any legal authority for this view. Further, the fact that

¹² The State asserts that neither it nor the Confederated Tribes accepted the Applicant's redraft of its financial assurance contention. State's Response at 6-7, 8. This does not establish that the issues have become "inextricably intertwined." If the issues stated in the contention can be separated by sponsoring party, this assertion is irrelevant.

¹³ In addition the State asserts that the issues raised in this portion of the Financial Assurance contention are significant because PFS is a newly formed company with no known track record, and PFS's ability to timely cover non-routine expenses "could be detrimental" to safety. State's Response at 7. The State's generalized statements, however, do not establish the existence of a significant safety issue.

¹⁴ In taking this view, the Staff retracts its previous view that the issue should be excluded from the contention upon Castle Rock's withdrawal (*see* Staff Response at 5).

the State has pursued discovery on these contentions, and has hired experts and conducted reviews (*id.* at 8-9), does not convert it into a co-sponsor of the contentions -- just as the Applicant and Staff have not become "co-sponsors" of the contention for having taken the same litigation steps. Further, as the Appeal Board has observed, an intervenor usually is permitted to conduct cross examination and submit factual and legal findings on the contentions sponsored by other intervenors, but that does not elevate the intervenor's status to that of a co-sponsor of a contention. *South Texas*, ALAB-799, 21 NRC at 383 and n.102.¹⁵

The State's assertion that its adoption of Castle Rock's contentions should be permitted so as to maintain the status quo of the proceeding (State's Response at 9), is similarly to no avail. Contrary to the State's assertion, there is no reason to believe that "discord" and "confusion" will result if Castle Rock's issues are deleted from the consolidated contentions, or that the "structure" of the proceeding will thereby be affected. As recognized by the Appeal Board in *South Texas*, the dismissal of a withdrawing intervenor's contentions is neither unfair nor inconsistent with the public interest. See *South Texas* at 383. Indeed, the Commission encourages parties to reach "good faith, mutually

¹⁵ The State's reliance on *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-86-22, 24 NRC 103 (1986), for the proposition that it should be permitted to adopt Castle Rock's wording of its contentions, is misplaced. See State's Response at 8 and n.8. In *Seabrook*, the State of New Hampshire withdrew a contention that had been incorporated by reference by another joint intervenor. See *id.* at 104-05. The Licensing Board found that the remaining intervenor had preserved its rights as a joint intervenor (by joining in and adopting the contention early in the proceeding), and should not be prejudiced by the State's withdrawal of its contention. *Id.* at 106. Unlike the situation in the instant proceeding, the intervenor in *Seabrook* had previously joined in and adopted the contention at issue, and had thereby become its co-sponsor. See *Public Serv. Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1083 (1982) (permitting the other intervenor to incorporate the State's contentions by reference, and permitting it to participate with the State as a joint intervenor).

satisfactory resolution" of issues without the need for litigation. *Id.*¹⁶ The State's request that Castle Rock's contentions be retained in the proceeding after it has withdrawn as a party, under the State's sponsorship, would unacceptably frustrate this policy. *Id.*¹⁷

Finally, the State's reliance on the Licensing Board's decision in *Vogle* is misplaced. First, the Licensing Board's decision in that proceeding is at odds with established Commission case law, whereby a party is not allowed to adopt a withdrawing party's contentions absent a showing that the late-filed factors in 10 C.F.R. § 2.714(a) favor that result. *See, e.g., Seabrook*, LBP-82-76, 16 NRC at 105 n.3 (late filed amendments to contentions must satisfy the late filing standards in 10 C.F.R. § 2.714(a)(1)); *see also*, cases cited in Staff's Response at 4. Further, even under the Board's standard in *Vogle*, the timeliness of the additional bases' submission is a central factor. *See Vogle*, LBP-94-22, 40 NRC at 39. Apart from stating that the State relied on Castle Rock's pursuit of these matters -- which is not a valid reason for its lateness -- the State fails to explain why it did not raise these matters earlier.¹⁸ Accordingly, these assertions should be rejected.

¹⁶ *See also* 10 C.F.R. § 2.759 (the Commission encourages the fair and reasonable settlement of contested issues in a proceeding, and the presiding officer and parties should "take appropriate steps to carry out this purpose.").

¹⁷ The State also asserts that by admitting these contentions, the Board recognized the significance of the issues raised. State's Response at 8. Commission case law, however, provides that "the mere acceptance of contentions at the threshold stage does not turn them into cognizable issues for litigation" absent their sponsor. *South Texas*, ALAB-799, 21 NRC at 383.

¹⁸ The Licensing Board in *Vogle* later found that the intervenor had not shown that he acted with reasonable promptness in submitting a new basis, based on the time he first became aware of the basis for the contention. *See Georgia Power Co.* (*Vogle Electric Generating Plant, Units 1 and 2*), LBP-94-27, 40 NRC 103, 106 (1994).

B. The State Has Failed to Show That the Other Late-Filing Factors Favor Its Adoption of Castle Rock's Portions of the Consolidated Contentions.

Regarding the other factors set forth in 10 C.F.R. § 2.714(a)(1), the Staff agrees with the State that factor two, the existence of other means to protect its interests, favors its adoption of the contentions. *See* State's Response at 10. While the State does not address factor four, the extent to which the petitioner's interest will be represented by other parties, this factor usually favors the late sponsorship of a contention. These two, factors, however, are accorded less weight than the other factors.

With respect to factor three, the State asserts that it will assist in developing a sound record because it has "already identified experts and knowledgeable persons" regarding the contentions. *Id.* at 10. The State, however, has not identified whom it intends to rely upon as witnesses, and has not summarized their proposed testimony. This factor therefore weighs against the State's position. *See, e.g., Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 246 (1986).*¹⁹

Finally, with respect to factor five, the State asserts that its continuance as lead party for the Castle Rock contentions will not broaden or delay the proceeding because the Board's schedule already accounts for litigation of these issues. State's Response at 10. This position is without merit. Although litigation of these matters is already in progress, additional hearing time, motions, and other litigation effort will be caused by the need to litigate these issues. Further, it is beyond question that

¹⁹ The Licensing Board in this proceeding has previously ruled that reliance upon an affiant who supported the admission of a contention is not sufficient to make this showing. *See* LBP-98-7, 47 NRC at 208. Here, the State has done even less.

the State's adoption of these issues, which would otherwise be dismissed, will result in a broadening of the issues in the proceeding.

Accordingly, the State has not demonstrated that the other factors in 10 C.F.R. § 2.714(a) favor its adoption of these contentions.

CONCLUSION

For the reasons set forth above, the Staff respectfully submits that the State has not demonstrated that it should be permitted to adopt Castle Rock's contentions and supporting bases.

Those contentions and bases should therefore be dismissed from the proceeding.

Respectfully submitted,

Catherine Marco

Catherine Marco
Counsel for NRC Staff

Dated at Rockville, Maryland
this 15th day of January 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PRIVATE FUEL STORAGE L.L.C.) Docket No. 72-22-ISFSI
)
(Independent Spent)
Fuel Storage Installation))

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S REPLY TO STATE OF UTAH'S RESPONSE TO CASTLE ROCK'S NOTICE OF WITHDRAWAL" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the United States mail, first class, as indicated by an asterisk, with copies by electronic mail as indicated, this 15th day of January, 1999.

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