

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
LBP-98-29

ATOMIC SAFETY AND LICENSING BOARD

'98 NOV 30 P2:35

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman  
Dr. Jerry R. Kline  
Dr. Peter S. Lam

OF  
ADJ

**SERVED NOV 30 1998**

In the Matter of  
  
PRIVATE FUEL STORAGE, L.L.C.  
  
(Independent Spent Fuel  
Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

November 30, 1998

MEMORANDUM AND ORDER

(Ruling on Late-Filed Contentions  
Regarding August 1998 Low, Utah Rail  
Spur License Application Amendment)

In filings dated September 29, October 14, and November 2, 1998, respectively, intervenors State of Utah (State of Utah), the Confederated Tribes of the Goshute Reservation (Confederated Tribes), and Ohngo Gaudadeh Devia (OGD) submitted late-filed contentions relating to an August 28, 1998 amendment to the pending 10 C.F.R. Part 72 application of Private Fuel Storage, L.L.C. (PFS). In its license request, PFS seeks authorization under 10 C.F.R. Part 72 to construct and operate an independent spent fuel storage installation (ISFSI) on the Skull Valley, Utah reservation of intervenor Skull Valley Band of Goshute Indians (Skull Valley Band). The August 28 license application amendment, among other things, outlines a

revised proposal to construct a rail spur off the existing Union Pacific rail mainline that would be used to transport flatbed rail cars holding spent fuel shipping casks to the PFS facility approximately thirty miles to the south. In responses to these intervenor filings, applicant PFS and the staff assert that none of the State, Confederated Tribes, or OGD contentions are admissible.

For the reasons set forth below, we find these parties' late-filed contentions relating to the August 1998 application amendment are not litigable.

#### I. BACKGROUND

As originally submitted in June 1997, the PFS application proposed that shipping casks containing nuclear reactor spent fuel rods would be moved into the Skull Valley area via a Union Pacific rail mainline that runs along the southern shore of the Great Salt Lake. It further stated that "shipping casks are shipped from the railroad mainline to the [Private Fuel Storage Facility (PFSF)] either by rail on a railroad spur or by highway." [PFS], Safety Analysis Report [for PFSF] at 4.5-1 (rev. 0 June 1997) [hereinafter SAR]. The application then went on to detail the "highway shipment" alternative. First, the shipping casks would be offloaded from rail cars onto heavy haul tractor/trailers at an intermodal transfer point (ITP)

located near Rowley Junction, Utah. Rowley Junction is a highway interchange at the intersection of Interstate 80 (I-80), which runs east and west along the Great Salt Lake's southern shore, and the Skull Valley Road (also known as Federal Aid Secondary Road 108), which goes south toward the Skull Valley Band reservation. From the Rowley Junction ITP, the truck trailers would transport the shipping casks some twenty-four miles south down the Skull Valley Road, then west via an access road onto the Skull Valley Band reservation and into the PFSF. See id. at 4.5-1 to -4. In addition, the application described the rail option, stating that "[t]he railroad will consist of a single track installed parallel to the existing Skull Valley Road." [PFS], Environmental Report [for PFSF] at 4.4-1 (rev. 0 June 1997) [hereinafter ER]; see also SAR at 4.5-4 (rev 0 June 1997). The application description further indicated that while a feasibility study would be done to determine on which side of the Skull Valley Road the rail spur would run, the spur would be located "adjacent to the edge of the existing road pavement." ER at 4.4-1 (rev. 0 June 1997).

The August 1998 application amendment makes several changes to this transportation scheme. First, it makes clear the preferred transportation method for shipping spent fuel casks to the PFSF is by rail. See SAR at 3.1-3 (rev. 2 Aug. 1998); ER at 2.1-3, 3.2-6 (rev. 1 Aug. 1998). Also, it

relocates the beginning of the proposed rail spur from Rowley Junction seventeen miles west to a point on the Union Pacific mainline near Low Junction, another I-80 interchange. From there, using a two-hundred-foot-wide public lands corridor for which PFS has applied to the United States Bureau of Land Management (BLM) for a right of way, the spur runs thirty-two miles to the PFSF. Specifically, from a Low Junction siding the spur would backtrack southeast approximately three miles along the south side of I-80; then turn due south for some twenty-six miles along the eastern edge of the Cedar Mountains that form the western boundary of Skull Valley; and finally go east three miles into the PFSF located on the Skull Valley Band reservation. See ER at 3.2-6 (rev. 1 Aug. 1998). In addition, the amendment moves the ITP for the train/truck transportation alternative 1.8 miles to the west of its original location at Rowley Junction. See id. at 3.2-5; SAR at 3.1-3 (rev. 2 Aug. 1998).

Three intervenors responded to this amendment with late-filed contentions. On September 29, the State filed two new contentions, Utah HH and Utah II, and a revised contention, Utah B-1. See [State] Contentions Relating to the Low Rail Transportation License Amendment (Sept. 29, 1998) [hereinafter State Low Rail Contentions]. Approximately two weeks later, asserting that it had not

been served with the August 28 amendment until September 29, intervenor Confederated Tribes sought admission of six new contentions, Confederated Tribes I through Confederated Tribes N. See Contentions of [Confederated Tribes] Relating to the Low Rail License Amendment (Oct. 14, 1998) [hereinafter Confederated Tribes Low Rail Contentions]. Then, some two weeks after that, intervenor OGD submitted ten new contentions, OGD Q through OGD Z. See [OGD] Contentions Relating to the Low Rail Transportation License Amendment (Nov. 2, 1998) [hereinafter OGD Low Rail Contentions]. In their initial filings, the State and the Confederated Tribes asserted their contentions merit admission under the five criteria for late-filing set forth in 10 C.F.R. § 2.714(a)(1), while all three intervenors maintained their contentions meet the standards for admissibility outlined in section 2.714(b)(2).

In response, PFS declared that none of the contentions filed by the State, the Confederated Tribes, or OGD meets either the section 2.714(a)(1) late filing standards or the section 2.714(b)(2) admissibility standards. See Applicant's Answer to [State] Contentions Relating to the Low Rail Transportation License Amendment (Oct. 14, 1998) [hereinafter PFS State Low Rail Contentions Response]; Applicant's Answer to Confederated Tribes' Contentions Relating to the Low Rail Transportation License Amendment

(Oct. 26, 1998) [hereinafter PFS Confederated Tribes Low Rail Contentions Response]; Applicant's Answer to OGD's Contentions Relating to the Low Rail Transportation License Amendment (Nov. 12, 1998) [hereinafter PFS OGD Low Rail Contentions Response]. The staff took a similar, albeit not identical approach. It declared that (1) with the exception of contentions Utah II and Utah B-1, the State, Confederated Tribes, and OGD contentions fail to meet the section 2.714(a)(1) late-filing criteria; and (2) with the exception of portions of Utah HH and Utah B-1 as it seeks to amend the basis for admitted contention Utah B, the State, Confederated Tribes, and OGD contentions do not satisfy the admissibility standards of section 2.714(b)(2). See NRC Staff's Response to [State] Contentions Relating to the Low Rail Transportation License Amendment (Oct. 14, 1998) [hereinafter Staff State Low Rail Contentions Response]; NRC Staff's Response to Contentions of [Confederated Tribes] Relating to the Low Rail License Amendment (Oct. 26, 1998) [hereinafter Staff Confederated Tribes Low Rail Contentions Response]; NRC Staff's Response to "[OGD] Contentions Relating to the Low Rail Transportation License Amendment" (Nov. 12, 1998) [hereinafter Staff OGD Low Rail Contentions Response].

Subsequently, in a reply filing submitted with leave of the Board, the State continued to maintain its contentions

are admissible under both the criteria of section 2.714(a)(1) and section 2.714(b)(2). See [State] Reply to Applicant's and Staff's Responses to Low Rail Contentions (Oct. 26, 1998) [hereinafter State Low Rail Contentions Reply]. On October 30, PFS countered with a pleading, also filed with leave of the Board, addressing the State's reply argument that its challenge to the Low rail spur was not untimely because the use of rail transportation was only presented as a limited option in the original application. See Applicant's Surreply to [State] Reply to Applicant's and Staff's Responses to Low Rail Contentions (Oct. 30, 1998) [hereinafter PFS State Low Rail Contentions Surreply]. Thereafter, with leave of the Board OGD lodged a reply filing, likewise asserting its late-filed contentions are admissible under both the criteria of section 2.714(a)(1) and section 2.714(b)(2). See [OGD] Reply to the Applicant's and Staff's Responses to Low Rail Contentions (Nov. 23, 1998) [hereinafter OGD Low Rail Contentions Reply].

## II. ANALYSIS

### A. Standards Governing Admissibility of Late-Filed Contentions

The deadline for filing timely contentions in this proceeding has long passed. See LBP-98-12, 47 NRC 343, 363 (1998). Accordingly, the contentions now before us, as well as any that might be proffered in the future, must meet the

five late-filing criteria of 10 C.F.R. § 2.714(a)(1). And, even if they meet these specifications, they also must pass muster under the admissibility standards set forth in section 2.714(b)(2), (d), and (e).

We have discussed both the general standards for contention admissibility and the late-filing criteria in previous decisions in this case, and thus will not repeat those here. See LBP-98-7, 47 NRC 142, 178-83 (general admissibility and late-filing criteria), as modified, LBP-98-10, 47 NRC 288, aff'd on other grounds, CLI-98-13, 48 NRC 26 (1998); LBP-98-13, 47 NRC 360, 365 (1998) (general admissibility criteria). An assessment of each of the intervenors' contentions relative to those standards follows.

B. State Contentions<sup>1</sup>

Utah HH -- The Low Rail Corridor and Fire Hazards

The Applicant's Environmental Report ("ER") 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, in that:

1. The ER fails to recognize that the Applicant's proposed movement of casks by locomotive in the Low rail line corridor presents a new wildfire ignition source in an area prone to wildfires, such as (a) the "welding, grinding of rail and the

---

<sup>1</sup> The wording of contentions Utah HH and Utah II reflect the applicant's suggested revisions as adopted and further revised (with PFS's acquiescence) by the State. See PFS Low Rail Contentions Response App. A at 1-2; State Low Rail Contentions Reply at 1-2.

presence of fuel for the operation of machinery" associated with rail construction, (b) sparks from friction or train exhaust, and (c) the shearing off of a hot brake shoe during rail operation.

2. The ER fails to evaluate the increased risk of wildfires caused by an increase of human activity near the railroad.
3. The ER fails to address how the Applicant's proposed rail line and the spent fuel transported on it will create an impediment to fighting wildfires.

DISCUSSION regarding Late-Filing Standards: State Low Rail Contentions at 18-19; PFS State Low Rail Contentions Response at 2-4; Staff State Low Rail Contentions Response at 3-8; State Low Rail Contentions Reply at 2-3; PFS State Low Rail Contentions Surreply at 1-4.

RULING: Concerning the first late-filing criterion -- good cause for filing late -- in instances such as this one in which a new contention purportedly is based on information contained in a document recently made publically available, an important consideration in judging the contention's timeliness is the extent to which the new contention could have been put forward with any degree of specificity in advance of the document's release. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-737, 18 NRC 168, 172 n.4 (1983); see also Yankee Atomic Electric Co. (Yankee Nuclear Power Station), LBP-96-15, 44 NRC 8, 26 (1996). In this instance, there are differences between the original application and

the August 1998 amendment that might provide material for new issues. For example, besides following a route that physically is ten or more miles to the west of the passageway previously proposed, the Low rail spur is to be built on open rangeland rather than immediately adjacent to, and within the right of way of, an existing highway.

The State, however, does not utilize this or any other information to show what is different about the revised rail route that establishes the wildfire ignition source, human activity, and firefighting impediment issues in contention Utah HH could not have been specified previously.<sup>2</sup> Instead, the State asserts the rail line alternative as outlined in the original application was not a sufficiently concrete possibility to warrant its effort in formulating any contentions regarding that option. See State Low Rail

---

<sup>2</sup> An affidavit accompanying the State's contention filing does state the "area" in which the Low rail spur will run is "prone" to wildfires. See State Low Rail Contentions Exh. 1, at 3 (affidavit of David C. Schen). But see PFS Low Rail Contentions Response at 3 n.3 (contesting Schen affidavit on this point). In explaining this conclusion, however, the affidavit states that such fires frequently are the result of fires that originate to the west in the Cedar Mountains and then spread to the east to cover the western part of Skull Valley. It is not apparent how this bears any relationship to the possibility of fires originating from the proposed Low rail spur. In fact, the more relevant consideration is the local vegetation, which the affidavit describes as being essentially uniform across Skull Valley. As a consequence, nothing presented by the State suggests there is anything unique about the Low rail spur, in contrast to the Skull Valley Road rail spur, that would make its wildfire ignition, human activity, or firefighter impediment concerns peculiar to the Low rail spur.

Contentions Reply at 2-3. The State's protests to the contrary notwithstanding, the rail option was specified in the original PFS application in a manner that made it clear rail-only transportation was on an equal footing with the rail/truck option.<sup>3</sup> See [PFS] License Application for [PFSF] at 1-1 (rev. 0 June 1997). Consequently, that the State may have chosen, for whatever reason, not to address the rail line option in its original contentions does not provide good cause for its failure to answer the central issue of what difference exists between the rail option as set forth in the original application and the option as described in the August 1998 amendment so as to show there is "good cause" for filing contention Utah HH late.

Because the State has failed to demonstrate the information upon which it places substantial reliance as the basis for contention Utah HH was not available in November 1997 when its contentions on the non-physical security plan portions of the PFS application were due, we conclude the State lacks good cause for filing this contention late.<sup>4</sup>

---

<sup>3</sup> An argument like the State's might have more resonance if an application set out a number of vaguely described options that suggested the applicant was simply trying to "keep all its options open." We do not see this as being the case here, however.

<sup>4</sup> The State's Low rail spur late-filed contentions, as well as those of the Confederated Tribes and OGD, were filed within approximately 30 days of the date the August 1998 application amendment was provided to them. Neither PFS nor  
(continued...)

Among the five late-filing standards of section 2.714(a)(1), the good cause factor has been accorded a preeminent role such that the moving party's failure to satisfy this requirement mandates a compelling showing in connection with the other four factors. See Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 244 (1986). Reviewing the remaining four factors, however, we are unable to conclude they support such a showing here.

The State correctly declares that factors two and four -- availability of other means to protect the petitioner's interests and extent of representation of petitioner's interests by existing parties -- favor late admission of this contention. On the other hand, factors three and five -- assistance in developing a sound record and broadening the issues/delaying the proceeding -- provide little, if

---

<sup>4</sup>(...continued)  
the staff has argued a lack of good cause for late filing based on the time it took the intervenors to prepare and file their contentions regarding the application amendment.

Given the nature of the August 1998 amendment, we do not base our various findings concerning a lack of good cause under late-filing factor one on the timeliness of the actual submission of the intervenors' contentions. We note, however, that such a finding depends in each instance on the scope and complexity of the "new" information the intervenor relies upon as the basis for late-filing. Further, as this proceeding moves forward, the time involved in preparing and submitting late-filed contentions may well become an element in determinations regarding factor five -- broadening or delaying the proceeding.

any, support for its admission. Relative to factor three, the State has submitted an affidavit from a forestry ecosystem manager in support of the contention and asserts that other, unnamed experts will be available to support its position on the contention. See State Low Rail Contentions at 18-19. But this proffer falls considerably short of the specificity regarding witness identification and testimony summaries the Commission has indicated is needed if this factor is to provide strong support for admissibility.<sup>5</sup> See LBP-98-7, 47 NRC at 208-09. As for factor five, it is true (as it is for most of the intervenors' Low rail spur contentions) the fact formal discovery has not yet commenced means prompt admission of this contention likely will not result in a protracted delay in this proceeding. Nonetheless, this is offset by the fact this contention will broaden the issues because the admitted wildfire-related contention -- Utah R -- concerns onsite rather than offsite fire protection.

Bearing in mind that factors two and four are accorded less weight than factors three and five, see Braidwood, CLI-86-8, 23 NRC at 245, despite the fact the former factors support the admission of this contention, a balancing of all four criteria clearly does not provide the requisite

---

<sup>5</sup> At best, the affidavit accompanying the State's filing provides very weak support in the admissibility balance.

compelling showing needed to overcome the lack of good cause for its late filing.<sup>6</sup>

Utah II -- Costs and effects associated with the Low Rail Corridor

The Low Corridor License Amendment does not comply with 10 C.F.R. § 72.100(b) or NEPA, including 10 C.F.R. § 51.45(c), and 40 C.F.R. § 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, in that:

1. The ER fails to quantify the costs and evaluate the cumulative impacts associated with fires potentially ignited as a result of activities occurring in the rail corridor.
2. The ER fails to quantify the costs and sufficiently analyze the impacts of the construction and operation of the rail line on species in the rail corridor, including species habitat, food base, mating and breeding habits, noise levels, and barriers to migration.
3. The ER fails to take account of the visual impact the railroad will have on the BLM Cedar Mountains Wilderness Study Area or other locations in Skull Valley.
4. The ER fails to quantify the costs associated with noise levels from the construction and operation

---

<sup>6</sup> At the same time, while we need not reach the question of its admissibility under section 2.714(b), based on our review of the parties' filings, we would have admitted only the portion of paragraph three of this contention dealing with impediments to four-wheel drive vehicle firefighting activities as being supported by a basis establishing a genuine material dispute adequate to warrant further inquiry. The other portions of this contention and their supporting bases would be inadmissible as impermissibly challenging the Commission's regulations or generic rulemaking-associated determinations (paragraph three as it relates to firefighter response hesitation); and/or lacking adequate factual or expert opinion support (paragraphs one and two). See LBP-98-7, 47 NRC at 179, 180-81.

of the railroad on the surrounding wilderness and recreational areas.

5. The ER fails to demonstrate how the Applicant plans to carry out the revegetation of the rail corridor and fails to show where and how the Applicant will obtain access to needed water.
6. The ER does not quantify or otherwise evaluate the loss of historical resources that may occur where the rail line crosses the Hastings Trail and the Donner-Reed Trail.
7. The ER fails to quantify the costs or evaluate the cumulative impacts associated with the rail line's impeding recreational users' and ranchers' crossing of Skull Valley from east to west.

1. Late-Filing Standards

DISCUSSION: State Low Rail Contentions at 18-19; PFS State Low Rail Contentions Response at 9, 11, 13-14; Staff State Low Rail Contentions Response at 3-8; State Low Rail Contentions Reply at 2-3; PFS State Low Rail Contentions Surreply at 1-4.

RULING: Applicant PFS asserts that paragraphs one, two, and five of this contention should be dismissed because application of the five-factor test in section 2.714(a) does not weigh in favor of admissibility. Repeating its principal argument regarding Utah HH, PFS maintains that each of these paragraphs is not dependent on information new to the August 1998 application amendment and, accordingly, each lacks "good cause" under factor one. The staff is in accord for that portion of the contention footed in Utah HH, which the State references as a basis for paragraph one.

We conclude the State has not met its burden to establish good cause for the late-filing of paragraph one by showing it was based on significant new data first revealed in the application amendment. Further, for the reasons set forth in connection with contention Utah HH, we find an analysis of the other four factors is insufficient to offset this lack of good cause in the admissibility balance.<sup>7</sup> See supra pp. 12-14. The first portion of this contention thus is not admissible as late-filed.

The remainder of the contention, including paragraphs two and five, appears to be based on significant new data that was first revealed in the application amendment, so as to provide the requisite good cause under late-filing factor one. Placing this factor one support for admission into the balance with the other four factors as described above, see supra pp. 12-14, we conclude relative to paragraphs two through seven that the admission of the contention is not precluded by the fact it was late-filed.

## 2. Admissibility

DISCUSSION: State Low Rail Contentions at 7-12; PFS State Low Rail Contentions Response at 9-17; Staff State Low

---

<sup>7</sup> In this regard, we note that for each paragraph, admission of the contention would broaden the issues in the proceeding. Further, in connection with factor three we observe there is even less provided concerning identification of witnesses and testimony than there was for contention Utah HH.

Rail Contentions Response at 12-18; State Low Rail Contentions Reply at 6-7.

RULING: In connection with paragraphs two through seven, these portions of the contention are inadmissible because these parts of the contention and their supporting bases impermissibly challenge the Commission's regulations or rulemaking-associated generic determinations (paragraphs two, four, six, and seven);<sup>8</sup> lack adequate factual or expert opinion support (paragraphs two, four, five, six, and seven); and/or fail properly to challenge the PFS application, as amended (paragraphs three, four, six, and seven).<sup>9</sup> See LBP-98-7, 47 NRC at 179-81.

Utah 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 C.F.R. § 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

---

<sup>8</sup> Although agency regulations implementing the National Environmental Policy Act of 1969 (NEPA) mandate cost quantification of environmental impacts as practicable in an environmental report, they impose a burden on the applicant to provide a quantification discussion only "to the fullest extent practicable." See 10 C.F.R. § 51.45(c).

<sup>9</sup> Although we need not reach the issue of its admissibility under section 2.714(b), based on our review of the parties' filings, the first paragraph of the contention also would be inadmissible as impermissibly challenging the Commission's regulations or rulemaking-related generic determinations; and/or as lacking adequate factual or expert opinion support. See LBP-98-7, 47 NRC at 179-80.

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 C.F.R. Part 72, including a security plan, an emergency plan, and radiation dose analyses.

DISCUSSION: State Low Rail Contentions at 12-17; PFS State Low Rail Contentions Response at 17-20; Staff State Low Rail Contentions Response at 18-20; State Low Rail Contentions Reply at 7-8.

RULING: With this "contention," the State seeks to amend the basis for already admitted contention Utah B to "account for proposed changes at the ITP" resulting from the August 1998 amendment. State Low Rail Contentions at 13 n.2. The applicant opposes this request, asserting the contention should remain as originally admitted except to note that the Rowley Junction ITP is now 1.8 miles west of its original location. The staff takes a somewhat more expansive view. Declaring that in addition to the location change, factual statements in the State's revised basis concerning the viability of the ITP pending completion of the BLM approval process and a revised description of the Rowley Junction facility, equipment, and expected shipping volume could be admitted, the staff opposes any basis revisions that would expand the contention beyond the scope established in the Board's original admission ruling or that are speculative and unsupported.

Although we see no need to adopt a renumbered contention Utah B as proposed by the State, bearing in mind the admonition that "[t]he reach of a contention necessarily hinges upon its terms coupled with its stated bases," Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988), we will deem the bases of that contention amended to incorporate: (1) the new location of the proposed Rowley Junction ITP, see State Low Rail Contentions at 13; (2) the assertion about the continuing viability of the ITP proposal pending BLM approval of the right of way for the Low rail spur, see id. at 13 n.3; and (3) the description of the ITP facility and equipment, per statements in the August 1998 PFS application amendment, see id. at 14. In so doing, however, we intend no change in the scope of our original ruling admitting this contention on a limited basis. See LBP-98-7, 47 NRC at 184-85.

C. Confederated Tribes Contentions

Confederated Tribes I

The Goshute Tribe hereby adopts and restates as though set forth in full herein the additional Contentions and Supporting Bases of the State of Utah filed with the Board on September 29, 1998, relating to the Low Rail Transportation License Amendment.

DISCUSSION: Confederated Tribes Low Rail Contentions at 1, 6; PFS Confederated Tribes Low Rail Contentions

Response at 1-2; Staff Confederated Tribes Low Rail Contentions Response at 6.

RULING: As we have held previously, a contention that seeks to adopt another intervenor's contention by reference is inadmissible. See LBP-98-7, 47 NRC at 236-37. Although we would permit the Confederated Tribes to incorporate these State contentions, see id., none of them has been found admissible.<sup>10</sup> See section II.B above.

Confederated Tribes J

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

DISCUSSION regarding Late-Filing Standards:

Confederated Tribes Low Rail Contentions at 6; PFS Confederated Tribes Low Rail Contentions Response at 3-5; Staff Confederated Tribes Low Rail Contentions Response at 2-6.

RULING: Relative to the first factor, the Confederated Tribes has failed to demonstrate the information upon which it places significant reliance as the basis for this contention was not available relative to the original

---

<sup>10</sup> We previously permitted Confederated Tribes to incorporate contention Utah B. See LBP-98-7, 47 NRC at 237. Our ruling regarding the revised basis for that contention, see supra p. 19, would reach that incorporation ruling as well.

application. See supra pp. 9-11. The Confederated Tribes thus lacks good cause for filing this contention late.

Nor has the Confederated Tribes made the compelling showing in connection with the other four factors that is needed to overcome a lack of good cause for late filing. As with the State's late-filed contentions, factor two -- availability of other means to protect the petitioner's interests -- favors late admission of this contention. But unlike the State's late-filed issues, factor four -- extent of representation of petitioner's interests by existing parties -- does not. This contention essentially tracks Utah HH, and, based on our previous experience, we have no difficulty in concluding the State is well able to represent the interests of the Confederated Tribes (or any other intervenor) relative to such an issue. See Licensing Board Memorandum and Order (Memorializing Prehearing Conference Rulings) (May 20, 1998) at 2 (approving request to change lead party for consolidated contention from Confederated Tribes to State) (unpublished).

So too, factors three and five -- assistance in developing a sound record and broadening the issues/delaying the proceeding -- do not support admission. In connection with factor three, the Confederated Tribes has not provided any information regarding witnesses or testimony that it would proffer in order to develop a record in support of

this contention. And relative to factor five, although the fact formal discovery has not yet commenced means prompt admission of this contention likely will not result in a protracted delay in this proceeding, admission of this contention will broaden the issues because the admitted wildfire-related contention -- Utah R -- concerns onsite rather than offsite fire protection.

A balancing of the other four factors thus clearly does not provide the requisite compelling showing needed to overcome the lack of good cause for the contention's late filing.<sup>11</sup>

#### Confederated Tribes K

The "Amended" Application fails to account for the costs associated with the construction, maintenance, operation, and decommissioning of the rail line and the costs associated with the ultimate removal of the stored fuel at the end of the lease.

#### DISCUSSION regarding Late-Filing Standards:

Confederated Tribes Low Rail Contentions at 6; PFS

Confederated Tribes Low Rail Contentions Response at 7;

---

<sup>11</sup> While we need not reach the question of its admissibility under section 2.714(b), based on our review of the parties' filings, we would not have admitted the contention because the contention and its supporting basis impermissibly challenge the Commission's regulations or generic rulemaking-associated determinations, including 10 C.F.R. Part 71; lack adequate factual or expert opinion support; and/or fail properly to challenge the PFS application, as amended. See LBP-98-7, 47 NRC at 179, 180-81.

Staff Confederated Tribes Low Rail Contentions Response at 2-6.

RULING: The Confederate Tribes has not met its burden to establish good cause for the late-filing by showing that significant new data was first revealed in the application amendment. Further, for the reasons set forth in connection with contention Confederated Tribes J, we find that an analysis of the other four factors is insufficient to offset this lack of good cause in the admissibility balance.<sup>12</sup> See supra pp. 21-22. This contention thus is not admissible as late-filed.<sup>13</sup>

#### Confederated Tribes L

The intermodal transfer point (ITP), under the proposed "Amendment," becomes a temporary storage facility which requires a separate and additional license. 10 CFR § 72.6(c)(1).

#### DISCUSSION regarding Late-Filing Standards:

Confederated Tribes Low Rail Contentions at 6; PFS

Confederated Tribes Low Rail Contentions Response at 9;

---

<sup>12</sup> In this regard, relative to factors four and five we note that this contention essentially tracks contention State II and that admission of the contention would broaden the issues in the proceeding.

<sup>13</sup> Although we need not reach the issue of its admissibility under section 2.714(b), based on our review of the parties' filings this contention also would be inadmissible because the contention and its supporting basis lack adequate factual or expert opinion support; fail properly to challenge the PFS application, as amended; and/or seek to litigate issues already rejected by the Board relative to contention Confederated Tribes A. See LBP-98-7, 47 NRC at 180-81, 234.

Staff Confederated Tribes Low Rail Contentions Response at 2-6.

RULING: The Confederate Tribes again has not met its burden to establish good cause for the late-filing by showing that significant new data was first revealed in the application amendment. Further, for the reasons set forth in connection with contention Confederated Tribes J, we find that an analysis of the other four factors is insufficient to offset this lack of good cause in the admissibility balance.<sup>14</sup> See supra pp. 21-22. This late-filed contention thus is not admissible.<sup>15</sup>

Confederated Tribes M

The proposed rail line will increase hazards to the public.

DISCUSSION regarding Late-Filing Standards:

Confederated Tribes Low Rail Contentions at 6; PFS

Confederated Tribes Low Rail Contentions Response at 11-12;

---

<sup>14</sup> In this regard, relative to factors four and five we note that this contention essentially tracks contention State B-1 and that admission of this contention would broaden the issues in the proceeding.

<sup>15</sup> Although we need not reach the issue of its admissibility under section 2.714(b), based on our review of the parties' filings this contention also would be inadmissible because the contention and its supporting basis impermissibly challenge agency regulations or rulemaking-associated generic determinations, including 10 C.F.R. Part 71; lack adequate factual or expert opinion support; fail properly to challenge the PFS application; and/or seek to litigate issues already rejected by the Board relative to contention Utah B. See LBP-98-7, 47 NRC at 179-81, 184.

Staff Confederated Tribes Low Rail Contentions Response at 2-6.

RULING: The Confederate Tribes once again has not met its burden to establish good cause for the late-filing by showing that significant new data was first revealed in the application amendment. Factor two and, in contrast to contentions Confederated Tribes J through L, factor four -- extent of representation of petitioner's interests by existing parties -- support admission of this contention. As we have already noted, however, factors two and four are accorded less weight than factors three and five. See supra p. 13. Consequently, when considered with factors three and five that, for the reasons set forth in connection with contention Confederated Tribes J, do not support admission, see supra pp. 21-22, we are unable to conclude the combined weigh of these four factors is sufficient to offset the lack of good cause in the admissibility balance.<sup>16</sup> This late-filed contention is not admissible as well.<sup>17</sup>

---

<sup>16</sup> In this regard, relative to factor five we note that admission of the contention would broaden the issues in the proceeding.

<sup>17</sup> Although we need not reach the issue of its admissibility under section 2.714(b), based on our review of the parties' filings this contention also would be inadmissible in that the contention and its supporting basis impermissibly challenge agency regulations or rulemaking-associated generic determinations, including 10 C.F.R. Parts 71 and 73; lack adequate factual or expert opinion support; and/or seek to litigate issues already rejected by the Board relative to contention OGD C. See LBP-98-7, 47 NRC at 179-80, 227-28.

Confederated Tribes N

The "Amendment" fails to provide adequate notice to the public of the changes, which are substantial.

1. Late-filing Standards

DISCUSSION: Confederated Tribes Low Rail Contentions at 6; PFS Confederated Tribes Low Rail Contentions Response at 12-13; Staff Confederated Tribes Low Rail Contentions Response at 4-6.

RULING: Challenging, as it does, the adequacy of the procedures under which the August 1998 application amendment is being considered by the agency, the contention raises a concern that could not have been proffered prior to that amendment. There thus is the requisite good cause under factor one. Notwithstanding the fact that factors three and five do not support admission of this contention as described in connection with contention Confederated Tribes J,<sup>18</sup> see supra p. 21-22, placing the factor one support for admission into the balance along with the support accorded by factors two and four as described above

---

<sup>18</sup> In this regard, relative to factor five we note that admission of the contention would broaden the issues in the proceeding. We also note relative to factor three that because this is essentially a legal question, the Confederated Tribes failure to specify witnesses or testimony does not count as heavily against admissibility as it otherwise might have. At the same time, in line with the Commission's Braidwood reasoning, see CLI-86-8, 23 NRC at 246, a strong showing under this factor for a legal contention may require a more detailed description of the authority for the intervenor's legal claim than has been provided here.

relative to contention Confederated Tribes M, see supra p. 25, we conclude that the admission of the contention is not precluded by the fact it was late-filed.

2. Admissibility

DISCUSSION: Confederated Tribes Low Rail Contentions at 5-6; PFS Confederated Tribes Low Rail Contentions Response at 12-13; Staff Confederated Tribes Low Rail Contentions Response at 12-13.

RULING: This is essentially a legal contention; nonetheless, it must have a basis sufficient to warrant its admission. Assuming that changes in a license application of sufficient magnitude could provide cause for renoticing the application, compare Rochester Gas & Electric Corp. (R.E. Ginna Nuclear Plant, Unit 1), LBP-83-73, 18 NRC 1231, 1233-36 (1983) (delay in proceeding of five years pending staff application review renders original notice of hearing sufficiently stale to require renoticing of proceeding), the Confederated Tribes conclusory assertions that "changes on virtually every page" of the application as a result of the August 1998 amendment indicate "substantial changes in the nature of the license" being sought, Confederated Tribes Low Rail Contentions at 5, are wholly inadequate to support admission of this contention.

D. OGD Contentions

OGD Q

In acting on the proposed license and amendments prior to completing an Environmental Impact Statement (EIS) as required by the National Environmental Policy Act (NEPA), the NRC has made irretrievable commitments of resources resulting in severe prejudice to the EIS process. In particular, the present procedure employed for the PFS license and license amendments prejudices the NRC's ability to fairly assess alternatives to the proposed PFS facility and the transportation of high level spent fuel.

DISCUSSION regarding Late-Filing Standards: PFS OGD Low Rail Contentions Response at 1-5; Staff OGD Low Rail Contentions Response at 3-5; OGD Low Rail Contentions Reply at 1-5.

RULING: As we noted above, consistent with longstanding agency practice, all contentions filed subsequent to November 1997 (other than those physical security plan contentions for which the Board granted a filing extension, see LBP-98-13, 47 NRC at 363) are late-filed. Consequently, OGD's arguments to the contrary notwithstanding,<sup>19</sup> this

---

<sup>19</sup> OGD asserts its Low rail spur-related contentions are not late-filed because there was no new hearing notice issued about the amendment and, therefore, its contentions need not meet the section 2.714(a)(1) late-filing criteria. See OGD Low Rail Contentions Reply at 1-2. The agency's licensing review procedures contemplate a dynamic process in which an application may be modified or improved without "renoticing" the application. At the same time, an intervenor is free to mount an adjudicatory challenge to any application revisions proffered after the deadline for filing contentions, at least so long as the new or amended contentions meet the late-filing criteria of section 2.714(a)(1). See Baltimore Gas and Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2),

(continued...)

contention (and all its other Low rail spur-related contentions) cannot be accepted unless a balancing of the five factors set forth in section 2.714(a) supports its admission.

Concerning factor one -- good cause for late filing -- while this issue statement is predominately a legal contention, OGD nonetheless has failed to demonstrate the information upon which it places significant reliance as the basis for this contention was not available relative to the original application. See supra pp. 9-11. It thus lacks good cause for filing this contention late.

OGD also failed to make a compelling showing in connection with the other four factors so as to counterbalance the lack of good cause for late filing. Factors two and four -- availability of other means to protect the petitioner's interests and extent of representation of petitioner's interests by existing parties -- do favor late admission of this contention. As we have noted, however, they are given significantly less weight in the balance as compared to factors three and five. See supra p. 13. Although, in the context of this legal contention, OGD's lack of a witness and testimony proffer means that factor three -- assistance in developing a sound

---

<sup>19</sup>(...continued)  
LBP-98-26, 48 NRC 232, 243 (1998), appeal pending.

record -- does not necessarily weigh as heavily as it might against late admission, see supra note 18, this is certainly not the case with factor five -- broadening the issues/delaying the proceeding -- which does not support admission given the significant new element this contention would introduce into the proceeding. Even with factors two and four on the admissibility side of the balance, there is not sufficient support to overcome the lack of good cause, rendering this contention inadmissible.<sup>20</sup>

OGD R

OGD and its members will be adversely impacted by the routine operation of the Low rail spur and will be seriously impacted by any transportation-related accidents.

DISCUSSION regarding Late-Filing Standards: PFS OGD Low Rail Contentions Response at 1-5; Staff OGD Low Rail Contentions Response at 3-5; OGD Low Rail Contentions Reply at 1-5.

RULING: Because OGD has failed to show the information upon which it places significant reliance as the basis for this contention was not available relative to the original application, we find it lacks good cause for late submission

---

<sup>20</sup> Although we need not reach the issue of its admissibility under section 2.714(b), based on our review of the parties' filings we would not have admitted the contention because the contention and its supporting basis impermissibly challenge the basic structure of the Commission's regulatory process; lack adequate factual or expert opinion support; and/or fail to establish with specificity any genuine dispute. See LBP-98-7, 47 NRC at 178-81.

of this contention. And lacking factor one support, OGD also has failed to make the compelling showing regarding the other four factors that is necessary to gain this contention's admission. While factors two and four -- availability of other means to protect the petitioner's interests and extent of representation of petitioner's interests by existing parties -- once again favor late admission of this contention, in this instance both factors three and five do not. Relative to factor three -- assistance in developing a sound record -- OGD has not provided any information regarding witnesses or testimony that it would proffer in order to develop a record in support of this contention. Further, concerning factor five -- broadening the issues/delaying the proceeding -- although the fact formal discovery has not yet commenced means prompt admission of this contention likely will not result in a protracted delay in this proceeding, admission of this contention (and indeed any of OGD's remaining contentions) will broaden the issues. With factors three and five thus weighing against admission, the support provided by the less important factors two and four clearly is insufficient to provide sufficient support for admitting this contention.<sup>21</sup>

---

<sup>21</sup> Although we need not reach the issue of its admissibility under section 2.714(b), based on our review of (continued...)

OGD S

OGD and its members are adversely affected by the potential sabotage of spent nuclear fuel during transportation along the proposed rail spur.

DISCUSSION regarding Late-Filing Standards: PFS OGD Low Rail Contentions Response at 1-5; Staff OGD Low Rail Contentions Response at 3-5; OGD Low Rail Contentions Reply at 1-5.

RULING: For the reasons set forth in our ruling regarding contention OGD R, we find this contention inadmissible.<sup>22</sup> See supra pp. 30-31.

OGD T

OGD and its members are adversely affected by the failure of PFS and/or the NRC to fully evaluate the potential failure of the flat bed rail cars that will transport the spent nuclear fuel along the rail spur.

---

<sup>21</sup> (...continued)  
the parties' filings we would not have admitted the contention because the contention and its supporting basis lack adequate factual or expert opinion support; fail properly to challenge the PFS application, as amended; and/or seek to litigate issues already rejected by the Board relative to contention OGD P. See LBP-98-7, 47 NRC at 180-81, 233-34.

<sup>22</sup> Although we need not reach the issue of its admissibility under section 2.714(b), based on our review of the parties' filings we would not have admitted the contention because the contention and its supporting basis impermissibly challenge the Commission's regulations or generic rulemaking-associated determinations, including 10 C.F.R. Parts 71 and 73; raise issues beyond the scope of this proceeding; lack adequate factual or expert opinion support; and/or seek to litigate issues already rejected by the Board relative to contention OGD C. See LBP-98-7, 47 NRC at 179-81, 227-28.

DISCUSSION regarding Late-Filing Standards: PFS OGD Low Rail Contentions Response at 1-5; Staff OGD Low Rail Contentions Response at 3-5; OGD Low Rail Contentions Reply at 1-5.

RULING: For the reasons set forth in our ruling regarding contention OGD R, we find this contention inadmissible.<sup>23</sup> See supra pp. 30-31.

OGD U

OGD and its members are adversely affected by potential fires caused by or enhanced by rail activities.

DISCUSSION regarding Late-Filing Standards: PFS OGD Low Rail Contentions Response at 1-5; Staff OGD Low Rail Contentions Response at 3-5; OGD Low Rail Contentions Reply at 1-5.

RULING: For the reasons set forth in our ruling regarding contention OGD R, we find this contention inadmissible.<sup>24</sup> See supra pp. 30-31.

---

<sup>23</sup> Although we need not reach the issue of its admissibility under section 2.714(b), based on our review of the parties' filings we would not have admitted the contention because the contention and its supporting basis impermissibly challenge the Commission's regulations or generic rulemaking-associated determinations, including 10 C.F.R. Parts 71 and 73; raise issues outside the scope of the proceeding; and/or lack adequate factual or expert opinion support. See LBP-98-7, 47 NRC at 179-181.

<sup>24</sup> In doing so, we note that to the degree this contention attempts to raise some of the same issues as were put forth in contention Utah HH, this weakens the OGD showing relative to factor four -- extent of representation of petitioner's interests by existing parties -- given the  
(continued...)

OGD V

OGD and its members are adversely affected by the potential human health and environmental safety problems associated with any type of failure of the casks that may be used to ship spent nuclear fuel to the proposed PFS facility along the proposed rail spur.

DISCUSSION regarding Late-Filing Standards: PFS OGD Low Rail Contentions Response at 1-5; Staff OGD Low Rail Contentions Response at 3-5.

RULING: For the reasons set forth in our ruling regarding contention OGD R, we find this contention inadmissible.<sup>25</sup> See supra pp. 30-31.

OGD W

OGD and its members are adversely affected by potential human errors, accidents, and/or other malfunctions involving the 1) loading of shipping casks, 2) transportation of shipping casks to a railhead, and 3) transportation of

---

<sup>24</sup>(...continued)  
State is fully qualified to represent its interest relative to these issues. See supra p. 21.

Further, although we need not reach the issue of its admissibility under section 2.714(b), based on our review of the parties' filings we would not have admitted the contention because the contention and its supporting basis lack adequate factual or expert opinion support; and/or fail properly to challenge the PFS application, as amended. See LBP-98-7, 47 NRC at 180-81.

<sup>25</sup> Although we need not reach the issue of its admissibility under section 2.714(b), based on our review of the parties' filings we would not have admitted the contention because the contention and its supporting basis impermissibly challenge the Commission's regulations or generic rulemaking-associated determinations, including 10 C.F.R. § 51.52 (Summary Table S-4); lack adequate factual or expert opinion support; and/or seek to litigate issues already rejected by the Board relative to contentions OGD C and OGD I. See LBP-98-7, 47 NRC at 179-181, 227-28, 230.

shipping casks via rail, including the proposed rail spur to the proposed PFS facility.

DISCUSSION regarding Late-Filing Standards: PFS OGD Low Rail Contentions Response at 1-5; Staff OGD Low Rail Contentions Response at 3-5; OGD Low Rail Contentions Reply at 1-5.

RULING: For the reasons set forth in our ruling regarding contention OGD R, we find this contention inadmissible.<sup>26</sup> See supra pp. 30-31.

OGD X

OGD and its members are adversely affected by the failure of PFS and/or the NRC to assess environmental justice issues caused by the proposed amendment to transport high level spent nuclear fuel into the Skull Valley area via rail spur.

DISCUSSION regarding Late-Filing Standards: PFS OGD Low Rail Contentions Response at 1-5; Staff OGD Low Rail Contentions Response at 3-5; OGD Low Rail Contentions Reply at 1-5.

---

<sup>26</sup> Although we need not reach the issue of its admissibility under section 2.714(b), based on our review of the parties' filings we would not have admitted the contention because the contention and its supporting basis impermissibly challenge the Commission's regulations or generic rulemaking-associated determinations, including 10 C.F.R. § 51.52 (Summary Table S-4); lack adequate factual or expert opinion support; and/or seek to litigate issues already rejected by the Board relative to contention Utah V. See LBP-98-7, 47 NRC at 179-81; 200-01.

RULING: For the reasons set forth in our ruling regarding contention OGD R, we find this contention inadmissible.<sup>27</sup> See supra pp. 30-31.

OGD Y

OGD and its members are adversely affected by the taking and use of lands proposed for the construction and operation of the proposed rail spur because they will be deprived of the opportunity to utilize these lands for grazing animals.

DISCUSSION regarding Late-filing Standards: PFS OGD Low Rail Contentions Response at 1-5; Staff OGD Low Rail Contentions Response at 3-5; OGD Low Rail Contentions Reply at 1-5.

RULING: For the reasons set forth in our ruling regarding contention OGD R, we find this contention inadmissible.<sup>28</sup> See supra pp. 30-31.

---

<sup>27</sup> Because there already is an admitted contention, OGD O, concerning environmental justice, factor five -- broadening the issues/delaying the proceeding -- seemingly would provide somewhat less support on the "inadmissibility" side of the balance than for contention OGD R, albeit not enough to provide the compelling showing needed to overcome the lack of good cause relative to factor one.

Additionally, although we need not reach the issue of its admissibility under section 2.714(b), based on our review of the parties' filings we would not have admitted the contention because the contention and its supporting basis raise issues outside the scope of this proceeding; lack adequate factual or expert opinion support; and/or fail properly to challenge the PFS application, as amended. See CLI-98-13, 48 NRC at 36; LBP-98-7, 47 NRC at 179-81.

<sup>28</sup> OGD maintains good cause exists for late-filing this contention because one of its members use of grazing land is limited to a part of the Skull Valley Band reservation on

(continued...)

OGD Z

The construction and operation of the proposed rail spur will permanently damage the historically and culturally significant trail used by the Goshute and others who used the area planned for the Low Corridor Rail Spur to travel through the Skull Valley region.

1. Late Filing Standards

DISCUSSION: PFS OGD Low Rail Contentions Response at 1-5; Staff OGD Low Rail Contentions Response at 3-5; OGD Low Rail Contentions Reply at 1-5.

RULING: Because OGD has made a showing that, by reason of the rail spur's relocation, there are now historical or cultural concerns that previously would not have been implicated, we find there is good cause for filing this particular contention late. Notwithstanding the fact that factors three and five provide little, if any support for admission of this contention as described in connection with

---

<sup>28</sup>(...continued)  
which the relocated rail spur will run. See OGD Low Rail Contention Reply at 14. The cited affidavit does not, however, support this assertion.

Also in this regard, we observe relative to factor three that the affidavit accompanying the OGD filing provides, at best, very weak support in the admissibility balance that clearly is inadequate, even in combination with factors two and four, to provide the compelling support needed to overcome the lack of good cause.

Additionally, although we need not reach the issue of its admissibility under section 2.714(b), based on our review of the parties' filings we would not have admitted the contention because the contention and its supporting basis lack adequate factual or expert opinion support; and/or fail properly to challenge the PFS application, as amended. See LBP-98-7, 47 NRC at 180-81.

contention OGD Y, see supra p. 36 & n.28, placing the factor one support for admission into the balance along with the support accorded by factors two and four as described above relative to contention OGD R, see supra p. 31, we conclude that the admission of the contention is not precluded by the fact it was late-filed.

2. Admissibility

Inadmissible in that the contention and its supporting basis fail to establish with specificity any genuine material dispute; lack adequate factual or expert opinion support; and/or fail properly to challenge the PFS application, as amended. See LBP-98-7, 47 NRC at 179-81.

III. CONCLUSION

For the reasons set forth above, we find that the late-filed contentions submitted by the State, the Confederated Tribes, and OGD regarding an August 1998 amendment to the PFS application that proposes, among other things, to construct and operate a rail spur between Low Junction, Utah, and its Skull Valley ISFSI are not subject to consideration in this proceeding either because these intervenors have failed to establish (1) a balancing of the five factors in 10 C.F.R. § 2.714(a)(1) governing late-filing supports admitting the contentions; or (2) the

standards in section 2.714(b)(2) support admission of the contentions. Further, although we find contention Utah B-1 inadmissible, we permit the basis for admitted contention Utah B to be amended to incorporate certain information about the proposed Rowley Junction ITP that arises from the August 1998 application amendment.

---

For the foregoing reasons, it is this thirtieth day of November 1998, ORDERED, that

1. The basis for admitted contention Utah B is amended as specified in section II.B. above.

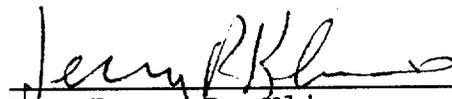
2. The following late-filed contentions submitted by the State, the Confederated Tribes, and OGD in filings dated September 29, 1998, October 14, 1998, and November 2, 1998, respectively, are rejected as inadmissible: Utah HH, Utah II, Utah B-1, Confederated Tribes I, Confederated Tribes J, Confederated Tribes K, Confederated Tribes L,

Confederated Tribes M, Confederated Tribes N, OGD Q, OGD R,  
OGD S, OGD T, OGD U, OGD V, OGD W, OGD X, OGD Y, and OGD Z.

THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>29</sup>



G. Paul Bollwerk, III  
ADMINISTRATIVE JUDGE



Dr. Jerry R. Kline  
ADMINISTRATIVE JUDGE



Dr. Peter S. Lam  
ADMINISTRATIVE JUDGE

Rockville, Maryland

November 30, 1998

---

<sup>29</sup> Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant PFS; (2) intervenors Skull Valley Band, OGD, Confederated Tribes, Castle Rock Land and Livestock, L.C./Skull Valley Company, LTD., and the State; (3) petitioner Southern Utah Wilderness Alliance; and (4) the staff.

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

In the Matter of

**PRIVATE FUEL STORAGE, LLC**

**(Independent Spent Fuel Storage  
Installation)**

**Docket No.(s) 72-22-ISFSI**

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing LB MEMO & ORDER (LBP-98-29) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

**Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555**

**Administrative Judge  
G. Paul Bollwerk, III, Chairman  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555**

**Administrative Judge  
Jerry R. Kline  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555**

**Administrative Judge  
Peter S. Lam  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555**

**Sherwin E. Turk, Esq.  
Catherine L. Marco, Esq.  
Office of the General Counsel  
Mail Stop - 0-15 B18  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555**

**Diane Curran, Esq.  
Harmon, Curran, Spielberg & Eisenberg  
2001 S Street, N.W., Suite 430  
Washington, DC 20009**

**Martin S. Kaufman, Esq.  
Atlantic Legal Foundation  
205 E. 42nd St.  
New York, NY 10017**

**Joro Walker, Esq.  
Land and Water Fund of the Rockies  
165 South Main, Suite 1  
Salt Lake City, UT 84111**

Docket No.(s)72-22-ISFSI  
LB MEMO & ORDER (LBP-98-29)

Denise Chancellor, Esq.  
Assistant Attorney General  
Utah Attorney General's Office  
160 East 300 South, 5th Floor  
P.O. Box 140873  
Salt Lake City, UT 84114

Jay E. Silberg, Esq.  
Shaw, Pittman, Potts and Trowbridge  
2300 N Street, NW  
Washington, DC 20037

John Paul Kennedy, Esq.  
Confederated Tribes of the Goshute  
Reservation and David Pete  
1385 Yale Avenue  
Salt Lake City, UT 84105

Richard E. Condit, Esq.  
Land and Water Fund of the Rockies  
2260 Baseline Road, Suite 200  
Boulder, CO 80302

Clayton J. Parr, Esq.  
Castle Rock, et al.  
Parr, Waddoups, Brown, Gee & Loveless  
185 South State Street, Suite 1300  
Salt Lake City, UT 84111

Danny Quintana, Esq.  
Skull Valley Band of Goshute Indians  
Danny Quintana & Assocs., P.C.  
50 West Broadway, Fourth Floor  
Salt Lake City, UT 84101

Richard Wilson  
Department of Physics  
Harvard University  
Cambridge, MA 02138

Dated at Rockville, Md. this  
30 day of November 1998

  
Office of the Secretary of the Commission