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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

SERVED AUG 30 1999

In the Matter of	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, L.L.C.	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel Storage Installation)	August 30, 1999

MEMORANDUM AND ORDER
(Granting Motion for
Summary Disposition Regarding
Contention Utah B)

Applicant Private Fuel Storage, L.L.C., (PFS) has requested that summary disposition be entered in its favor regarding contention Utah B, License Needed for Intermodal Transfer Facility. As admitted, the contention details the claim of intervenor State of Utah (State) that the PFS application for a 10 C.F.R. Part 72 independent spent fuel storage installation (ISFSI) in Skull Valley, Utah, is incomplete because a planned Intermodal Transfer Point (ITP), to be located at Rowley Junction, Utah, is a de facto interim spent storage facility that does not comply with the requirements of 10 C.F.R. Part 72. According to PFS, however, there is no genuine issue as to any material fact relevant to this contention so that, in accordance with

10 C.F.R. § 2.749, it is entitled to a determination in its favor on this contention as a matter of law. The NRC staff supports the motion for summary disposition while the State opposes it on the ground that genuine issues of material fact remain in dispute.

For the reasons described below, on this issue we grant summary disposition in favor of PFS. In addition, because portions of other contentions admitted in this proceeding concern the ITP, we provide the parties an opportunity to make a filing outlining their positions on the impact of this ruling.

I. BACKGROUND

PFS submitted its proposal to construct and operate an independent spent fuel storage installation (ISFSI) on the reservation of the Skull Valley Band of Goshute Indians (Skull Valley Band) in a June 1997 license application. As detailed in the safety analysis report that accompanies the application, see [PFS] Safety Analysis Report at 4.5-3 (rev. 2 Aug. 1998), if PFS decides to transport the shipping casks containing spent reactor fuel by heavy-haul trucks from the Union Pacific railroad mainline to the PFS facility some twenty-five miles to the south, the ITP, which consists of rail sidings, a tractor/trailer yard, a gantry crane, and a weather enclosure, will serve as the point at which the

shipping casks are transferred from railroad cars to trucks.[1] According to PFS, these casks will remain both sealed and in shipment mode throughout the time they remain at the ITP. See [PFS] Motion for Summary Disposition of Contention Utah B (June 11, 1999) at 4 [hereinafter PFS Motion].

The agency's regulations on transportation of spent nuclear fuel, 10 C.F.R. Part 71, make it clear that both NRC and the United States Department of Transportation (DOT) regulate the shipment of spent nuclear fuel. A memorandum of understanding, 44 Fed. Reg. 38,690 (1979), delegates responsibilities to each: NRC regulates transportation licensing, packaging, and physical protection while DOT regulates transportation preparation and operations. For its part, NRC licenses the shipment of spent nuclear fuel by general license granted under 10 C.F.R. § 71.12. As is pertinent here, that section provides:

> (a) A general license is hereby issued to any licensee of the Commission to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance, or other approval had been issued by the NRC.

10 C.F.R. § 71.12(a).

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[1] As we have noted elsewhere in this proceeding, currently the PFS preferred transportation option is to move the shipping casks from the rail mainline to the facility using a spur line running from Low Junction, Utah. See LBP-98-29, 48 NRC 286, 289 (1998).

In its contention Utah B, the State claimed that the size and nature of the operations to be performed at the Rowley Junction ITP mandated PFS compliance with the requirements of 10 C.F.R. Part 72, which governs the ISFSI storage of spent nuclear fuel and high-level radioactive waste. In admitting contention Utah B, the Board accepted those portions of the contention in which the State claimed that the ITP was "not merely part of the transportation but a de facto interim spent fuel storage facility" and that depending on how this material was handled, PFS might be required to provide "a security plan, and emergency plan and radiation dose plan" in compliance with 10 C.F.R. Part 72. LBP-98-7, 47 NRC 142, 184, reconsideration granted in part and denied in part on other grounds, LBP-98-10, 47 NRC 288, aff'd on other grounds, CLI-98-13, 48 NRC 26 (1998). In making this determination, the Board held:

> In this instance, there is a genuine legal/factual issue that merits further inquiry as to whether the PFS scheme for operation of the Rowley Junction ITP will cause the materials delivered there to remain within the possession and control of an entity or entities that comply with the terms of the general license issued under section 71.12 or will be handled in such a way as to require specific licensing under Part 72.

Id. at 185 (citation omitted).[2] The contention, as admitted by the Board, reads as follows:

> Utah B -- 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 a part of the transportation operation but a de facto interim spent nuclear fuel storage facility at which PFS will receive, handle, and possess spent nuclear fuel. Because the ITP is an interim spent fuel storage facility, it is important to provide the public with the regulatory protections that are afforded by compliance with 10 C.F.R. Part 72, including a security plan, an emergency plan, and radiation dose analyses.

Id. at 251.

In its pending motion for summary disposition, which is accompanied by an eleven item statement of material facts not in dispute, PFS argues there no longer are any genuine issues of material fact in dispute because the related questions posed by contention Utah B -- whether the

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[2] As originally submitted to the Board, contention Utah B also posed questions about the regulatory status of the Rowley Junction ITP under 10 C.F.R. Part 72 based on the volume and quantity of fuel shipments that would pass through the facility. See LBP-98-7, 47 NRC at 184. The Board, however, rejected these portions of the contention as "impermissibly challeng[ing] the Commission's regulations or rulemaking-associated generic determinations, including the provisions of 10 C.F.R. Part 71." Id.

materials delivered to the ITP comply with the terms of section 71.12 and whether specific licensing under Part 72 is required -- have been resolved. PFS argues that because it qualifies for the general license granted in section 71.12, it is authorized to undertake the activities proposed at the Rowley Junction ITP without a specific license issued under Part 72. This is so, PFS asserts, because its plan for ITP operation complies with applicable NRC and DOT transportation and operational requirements. Relying upon the attached sworn declarations of several of those with substantial responsibility for the proposed project, PFS asserts that regulation under Part 72 is not warranted because all proposed activities at Rowley Junction will be within the scope of Part 71 as it governs the transportation of spent fuel. See PFS Motion at 3-4.

In addressing whether its activities are subject to regulation under the general license issued in Part 71 or require a specific license under Part 72, PFS maintains the agency already has held that a general license, not a specific license, is needed for the intermodal transportation of spent nuclear fuel. See id. at 8-9 & n.13 (citing State of New Jersey (Department of Law and Public Safety's Requests Dated October 8, 1993), CLI-93-25, 38 NRC 289, 294 (1993); Shipments of Fuel from Long Island Power Authority's Shoreham Nuclear Power Station to Philadelphia

Electric Co.'s Limerick Generating Station, DD-93-22, 38 NRC 365 (1993) (ruling by director of NRC Office of Nuclear Materials Safety and Safeguards (NMSS) that specific licensing is not required for a licensee's intermodal transportation of spent nuclear fuel)). PFS claims that this proposition is further supported by the agency guidance in NUREG-0561 that addressed the physical protection of spent nuclear fuel during transportation. See id. at 9 & nn.14-15 (citing NMSS, U.S. Nuclear Regulatory Commission, NUREG-0561, Physical Protection of Shipments of Irradiated Reactor Fuel 2, 9, 33, 36 (rev. 1 1980), for the proposition guidance furnished operates on the premise transportation of spent nuclear fuel is governed by Part 71 and not Part 72).

The NRC staff supports the PFS motion for summary disposition. Following PFS's initial June 1997 filing of its application and the Board's April 1998 decision to admit contention Utah B, the staff in a December 10, 1998 requests for additional information (RAI) posed questions regarding the process by which the shipment of spent nuclear fuel would be transported between the rail mainline and the PFS facility using the Rowley Junction ITP. The staff maintains that the PFS February 10, 1999 responses to the December 1998 RAI "establish that its operation of that [ITP] facility will be conducted in accordance with applicable NRC and DOT regulations" and that "materials delivered to the

ITP will remain in the possession and control of an entity that will comply with the general license established for carriers, and will not be handled in a manner that requires licensing under 10 C.F.R. Part 72." NRC Staff's Response to [PFS] Motion for Summary Disposition of Contention Utah B (July 16, 1999) at 11-12 [hereinafter Staff Response]; see also NRC Staff's Statement of Its Position Concerning Group I Contentions (June 15, 1999) attach. at 1-3. Based on this information, the staff contends there are no longer any material facts in dispute regarding contention Utah B so that summary disposition in favor of PFS is appropriate.

In opposing the PFS summary disposition motion, the State filed a supporting statement of material facts in dispute that lists twenty-three elements. As part of its argument, the State claims that PFS has failed to show how all activities at the ITP will be regulated under Part 71, mandating NRC specific licensing under Part 72 so that potential dangerous situations do not "fall through the cracks" under the existing regulatory scheme. [State] Opposition to [PFS] Motion for Summary Disposition of Utah Contention B (July 16, 1999) at 6 [hereinafter State Response]. The State emphasizes the need to regulate under Part 72 the machinery that will lift and move the casks while at Rowley Junction. See State Response at 5-6. According to the State, Part 71 only regulates the

"'structural part of the package [cask] that could be used to lif[t] or tie down the package during transport'" and not stationary facilities or stationary structures like the gantry crane proposed by PFS. Id. at 8 (quoting 10 C.F.R. § 71.87(h)). This is a regulatory void in Part 71 that must be filled by requiring the facility to comply with Part 72, the State declares. Otherwise, various of the PFS commitments regarding ITP operation that are outlined in its motion will be nothing more than unenforceable promises. See id. at 11; see also [State] Response to NRC Staff's Response to [PFS] Motion for Summary Disposition of Contention Utah B (July 26, 1999) at 2-3 [hereinafter State Reply].

In addition, the State distinguishes the present proposal from the Commission's New Jersey ruling and the Shoreham 10 C.F.R. § 2.206 director's decision cited by PFS, arguing that the size of the casks, the radioactivity of materials to be carried, and the mode of transportation are markedly different from those outlined in the PFS plan. See id. at 9-10. Finally, the State maintains that additional safety requirements must be imposed by NRC because of the unique nature of the activities and environment around Rowley Junction -- e.g., nearby bombing ranges, rocket engine transportation on the adjacent interstate highway, and the Great Salt Lake. The State concludes that these

factors, combined with the fact that the ITP facility will store spent nuclear fuel, mean that NRC must require compliance with Part 72 including the completion of an accident analysis, an emergency plan, and safeguards in order to guarantee safety at the site. See id. at 11-12. Since the PFS plan for the ITP does not comply with these Part 72 requirements, the State argues that genuine issues of material fact remain so that summary disposition would be improper.

II. ANALYSIS

A. Legal Standard For Summary Disposition

A party to an NRC proceeding is entitled to summary disposition on any or all matters

> if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and affidavits, if any, show that there is no genuine issue as to any material fact and that the party . . . is entitled to a decision as a matter of law.

10 C.F.R. § 2.749(d). As with the analogous Rule 56 of the Federal Rules of Civil Procedure, the movant bears the initial burden of making the requisite showing that there is no genuine issue as to any material fact, which it attempts to do by means of a required statement of material facts and any supporting materials that accompany the dispositive motion. An opposing party must counter each adequately

supported material fact with its own statement of material fact in dispute and supporting materials. If uncontroverted, the movant's facts will be deemed admitted. See Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102-03 (1993).[3]

B. Board Ruling

The pivotal question regarding summary disposition for contention Utah B is whether the rail to truck transfer activity that is to be accomplished at the Rowley Junction ITP is a transportation function that falls within the scope of Part 71. In making this determination, we must also decide whether there could be any specific activities

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[3] As the staff has noted, see Staff Response at 8 n.8, in the interest of avoiding unnecessary evidentiary hearings, the use of summary disposition has been encouraged by both the Commission and the Appeal Board when there are no genuine issues of material fact in dispute. See Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981); see also Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1263 (1982); Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550 (1980). Nevertheless, in July 1998, the Commission directed that licensing boards should forego summary disposition absent a written justification explaining why permitting summary disposition motions to be filed would benefit the timeliness and efficiency of the proceeding. See Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 20-21 (1998). In this instance, the Board has contemplated since April of last year that the use of summary disposition would contribute substantially to the timely and efficient conduct of this proceeding. See LBP-98-7, 47 NRC at 244; see also Licensing Board Memorandum and Order (General Schedule for Proceeding and Associated Guidance) (June 29, 1998) at 8-10 (unpublished). We continue to hold that view.

carried on at the ITP, such as cask handling, that would be governed by Part 72 such that a specific license is required.

The PFS February 1999 responses to the staff's December 1998 RAI, see PFS Motion attach. 1, exh. 2 (February 10, 1998 PFS response to staff RAI), along with the affidavits of PFS technology committee chairman John A. Vincent (who is also a senior engineer nuclear fuel with GPU Nuclear) and PFS project director John Donnell,[4] describe the nature of PFS's operation of the ITP as set forth in the ITP plan for the facility. And in doing so, they attempt to demonstrate that the spent fuel shipments to PFS's main storage facility via the Rowley Junction ITP would be regulated by Part 71 requirements.

The PFS plan establishes, among other things, that materials delivered to the ITP will remain under the possession and control of an entity complying with the terms of a section 71.12 general license. Spent fuel would be shipped in NRC-certified transportation casks from the originating reactor site to the PFS ISFSI facility. The

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[4] There have been no objections by PFS, the staff, or the State to the qualifications or expertise to these or the other affiants, including State declarants Dr. Marvin Resnikoff and Bronson W. Hawley, Ph.D, and staff declarant Earl P. Easton, whose statements are relied upon to provide support for other parties' assertions regarding the material factual matters at issue in connection with contention Utah B.

shipper will be the originating reactor licensee, who will ship the spent fuel under the general license authority of section 71.12 and retain ownership of the spent fuel throughout the transportation process (as well as while the fuel is at the PFS ITP and the Skull Valley facility). By virtue of the section 71.12 general license, the originating reactor licensee/fuel owner is empowered to deliver the fuel for transport to the PFS ISFSI facility to one or more carriers authorized under the general license provided for by section 70.20a. Under the PFS plan, cask transport to its Skull Valley facility would be undertaken by one or more section 70.20a authorized carriers in an NRC-approved package or cask that carries a certificate of compliance or other NRC approval. Throughout the transportation operation (i.e., from the reactor, to the rail line, to the ITP, to the heavy-haul truck, to the PFS Skull Valley facility), the fuel would be sealed inside casks that will remain in shipment mode, with the carrier in possession of the spent fuel transportation casks having custody and control of the cask, subject to NRC and DOT regulations. See PFS Motion at 5-8, 10-11.

In connection with the Rowley Junction ITP, under its plan, PFS (or another entity if PFS elects not to be the carrier) would operate the ITP and be in possession of the spent fuel at the ITP as a "carrier" within the meaning of

Part 71.[5] PFS asserts that there appear to be no physical or legal impediments to it qualifying as a carrier, which would include qualifying with DOT as a motor carrier and as a carrier of hazardous materials, and that it will comply with the applicable DOT and NRC regulations if it becomes the carrier. See PFS Motion at 11-12.

In this regard, as a carrier PFS would be subject to the safety fitness requirements of the DOT Federal Highway Administration, see 49 C.F.R. Part 385, and the DOT hazardous materials transportation requirements, see id. Parts 107, 171-173, 178, 177, 180, as well as the NRC requirements in 10 C.F.R. Parts 71 and 73. As to the former, PFS would be required to verify that the cask is accompanied by appropriate shipping papers and is marked, labeled, and placarded in compliance with 49 C.F.R. §§ 172.3, 174.24, 177.817, which it has indicated it will do. Regarding the latter, PFS acknowledged that, during the

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[5] In this regard, although 10 C.F.R. Part 71 defines a "carrier" to include either a common, contract, or private carrier, see 10 C.F.R. § 71.4 (definition of "carrier"), according to PFS, it would not act as a private carrier because it will never take title to or own the spent fuel. See PFS Motion at 6 n.7. Rather, in becoming a "carrier" authorized to transport material under a section 70.20a general license, PFS asserts it may choose to qualify as either a common or contract carrier, with the main difference between these being that under the regulations of DOT's Federal Highway Administration, which regulates motor carriers, a common carrier must file proof of cargo insurance while a contract carrier need not do so. See PFS Motion at 12 n.19 (citing 49 C.F.R. § 365.109(a)(5)(iii)).

time it is acting as a carrier at the ITP, to meet the general licensing requirements of section 71.12, the spent fuel would have to remain sealed in NRC-certified transportation casks and be handled in conformance with the cask's design basis as described in the cask's NRC certificate of compliance (CoC),[6] as well as being protected in accordance with the physical protection requirements set forth in 10 C.F.R. § 73.37,[7] all of which PFS has committed to doing as well. See PFS Motion at 11-12.

Based on this PFS transportation plan, we conclude that there are no material facts in dispute regarding contention Utah B and that PFS has established it is entitled to a

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[6] In this regard, PFS declares that the sole operation at the ITP will be transferring the sealed transportation casks from a rail car to a heavy-haul trailer, during which time the cask will remain in its shipment mode, i.e., loaded on its transportation cradle, horizontally with impact limiters installed. Also according to PFS, all cask CoC requirements will be complied with and all ITP operations will be conducted in accordance with the cask's design basis and the PFS Part 71 quality assurance program. See PFS Motion at 3-4, 6; id. exh. 1, at 4-5.

[7] PFS declares that under the general license provision of section 71.12, the "shipper" (i.e., the utility) is responsible for ensuring the provision of the physical protection elements mandated by section 73.37, while the general license provision of section 70.20a makes the carrier responsible for ensuring implementation of those requirements. PFS further notes that if it becomes the carrier at the ITP, it is prepared to meet the section 73.37 requirements as part of the transportation services agreements it will enter into with its utility/shipper customers, including providing armed escorts, a staffed communications center, and other safeguard precautions relative to the spent fuel transportation casks that will come into the ITP. See PFS Motion at 6-7 & n.9.

judgment in its favor on the issue of whether Rowley Junction ITP activities are governed by the general licensing provisions of 10 C.F.R. Part 71 and the related DOT regulations for transporting spent nuclear fuel so as not to require specific licensing under 10 C.F.R. Part 72. In doing so, we also conclude that the State failed to demonstrate that there are material facts in dispute regarding the ITP plan or any ITP transportation-related activities.

To be sure, the State has attempted to interpose various material disputes, factual and otherwise. For instance, it argues that the close proximity of the ITP to several local activities and places (e.g., Interstate Highway 80 along which various potentially destructive items, including powerful rocket motors, are transported; the Great Salt Lake; military bombing ranges; flight patterns for the Salt Lake City International Airport) could result in accidents at the ITP not considered by PFS or the staff. See State Response at 12. The State also maintains that NRC Part 71 and DOT regulations do not mandate protections for ITP workers -- such as radioactivity inspections of casks or dosimeters -- that will be afforded to employees twenty-five miles to the south when the casks are received at the PFS facility. See id. at 6-7. According to the State, this "regulatory gap" is further

evidenced by the fact that an important component of the transportation cask handling process, the gantry crane, will not be regulated under Part 71. See id. at 7-9.

In light of the PFS showing in its motion regarding the Rowley Junction ITP, however, the answer to these concerns, is the same as we provided in our April 1998 ruling on other aspects of contention Utah B. Agency adjudications are not the proper forum for challenging applicable federal regulations. See LBP-98-7, 47 NRC at 179, 184. The established regulatory scheme for the transportation of spent nuclear fuel is found in 10 C.F.R. Part 71 and the complementary DOT regulations and is applicable to the ITP.[8] Because this Board cannot go afield of what is required by these regulations, the State's concerns challenging this

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[8] To the degree the State's arguments in this regard appear to rest upon the assumption that intermodal transfer activities (such as the unloading and reloading activities at an ITP) are somehow not part of the "transportation" process regulated under Part 71 and the complementary DOT regulations, they are misplaced. Under the terms of the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. §§ 5101-5127, from which DOT derives its authority to regulate the transportation of materials like spent nuclear fuel, "transportation" is defined as "the movement of property and loading, unloading, or storage incidental to the movement." Id. § 5102(12). DOT, as the agency with principal responsibility for implementing HMTA's provisions, further interprets "transportation" to mean "any movement of property by any mode, and any loading, unloading, or storage incidental thereto." 49 C.F.R. § 107.3. Nothing presented by the State suggests that DOT would characterize the loading and unloading activities performed at the ITP, as well as any incidental storage of spent fuel at the ITP, as outside of its definition of "transportation" or its jurisdiction.

regulatory scheme, to the degree it desires that scheme to mirror the various requirements of Part 72, must be pursued as an effort to change those rules.[9] Compare 10 C.F.R. § 2.758.

We would add that our conclusion in this regard is bolstered by the Commission's State of New Jersey decision, CLI-93-25, 38 NRC at 294, holding that transportation activities for the shipment of spent nuclear fuel are governed by Part 71 and do not require a specific license

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[9] In fact, the focus of much of the State's argument is not on the question whether there is a legal basis for applying the specific licensing provisions of Part 72. Rather, the State outlines its position that the existing general licensing requirements in Part 71 and the DOT hazardous waste transportation regulations are inadequate to address its safety concerns because they result in regulatory oversight of important ITP components, in particular the 150-ton gantry crane, that is either nonexistent or relies upon PFS commitments that cannot be enforced. According to the State, this situation must be corrected by the Board in the course of this adjudicatory proceeding. See State Response at 5-8; State Reply at 2-3.

We disagree with the State's basic premise. For instance, it is not apparent that the gantry crane that will be used to lift the casks from a rail car to trucks at the ITP falls outside the jurisdiction of the NRC or DOT under the existing NRC/DOT regulatory scheme. Although, as far as we can determine, stationary components such as a crane are not specifically mentioned in these regulations, their use at a facility like the proposed PFS ITP would clearly seem to be a part of the transportation process, and thus subject to scrutiny under this regime. See 49 C.F.R. 107.3 (definition of "transportation"). The degree to which DOT and NRC have sought to exercise that authority is, however, a separate question that goes to the scope of the existing regulations and, in any event, is not a matter with which we can deal in the context of this proceeding regarding the sufficiency of the PFS license application under 10 C.F.R. Part 72.

under Part 72. Notwithstanding the State's claim of factual distinctions between that case and this proceeding (e.g., cask size, extent of radioactivity, and mode of transportation), these differences do not obviate the Commission's determination in State of New Jersey that Part 71 (rather than Part 72) governs the transportation of spent fuel. None of the matters presented by the State provides a basis for declining to follow that holding, which dictates that transportation activities, including activities at the ITP as they are described in the sworn declarations by PFS, are governed by Part 71 and the complementary DOT regulatory regime.

Accordingly, we grant the PFS request that summary disposition of contention Utah B be entered in its favor.

III. IMPACT OF RULING

As has been noted in other summary disposition rulings issued this date, see LBP-99-35, 50 NRC ___, ___ (slip op. at 4) (Aug. 30, 1999) (contention Utah K/Confederated Tribes B); LBP-99-36, 50 NRC ___, ___ (slip op. at 2) (Aug. 30, 1999) (contention Utah R), our ruling in favor of PFS on this issue is potentially dispositive of portions of other contentions that were admitted subject to a merits resolution of this contention. These contentions include Utah K/Confederated Tribes B, Inadequate Consideration of

Credible Accidents; Utah N, Flooding; Utah O, Hydrology; Utah R, Emergency Plan; Utah S, Decommissioning; Utah T, Inadequate Assessment of Required Permits and Other Entitlements; Utah U, Impacts of Onsite Storage Not Considered; and Utah W, Other Impacts Not Considered. See LBP-98-7, 47 NRC at 190 n.12, 192 n.15, 193 n.16, 196 n.18, 197 n.19, 198 n.20, 199 n.22, 202 n.24. PFS has suggested that a ruling in its favor on this motion merits the dismissal of contentions (or portions of contentions) that concern the ITP. See [PFS] Motion for Partial Summary Disposition of Utah Contention R -- Emergency Plan (June 28, 1999) at 2 n.2. In the absence of such a motion, however, we will afford the parties an opportunity to address the question of the continuing validity of the ITP-related portions of these issues. Accordingly, the parties shall have up to and including 1:00 p.m. EDT (11:00 a.m. MDT) on Tuesday, September 7, 1999, within which to provide the Board with their views on whether, in light of this ruling on contention Utah B, the above referenced contentions should be dismissed as they relate to the ITP.

IV. CONCLUSION

For the reasons explained above, we find that the Rowley Junction ITP and the transportation activities conducted at that facility are governed by, and subject to

compliance with, 10 C.F.R. Part 71 and the complementary DOT regulations regarding hazardous materials transportation and, as such, cannot, and need not, be regulated under 10 C.F.R. Part 72. We also conclude that there are no material factual issues remaining pertaining to contention Utah B and that, as a matter of law, contention Utah B should be resolved in favor of PFS. Further, we afford the parties an opportunity to provide the Board with their views on the impact of this ruling on the ITP-related portions of other admitted contentions.

For the foregoing reasons, it is this thirtieth day of August 1999, ORDERED, that:

1. The June 11, 1999 motion for summary disposition of PFS regarding contention Utah B is granted and, for the reasons set forth in section II of this memorandum and

order, a decision regarding contention Utah B is rendered in favor of PFS.

2. As outlined in section III of this memorandum and order, the parties may provide views on the impact of this ruling on the ITP-related portions of other admitted contentions.

THE ATOMIC SAFETY
AND LICENSING BOARD[10]

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Dr. Jerry R. Kline
ADMINISTRATIVE JUDGE

Dr. Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland

August 30, 1999

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[10] 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 of Goshute Indians, Ohngo Gaudadeh Devia, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State; and (3) 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-99-34) 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.

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Docket No.(s)72-22-ISFSI
LB MEMO & ORDER (LBP-99-34)

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Dated at Rockville, Md. this
30 day of August 1999

Adria T. Byrdsong
Office of the Secretary of the Commission