

October 18, 1999

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S RESPONSE TO  
STATE OF UTAH'S REQUEST FOR ADMISSION  
OF LATE-FILED AMENDED UTAH CONTENTION V

INTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c), and the Atomic Safety and Licensing Board's "Order (Schedule for Responses to Request for Admission of Late-Filed, Amended Contention)," dated October 7, 1999, the staff of the Nuclear Regulatory Commission (Staff) hereby files its response to the "State of Utah's Request for Admission of Late-Filed Amended Utah Contention V" (Late-Filed Contention V), filed October 4, 1999. For the reasons set forth below, the Staff submits that the State's Late-Filed Contention V should be rejected on the grounds that it was untimely filed without good cause, and a balancing of the factors set forth in 10 C.F.R. § 2.714(a)(1) weighs against its admission. Further, in the event that the contention is admitted, the Staff submits that portions of the contention and/or its basis statements should be excluded as lacking factual or legal basis.

## BACKGROUND

The State of Utah's original proposed Contention V asserted that the Environmental Report (ER) submitted by Private Fuel Storage, L.L.C. (PFS or Applicant) fails to give adequate consideration to the transportation-related environmental impacts of the proposed ISFSI.<sup>1</sup> The basis for this contention addressed, among other things, the Applicant's reliance on 10 C.F.R. § 51.52 (Table S-4) and NUREG-1437 in addressing transportation-related environmental impacts. Original Contention V at 145-149.<sup>2</sup>

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<sup>1</sup> See "State of Utah's Contentions on the Construction and Operating License Application by Private Fuel Storage, LLC for an Independent Spent Fuel Storage Facility," dated November 23, 1997 (Original Contention V), at 144.

<sup>2</sup> As reformulated by the State and PFS, Contention V asserted as follows:

The Environmental Report ("ER") fails to give adequate consideration to the transportation-related environmental impacts of the proposed ISFSI in that:

1. In order to comply with NEPA, PFS and the NRC Staff must evaluate all of the environmental impacts, not just regional impacts, associated with transportation of spent fuel to and from the proposed ISFSI, including preparation of spent fuel for transportation to the ISFSI, spent fuel transfers during transportation to the ISFSI, transferring and returning defective casks to the originating nuclear power plant, and transfers and transportation required for the ultimate disposal of the spent fuel.
2. PFS's reliance on Table S-4 is inappropriate and inadequate. 10 C.F.R. § 51.52 applies only to light-water-cooled nuclear power plant construction permit applicants, not to offsite ISFSI applicants. Even if 10 C.F.R. § 51.52 applied, PFS does not satisfy the threshold conditions for using Table S-4, and its reliance on NUREG-1437 is misplaced. Since the conditions specified in 10 C.F.R. § 51.52(a) for use of

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The Licensing Board, in its ruling on contentions, found the majority of the State's bases for Contention V to be inadmissible,<sup>3</sup> on the grounds that those statements:

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<sup>2</sup>(...continued)

Table S-4 are not satisfied, the PFS must provide "a full description and detailed analysis of the environmental effects of transportation of fuel and wastes to and from the reactor" in accordance with 10 C.F.R. § 51.52(b).

3. The SAR is inadequate to supplement Table S-4 in that:
  - a. The Applicant fails to adequately address the intermodal transfer point in that the analysis utilizes unreasonable assumptions regarding rail shipment volume and its associated effects.
  - b. The Applicant fails to calculate impacts of the return of substandard or degraded casks to the originating nuclear power plant licensees, including additional radiation doses to workers and the public.
  - c. The Applicant fails to address the environmental impacts of any necessary intermodal transfer required at some of the originating nuclear power plants due to lack of rail access or inadequate crane capability.
  
4. New information shows that Table S-4 grossly underestimates transportation impacts in that:
  - a. WASH-1238, which is the basis for Table S-4, uses poor and outdated data, and hence the Applicant's reliance on WASH-1238 and Table S-4 is inadequate to demonstrate compliance with NEPA . . . .

*See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 199-200 (1998).*

<sup>3</sup> The Board admitted a portion of the contention which alleged that the weight of a loaded PFS shipping cask exceeds the parameters of 10 C.F.R. § 51.52 (Table S-4). *See LBP-98-7, 47 NRC at 200.*

fail to establish with specificity any genuine dispute, impermissibly challenge applicable Commission regulations or rulemaking-associated generic determinations, including 10 C.F.R. §§ 51.52 [(Table S-4)], 72.108, and . . . WASH-1238 (Dec. 1972), as supplemented, NUREG-75/038 (Supp. 1 Apr. 1975); lack adequate factual or expert opinion support; and/or fail properly to challenge the PFS application.

LBP-98-7, 47 NRC at 200-01. Thereafter, the Applicant sought reconsideration and clarification of the admitted portion of this contention, arguing that the contention should be limited to regional impacts, and should exclude aspects of the contention that relate to transportation across the country.<sup>4</sup> The Licensing Board, in its ruling on motions for clarification, rejected this argument, finding that the NRC is responsible under the National Environmental Policy Act of 1969 (NEPA) to consider reasonably foreseeable environmental impacts, "including the potentially extra-regional impacts reflected in Table S-4." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-10, 47 NRC 288, 295-96 (1998).

On October 4, 1999, the State submitted Late-Filed Contention V, based on a document entitled "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," NUREG-1437, Vol 1, Addendum 1, August 1999 (Final Addendum-GEIS). Late-Filed Contention V at 2. According to the State, in the Final Addendum-GEIS, "the Commission found that Table S-4 is inadequate to address the impacts of the convergence of many shipments of spent fuel on a Nevada repository, thus implicitly questioning the adequacy of Table S-4 to address the impacts of the convergence of fuel on Salt Lake City and the PFS facility." *Id.* Further, the State asserts that "the Commission specifically stated that the impacts of spent fuel transportation

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<sup>4</sup> "Applicant's Motion for Reconsideration and Clarification," May 6, 1998 at 12.

through Salt Lake City are to be considered in the environmental review for the Private Fuel Storage facility." *Id.*; emphasis added.<sup>5</sup>

In Late-Filed Contention V, the State asserts as follows:

The ER for the PFS facility fails to give adequate consideration to the transportation-related environmental impacts of the proposed independent spent fuel storage installation ("ISFSI") in that it relies on Table S-4, which neglects to consider the impacts of converging many spent fuel shipments on the Wasatch Front region, including the impact of a severe and foreseeable accident on Salt Lake City and its environments, and including economic as well as physical impacts. Therefore, the ER is inadequate to satisfy 10 C.F.R. § 72.108. The impacts on the Wasatch Front must also be considered cumulatively with the impacts on high population areas in Nevada, such as Las Vegas.

Late-Filed Contention V at 2-3. For the reasons set forth below, the Staff submits that Late-Filed Contention V should be rejected.

### DISCUSSION

#### I. The Contention Fails to Satisfy the Late-Filing Criteria in 10 C.F.R. § 2.714(a).

##### A. Legal Standards for Late-Filed Contentions.

The criteria to be considered when determining the admissibility of a late-filed contention are set forth in 10 C.F.R. § 2.714(a)(1)(i)-(v). *Sacramento Municipal Utility Dist. (Rancho Seco*

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<sup>5</sup> The State's assertion incorrectly characterizes the Commission's statement that "the NRC is currently reviewing a site-specific application for construction and operation of the proposed Private Fuel Storage facility at Skull Valley in a separate regulatory action. A site-specific study of the cumulative impacts of transportation is part of that review. The study will be reported in a draft Environmental Impact statement to be published for public comment. . . ." 64 Fed. Reg. at 48501. These statements refer to the Staff's preparation of an EIS, and do not indicate that these issues "are to be addressed" in this proceeding. See discussion *infra* at 13-16.

Nuclear Generating Station), CLI-93-12, 37 NRC 355, 363 (1993).<sup>6</sup> Further, where (as here) a contention purportedly is based on the existence of a document recently made publically available, an important consideration in assessing good cause for lateness is the extent to which the contention could have been submitted prior to the document's availability. See *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-737, 18 NRC 168, 172 n.4 (1983); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-29, 48 NRC 286, 292 (1998). Finally, in addition to the showing that a balancing of the five factors favors intervention, a petitioner or intervenor must also meet the requirements for setting forth a valid contention. 10 C.F.R. § 2.714(d)(2).

B. The State Has Failed to Establish Good Cause  
For the Late Filing of Amended Contention V.

The State asserts that it has good cause for the late-filing of its contention because the *Federal Register* notice regarding the publication of the Final Addendum-GEIS, upon which the contention is said to be based, was issued on September 3, 1999, and the State submitted its

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<sup>6</sup> The five factors specified in 10 C.F.R. § 2.714(a)(1) are:

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

contention within 30 days of the publication of this notice. Late-Filed Contention V at 12. This assertion, however, does not demonstrate good cause for late filing of Amended Contention V.

First, the issue of whether Table S-4 is applicable or adequate for the consideration of environmental impacts for this proposed facility could have been raised without regard to the issuance of the Final Addendum-GEIS. Thus, regardless of whether the Commission itself, had identified an issue concerning the adequacy of Table S-4 in considering the impacts of transportation to a spent fuel repository, the State could have raised this issue on its own.

Second, the State has not indicated when it first could have learned of the information discussed in the *Federal Register* Notice and Final Addendum-GEIS, upon which the late-filed contention is based. Indeed, the *Federal Register* Notice referenced by the State does not provide the first notice available to the State concerning this issue. Rather, the Notice culminates an involved rulemaking proceeding, in which the State took an active part. The rulemaking concerns an amendment to the Commission's regulations pertaining to the review of transportation-related environmental impacts with respect to nuclear power plant operating license renewal applicants. The following *Federal Register* notices are pertinent to a determination of whether the State could have raised this contention earlier:

- 1) Final Rule, "Environmental Review for Renewal of Nuclear Power Plant Operating Licenses," 61 Fed. Reg. 28,467 (June 5, 1996) (rulemaking that specified the plant-specific content of the environmental review of applications for the renewal of nuclear power plant operating licenses) (June 5, 1996 Final Rule).
- 2) Final Rule, "Environmental Review for Renewal of Nuclear Power Plant Operating Licenses," 61 Fed. Reg. 66,537 (Dec. 18, 1996) (clarification of the June 5, 1996 rulemaking) (December 18, 1996 Final Rule).
- 3) Proposed Rule, "Changes to Requirements for Environmental Review for Renewal of Nuclear Power Plant Operating Licenses," 64 Fed. Reg. 9884 (Feb. 26, 1999)

(addresses the use of a draft Addendum to NUREG-1437 to support an amendment to regulations involving plant-specific content of environmental review of license renewal applicants) (February 26, 1999 Proposed Rule).<sup>7</sup>

- 4) Final Rule, "Changes to Requirements for Environmental Review for Renewal of Nuclear Power Plant Operating Licenses," 64 Fed. Reg. 48,946 (Sept. 3, 1999) (finalizes February 26, 1999 Proposed Rule; notices Final Addendum-GEIS) (September 3, 1999 Final Rule).

The *Federal Register* Notices which preceded the September 3, 1999 Notice provided ample opportunity for the State to raise this issue sooner. Even if the State is assumed to be correct in its assertion that it is "clear" from NUREG-1437 "that the Commission does not consider Table S-4 to constitute an adequate analysis of spent fuel transportation impacts involving convergence of a large number of shipments on a single site," the State does not explain why it could not have derived this understanding based on the *Federal Register* notices which were available prior to the September 1999 Notice.

Thus, in the June 5, 1996, rulemaking, the Commission stated that "there may be unresolved issues regarding the magnitude of cumulative impacts from the use of a single rail line or truck route in the vicinity of the repository to carry all spent fuel from all plants." 61 Fed. Reg. at 28,480.<sup>8</sup> Similarly, in the December 18, 1996, rulemaking, the Commission clarified that

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<sup>7</sup> See NUREG-1437, Vol. 1, Addendum 1, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Main Report Section 6.3 -- 'Transportation,' Table 9.1 'Summary of findings on NEPA issues for license renewal of nuclear power plants,' Draft for Comment," February 1999 (Draft Addendum-GEIS).

<sup>8</sup> In this rulemaking, the Commission evaluated what aspects of nuclear power plant license renewal could be evaluated generically, and what aspects required a plant-specific environmental review. 61 Fed. Reg. at 28,473, 28,480. Category 1 issues are those environmental issues that have been determined to be appropriate for generic findings in plant license renewal reviews; in contrast, Category 2 issues would require a plant-specific review. The

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applicants for license renewal are required: 1) to review the environmental effects of transportation in accordance with Table S-4, and 2) to discuss the generic and cumulative impacts associated with transportation infrastructure in the vicinity of a high-level waste repository site. 61 Fed. Reg. at 66,538. While recognizing that the rulemaking does not alter Table S-4, the Commission stated that "because Table S-4 does not take into account the generic and cumulative (including synergistic) impacts of transportation infrastructure construction and operation in the vicinity of the Yucca Mountain repository site, such information would have to be provided by these applicants." *Id.* The Commission also stated that it will consider as part of its effort to develop regulatory guidance for the rule whether the rule should be changed to address generically the issue of cumulative transportation impacts such that a nuclear power plant license renewal applicant could reference the generic finding in its application. *Id.*

Finally, in the February 26, 1999 Proposed Rule, the Commission noticed the availability of the Draft Addendum-GEIS, which provided the Staff's assessment of the generic and cumulative impacts associated with transportation operation in the vicinity of the candidate high-level waste repository at Yucca Mountain. 64 Fed. Reg. at 9884. The Commission announced its intent to change the issue of transportation of fuel and waste from Category 2 to Category 1,

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<sup>8</sup>(...continued)

Commission, in the June 5, 1996 Final Rule, categorized the transportation issue as Category 2, thus deciding that plant-specific review would be required of this matter, rather than allowing a generic finding to be referenced by applicants for license renewal. *Id.* at 28,480.

based on the Draft Addendum-GEIS, so that applicants for license renewal could adopt the environmental impacts in Table S-4 without further analysis. *Id.*<sup>9</sup>

In sum, the State could have raised this issue earlier, in light of the Commission's treatment of this matter in the 1996 rulemaking proceedings, wherein the Commission expressed concerns about the degree of information then available for the generic resolution of this matter. Further, the State had enough information to raise its concerns regarding Table S-4 following the February 26, 1999 Proposed Rule and availability of the Draft Addendum-GEIS. In its late-filed contention, the State quotes from the Draft Addendum-GEIS, stating that "Table S-4 'does not explicitly take into account the cumulative environmental impacts of the convergence of high-level waste shipments on a proposed repository at Yucca Mountain.'" Late-Filed Contention V at 6.

Significantly, the State indicates that on April 27, 1999, it provided similar comments in response to the February 1999 Proposed Rule, stating that "because the spent fuel may be shipped through Utah to and from the PFS facility, the cumulative impacts analysis in the GEIS should include consideration of spent fuel shipments through the Wasatch Front, including Salt Lake City and its environs." *Id.* After reciting its comments on the proposed GEIS, the State asserts that those comments provide additional basis for its contention. *Id.* at 10. However, the fact that the State was able to formulate these comments prior to the publication of the Final Addendum-GEIS demonstrates that these basis statements were not dependent on the Final Addendum-GEIS. Therefore, good cause has not been demonstrated with respect to the late filing in this proceeding of the State's April 1999 comments submitted in the rulemaking proceeding.

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<sup>9</sup> The September 3, 1999 Final Rule adopted this change. 64 Fed. Reg. at 48,497.

Finally, there is no merit in the State's assertion that "in effect, after having been sent by the Board to a generic proceeding, the State has now been returned to the Board for resolution of this issue." Late-Filed Contention V at 10. The State's initial contention challenged Table S-4, which the Licensing Board correctly rejected, in part, as an impermissible challenge to the regulations. Moreover, the fact that the Staff is evaluating the cumulative impacts of the transportation of spent fuel to the PFS site should come as no surprise to the State, in that the Staff indicated in response to the State's initial Contention V that it might be appropriate to conduct such an evaluation, to the extent that shipments to the PFS facility may exceed the parameters set forth in Table S-4.<sup>10</sup>

In sum, the State has not demonstrated good cause for the late filing of this contention, because the State did not need the Final Addendum-GEIS in order to formulate its contention. Rather, the State should have submitted its contention at least when the State provided comments with respect to the Draft Addendum-GEIS and proposed rulemaking -- on April 27, 1999 -- if not in November 1997 when the State raised its contention initially.

C. The Other Late-Filing Factors Do Not Favor Admission of Contention V.

With respect to the four other factors specified in 10 C.F.R. § 2.714(a)(1), the Staff submits that those factors weigh against the admission of Late-Filed Contention V. Regarding factors two and four, while the State's interest may not be represented by existing parties with respect to the issues raised in Late-Filed Contention V, other means are available to protect the

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<sup>10</sup> See "NRC Staff's Response to Contentions Filed by (1) the State of Utah, . . . ," dated December 24, 1997 ("Staff Response to Contentions"), at 59-60 and 62-63.

State's interest with respect to these issues. As mentioned in the Final Addendum-GEIS, the State will have an opportunity to comment on the Staff's Draft EIS evaluation of transportation issues.<sup>11</sup>

With respect to factors three and five, while the State's participation may arguably be expected to assist in developing a sound record, as recognized by the State, the admission of this contention will broaden the issues in the proceeding. Late-Filed Contention V at 13. NEPA issues are included in Group III, which is scheduled for hearing in April and May of 2001. Inclusion of this contention at the end of the hearing process will certainly cause a delay in the overall schedule. Further, discovery and motions related to summary disposition would have to be accounted for in the schedule for the litigation of this contention.

In sum, the Staff submits that the State has failed to establish good cause for the late filing of Contention V, given that the State could have framed its contention long ago. Further, the State's lack of good cause for filing this contention late is not overcome by a "compelling" showing that the other factors specified in 10 C.F.R. § 2.714(a)(1) favor its admission. *State of New Jersey* (Department of Law and Public Safety's Requests Dated October 8, 1993), CLI-93-25, 38 NRC 289, 296 (1993). For these reasons, the Staff submits that Late Filed Contention V should be rejected.

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<sup>11</sup> The availability of the Staff's Draft EIS for the PFS facility for public comment, discussed in the Final Addendum-GEIS, should be contrasted with the State's incorrect assertion that the Commission gave a "clear instruction" that the "issues raised by the State regarding Table S-4's consideration of impacts on the Wasatch Front are to be considered in the environmental review for this proceeding." Late-Filed Contention V at 13.

II. Certain Portions of The Contention Lack Factual or Legal Basis.

The Staff opposes the admission of portions of this contention to the extent that the contention and/or its basis statements lack a factual or legal basis. *See* 10 C.F.R. §§ 2.714(b)(2); *see also Philadelphia Elec. Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974)*. As set forth *supra* at 5, the State's Late-Filed Contention V asserts that the Applicant's ER fails to satisfy 10 C.F.R. § 72.108, in that it improperly relies on Table S-4, "which neglects to consider the impacts of converging many spent fuel shipments on the Wasatch Front region, including the impact of a severe and foreseeable accident on Salt Lake City and its environments, and including economic as well as physical impacts." Late-Filed Contention V at 2. The State further contends that "the impacts on the Wasatch Front must be considered cumulatively with the impacts on high population areas in Nevada, such as Las Vegas." *Id.* at 3.

The Licensing Board has recognized that reasonably foreseeable environmental impacts should be considered in connection with licensing, "including the potentially extra-regional impacts reflected in Table S-4." LBP-98-10, 47 NRC at 295-96. As the Staff has stated previously, the environmental impacts of spent fuel transportation, summarized in Table S-4, may generally be applied to the transportation of spent fuel from a reactor to an ISFSI.<sup>12</sup> In the Staff's view, to the extent that the PFS application is enveloped by the generic rule and evaluations, including NUREG-1437 and the Final Addendum-GEIS, no additional evaluation of the environmental impacts of spent fuel transportation to its facility would be required; to the extent that the application may exceed the parameters of these generic evaluations, an evaluation may

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<sup>12</sup> *See* Staff Response to Contentions at 54-63.

need to be conducted of the impact of those differences, all other considerations remaining the same. The Commission's Final Addendum-GEIS and its treatment of this issues in the preceding rulemaking proceedings is consistent with these views.

The State's characterization of the Commission's Final Addendum-GEIS is incorrect in several respects -- and those statements should therefore be excluded from the contention if it is admitted by the Board. First, the State asserts that the Commission "found that Table S-4 is inadequate to address the impacts of the convergence of many shipments of spent fuel on a Nevada repository, thus implicitly questioning the adequacy of Table S-4 to address the impacts of the convergence of fuel on Salt Lake City and the PFS facility." Late Filed Contention V at 2.<sup>13</sup> Additionally, the State asserts that the Commission "specifically stated that the impacts of spent fuel transportation through Salt Lake City are to be considered in the environmental review for the Private Fuel Storage facility." *Id.* at 2.

As recognized by the Licensing Board, documentary information is not to be accepted uncritically when used as the basis for a contention. LBP-98-7, 47 NRC at 181. Indeed, the Board should review the information provided to see that it does supply a factual basis for admission of a contention. *Id.* In this regard, the State is mistaken in its characterization of the Commission's discussion in the Final Addendum-GEIS. Specifically, the Commission did not find Table S-4 to be inadequate; rather the Commission indicated that the environmental impact values contained in Table S-4 are still appropriate for use in license renewal review if spent fuel is

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<sup>13</sup> The State's assertion contradicts another part of its contention where the State asserts that the amendment to 10 C.F.R. Part 51 "affirms the adequacy of Table S-4 for the consideration of environmental impacts of transportation of spent fuel in license renewal cases, with respect to shipments to and from a licensed repository in Nevada." Late-Filed Contention V at 5.

transported to a single destination such as the candidate repository at Yucca Mountain. *See* 64 Fed. Reg. at 48,497 (the "impacts of transporting fuel and waste generated during the license renewal period are small and are consistent with the impacts of the values in Table S-4"); Final Addendum-GEIS at 19 ("in light of the many conservative assumptions made in this analysis, the NRC Staff concludes that the radiological impacts of the shipment of SNF are small and are acceptably addressed using the generic impacts methodology of Table S-4 for individual nuclear power plant operation license renewal purposes"). For this reason, the State's characterization of the Final Addendum-GEIS is at odds with that document's actual conclusion and Commission's subsequent endorsement of it, and thus cannot support the proffered contention.<sup>14</sup>

The State additionally asserts that "because the Commission has now made it clear that it does not intend to address the cumulative impacts of spent fuel shipments through high population zones in both Utah and Nevada, they should be addressed in the ER for the PFS facility." Late Filed Contention V at 10-11. The State asserts that these issues must be considered together "to determine whether the combined impacts may be mitigated by selecting other alternatives, such as leaving spent fuel onsite until a permanent repository is available," and that this consideration should include economic impacts. *Id.* at 11. However, the State does not set forth a valid factual or legal basis for its assertion. Contrary to the State's assertion, the Commission has not stated that the cumulative impacts of spent fuel shipments through high population zones in both Utah

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<sup>14</sup> The Final Addendum-GEIS further resolves the issues set forth in the June 5, 1996 Final Rule and the December 18, 1996 Final Rule regarding the Commission's concerns that there may be unresolved issues regarding the magnitude of cumulative impacts from transportation in the vicinity of the final repository. *See* September 3, 1999 Final Rule at 48,497 (final rule codifies conclusions of Final Addendum-GEIS).

and Nevada should be addressed in the ER for the PFS facility. Therefore, these assertions do not provide support for Late-Filed Contention V and should be excluded from the contention if the contention is admitted.

CONCLUSION

For the reasons set forth above, the Staff's Late-Filed Contention V should be rejected as failing to satisfy the Commission's requirements for the admission of late-filed contentions, as set forth in 10 C.F.R. § 2.714(a). Further, in the event that Late-Filed Contention V is admitted, portions of the contention and/or its basis statements should be excluded as lacking factual or legal basis.

Respectfully submitted,

*Catherine Marco*

Catherine Marco  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 18<sup>th</sup> day of October 1999

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO THE STATE OF UTAH'S REQUEST FOR ADMISSION OF LATE-FILED AMENDED UTAH CONTENTION V" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the Nuclear Regulatory Commission's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the United States mail, first class, as indicated by double asterisk, with copies by electronic mail as indicated, this 18<sup>th</sup> day of October, 1999.

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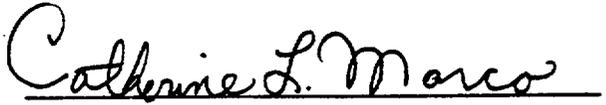
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