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72-22

Mr. David L. Meyer
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U.S. Nuclear Regulatory Commission
Washington, D.C., 20555-0001

RE: Draft Environmental Impact Statement for an Independent Spent Fuel Storage Installation On the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah Docket 72-22, Private Fuel Storage, L.L.C.

The National Association of Regulatory Utility Commissioners (NARUC) submits the attached comments on the subject Draft Environmental Impact Statement.

Sincerely,

Charles D. Gray
Executive Director

Enclosures

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add Scott Flanders
(SCF)

**BEFORE THE
U.S. NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C.**

Draft Environmental Impact Statement for an)	Docket 72-22
Independent Spent Fuel Storage Installation)	Private Fuel
On the Reservation of the Skull Valley Band)	Storage, L.L.C.
Of Goshute Indians and the Related Transportation)	
Facility in Tooele County, Utah)	

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION
OF REGULATORY UTILITY COMMISSIONERS**

Interests of Our Organization

NARUC is a quasi-governmental nonprofit organization founded in 1889. Within its membership are the governmental bodies of the fifty States engaged in the economic and safety regulation of carriers and utilities. The mission of NARUC is to serve the public interest by seeking to improve the quality and effectiveness of public regulation in America. More specifically, NARUC is comprised of those State officials charged with the duty of regulating the retail rates and services of electric, gas, water and telephone utilities operating within their respective jurisdictions. We have the obligation under State law to assure the establishment and maintenance of such energy utility services as may be required by the public convenience and necessity, and to ensure that such services are provided at rates and conditions which are just, reasonable and nondiscriminatory for all consumers.

Utility ratepayers are stakeholders in the matter of disposal of nuclear waste. On their behalf, we have followed this matter closely since well before the passage of the Nuclear Waste Policy Act of 1982. Thirty-four States with nuclear power plants also have spent nuclear fuel from those plants stored at reactor sites. Those sites, though currently licensed for safe storage, were never intended for indefinite storage of such materials. Indeed, in many of those locations the capacity to store spent fuel has reached the limits of the facility or will do so before the geologic repository is operational. There are also eight nuclear plants that have shut down and reuse of the closed plant property is essentially foreclosed until the radioactive material is physically relocated off-site and the site is cleaned up to safe standards to enable economic reuse of the site.

By passing the Nuclear Waste Policy Act in 1982, Congress established national policy to permanently dispose of spent nuclear fuel and other high-level radioactive waste in a geologic repository beginning in January 1998. The Department of Energy (DOE) was responsible for meeting that milestone. It further established the Nuclear Waste Fund as the mechanism to pay for the cost of packaging, shipping and emplacing the spent nuclear fuel and other waste in the repository. For various reasons, the federal agencies have not met their schedules, but payments into the Nuclear Waste Fund began in 1983 and continue to be collected. Over \$16 billion has been paid to date. Those payments are made through electricity rates paid by ratepayers who consume electricity generated by nuclear power plants. Our primary concern is simple: the permanent repository must be built in a safe, economic and expedient manner as required by the Nuclear Waste Policy Act (NWPA) and whatever other laws and regulations that apply. The waste must be moved from its present locations—which were never intended to store the material indefinitely—as soon as possible.

The need and purpose of the Independent Spent Fuel Storage Installation (ISFSI) proposed to be built by Private Fuel Storage L.L. C. (PFS) Company would not exist had the federal government fulfilled its part in the NWPA to begin accepting spent nuclear fuel from utilities in January 1998. Instead, DOE now projects spent nuclear fuel acceptance for the permanent repository will not likely begin sooner than 2010. Even that date is in jeopardy as Congress continues to deny the funds from the Nuclear Waste Fund to meet the Budget request. It is out of necessity that some of the nuclear utilities through this project propose to take the extraordinary step of ‘taking matters into their own hands’ as the federal government is unable to meet its responsibilities under the law. We are encouraged to see that the NRC and the other Cooperating Agencies have combined their efforts in fulfilling their obligations under NEPA as part of this DEIS. Inasmuch as one part of the Federal Government has created the necessity for this project, through its failure, it is fitting that other federal agencies work in concert to enable the project to be considered from environmental and other regulatory procedures.

General Comments

NARUC supports the need for the ISFSI as proposed for Skull Valley. We would have preferred that DOE had begun accepting spent nuclear fuel (SNF) at a permanent geologic repository by now, but that is not the case and will not be for another ten years or more. The reality that the nuclear utilities are facing is that, as each year goes by, more and more of them are exceeding their reactor-site spent fuel storage capacity and investments must be made to add capacity. Just as it makes sense to have a permanent repository in one or two central locations, there are bound to be economies and benefits in having a temporary ISFSI in a central location—designed and operated under ideal and licensed conditions—than at each of the reactor sites, which often simply lack the site conditions to manage the added material.

This organization is not in a position to review the DEIS with the level of detail that many organizations more directly concerned by the proposal are. We are pleased to note that considerable outreach and public involvement has taken place, as well as needed inter-governmental coordination. Although it is unusual to have a project of a limited period of service, that impermanence is a crucial aspect of the project.

The Skull Valley ISFSI

We note that the PFS application for 10 C.F.R. Part 72 License was submitted in 1997 and presume there is a thorough review completed or ongoing on all the nuclear regulatory aspects of this project. As we understand it, many of the design features, such as the containers, the canister handling facilities and other operational facilities are of proven performance characteristics. There being an essentially unbounded flat site, the entire layout seems ideal for its purpose. Such perspective views of the site demonstrate how superior in every way such a central facility is in comparison to the typical constrained site where the SNF is currently stored at reactor sites.

The summary of environmental impacts (Table ES.1) for the proposed alternative indicates all are either small or moderate, with the exception of economic impact that is “moderate to large (but beneficial.)” There may be more environmental concerns over the construction of the rail line than the construction or operation of the ISFSI itself. Provided that it can be built both economically and in an environmentally sound manner, we believe that the direct rail connection to the facility makes more sense than the ITF alternative. The introduction to Section 5 indicates the proposed rail line does not exceed Surface Transportation Board established environmental thresholds.

From what we understand of the economic benefits to the Skull Valley Band, the ISFSI represents an economic development opportunity unlike anything else that is available in the project area. We would imagine that the leadership of the Band had to weigh the potential risks and benefits associated with a project of this nature. We urge that all other stakeholders respect that the two principal stakeholders—the Skull Valley Band and PFS—have negotiated a lease that serves the interests of both parties to their satisfaction.

Other Alternatives

A review of the history of spent fuel management over the past 40 years or more suggests that there are more theoretical alternatives to spent fuel storage and disposal than there are feasible alternatives, owing to the lack of public acceptance. It bears repeating that this temporary facility would not be needed had the federal government pursued the national policy set forth in the NWPA with full commitment. Even though our national elected leaders selected the geologic repository as the best permanent solution to the high-level radioactive waste disposal problem, there have been delays that can be attributed, in part, to determined opposition to the permanent repository because of either its location in Nevada or any solution that enables continued use of nuclear energy.

Some of the alternatives examined in the DEIS were:

- a. *A different privately owned ISFSI.* No other commercially available away-from-reactor ISFSI's are available or planned. There is another private ISFSI being considered at Owl Creek, Wyoming, but it is in a very preliminary stage of the planning process. With the continued uncertainty over the availability of the DOE permanent repository, it is likely that both facilities in Skull Valley and Owl Creek may be needed, perhaps of different capacity.
- b. *Shipment of spent fuel between reactor storage sites.* The theory here would be that utilities could ship SNF from sites reaching capacity limits to those with capacity to spare. That requires that both plants agree to the move, which might be possible if they were both owned by the same utility, but the reality is that by the time the Skull Valley ISFSI would come on line (2004) about half of the reactor sites will run out of on-site storage for their own fuel and by 2010 about 80 percent will have run out of capacity. This is not a practical alternative to any extent that it reduces the need for interim storage away from reactor sites.
- c. *DOE "take title" and possession of SNF at reactor sites.* This approach was proposed by the Secretary of Energy in 1999 as an alternative to the delayed permanent repository, by having DOE take responsibility for the fuel. Congress has not authorized such an approach. Several governors opposed the move as being *de facto* indefinite storage on sites that were never designed for extended use and which would be beyond jurisdiction of the States. We see little difference between this alternative and the "no-action" alternative, other than that the government has financial responsibility instead of the utility.
- d. *"No-Action."* This is the current situation. As noted in Section 2.2.5, many utilities have already expanded their on-site storage capacity by expanding the capacity of their pool storage or installing cask storage ISFSI's on-site. There are eleven lawsuits pending over utility claims for damages for those avoidable expenses. One utility has signed a settlement agreement with DOE that allows the utility to be reimbursed for such expenses up to \$80 million over a ten year period by deducting fee payments to the Nuclear Waste Fund. On August 31, 2000 the U.S. Court of Appeals for the Federal Circuit ruled in two related cases that utilities have the right to sue for damages due to DOE's failure to move their spent fuel¹. These alternatives which do not move the spent fuel and divert revenue from the Nuclear Waste Fund—the financial means to establishing the permanent repository—are unacceptable. It is unfair to the Nation's electricity ratepayers who have been paying for the permanent facility that they were promised two years ago and it does not fulfill the mandate of the NWPA.

Opposition to the Project Within the State of Utah

We are aware of opposition within the State of Utah, by elected officials and some members of the general public. We agree with the people of Utah, as we do with the people of Nevada with respect to the permanent repository, that they have every right to insist that whatever nuclear waste facilities are built within the State or material that is transported through the State should be carefully and certainly managed. We place our confidence in the Nuclear Regulatory Commission to fulfill its statutory obligation to ensure that the radioactive materials are transported, off-loaded, re-packaged and stored in strict compliance with the appropriate NRC license requirements.

We took notice of the objections expressed to former NRC Chairman Jackson in 1997 by the Governor of Utah, that:

- “Temporary” storage cannot be guaranteed to be temporary
- Need for this facility is not documented
- Utah has not generated these wastes
- Health and safety issues regarding transportation have not been addressed

We believe that since 1997, much has been done to address the health and safety issues, as is evident in the Yucca Mountain DEIS², the NRC revised study of transportation risk estimates³ and this DEIS.

While it is true that none of the spent nuclear fuel to be stored will come from Utah, the DEIS and the lack of progress by DOE since 1997 on the permanent repository make crystal clear that there is definitely a need for this ISFSI as a temporary solution.

It is the first point that the governor raises that is probably the most troublesome within the State. On one level, it is clear that the Skull Valley ISFSI license period is for 20 years. Also, the lease with the landowner is for 25 years. What the governor and the public fear is what other States have been concerned with: “spent nuclear fuel tends to stay where it is.” There is a palpable distrust of the federal government in the nuclear waste program that may not always seem rational but it is a strong force of inertia to overcome. It is very important, therefore, for federal agencies, such as NRC and the others involved with this project to proceed with great care, sensitivity and on solid foundation of protecting public health, safety and welfare. For Utah. For Nevada. For Illinois, Vermont and the other States which have a stake in this project, too.

Transportation

We are pleased to see a separate analysis (Section 5) on Transportation Impacts of the Proposed Action. As with the permanent repository, there is considerable public interest on a broader national scale over the safe transportation of spent nuclear fuel. We have observed that there is a great amount of misinformation among the public over the shipment of nuclear waste, such as not knowing:

- The excellent safety record of spent fuel shipments to date
- That there have been spent fuel shipments before
- That the fuel is a solid and cannot explode

Section 5.7.2. addresses what is the most feared aspect of the proposed ISFSI: what is the risk to public health from radiation during shipment to the site, both nationally and within Skull Valley and Utah?

We suspect the public will find difficulty following the analytical approach in Section 5.7.2. The entire section seems written for fellow experts and may very well be accurate and appropriate to helping portray the levels of risk from both incident-free and accident scenarios, but the public is not used to such terms as “ 3.60×10^{-2} LCF.” Consider the unresolved differences between radiation safety specialists at the NRC and the EPA on appropriate radiation standards for Yucca Mountain and whether to set standards in terms of dose or risk. Much more needs to be done to explain to the public what the difference is.

We believe that the radiation risk analysis should be based on the most recently available estimates, namely the *Re-examination of Spent Fuel Shipment Risk Estimates*, NUREG/CR-6672, previously cited. The data in that study substantiates that the risk estimates in NUREG-0170 are, indeed, conservative when related to actual shipment experience in that later study.

We appreciate that the analysis in Section 5.7.2.3 of radiological impacts of national transportation of SNF was conducted on a “worst case” basis by assuming all 40,000 MTU of SNF will be shipped from Maine to Skull Valley resulting in a conservative estimate of exposure in a more concentrated population, over the longest possible route for a longer period than would occur in reality. We would urge that the calculation be made available for more likely routes and actual amounts so that States along specific corridors can relate to their own scenario. We found the methodology used by DOE in the Yucca Mountain DEIS of providing “generic risk” for incident-free and accident doses for both rail and truck modes to be of some value to States and local governments even as DOE deferred on selection of mode or routing for the permanent geologic repository.

We share the conclusion in Section 5.7.2.8 that actual transportation risks are “small” using the conservative assumptions. The DEIS presented a one-page analysis of radiological risk within Utah and states the risk to be one chance in 3200 of developing a

latent fatal cancer. Since there has been more interest within the State than in other States, it would be well to expand the analysis in that section to enhance public understanding. It may be easy to under-estimate the public misunderstanding of radiological risks associated with nuclear materials. Even though the risks are “small,” the public may not perceive them to be. It may be well for the NRC or PFS to establish a community outreach program in the early stages of the project, similar to what DOE maintains as part of the high-level radioactive waste management program in Nevada. Such programs help to close the knowledge gap and help build public confidence.

Summary

NARUC would have preferred that the Department of Energy fulfill its obligation to the nuclear utilities to take the spent fuel for disposal in the permanent repository as directed in the Nuclear Waste Policy Act. The government also has an obligation to the Nation’s electric ratepayers who have contributed to the Nuclear Waste Fund that serves to finance the safe, permanent disposal of SNF. Over six years ago it was apparent to DOE that it would not meet the 1998 milestone. We then urged and continue to urge DOE to begin moving the waste to a central interim storage facility, both because on-site storage was reaching its capacity limits at many reactors and because it made economic sense that if expanded interim storage capacity is needed (solely due to the government failure to build the repository), it is best done at one or more facilities which will be designed and operated for this temporary purpose. There should have been no need for such a facility to be built and operated by a private firm, such as the Skull Valley facility.

The federal government continues to refuse to accept the spent fuel, other than to propose to assume financial responsibility for it at reactor sites. That does nothing to move the waste, although it may enable some site storage capacity expansion, but the government would only pay for that added expense with the Nuclear Waste Fund —which was not intended for that purpose.

Given the DOE failure to develop either a permanent repository or a government operated interim storage facility, there is a need for a facility such as the Skull Valley ISFSI. We commend the PFS Company and the utilities for taking the initiative and patiently working with the Skull Valley Band and the various governmental agencies. The DEIS is professionally prepared and presented and properly concludes there are no significant adverse environmental impacts that are not mitigated. Indeed, the project holds promise of considerable economic benefit to a region that does not have a lot of choices for economic development. If the ISFSI is built and operated for the period of the license and the lease and is decommissioned as required by regulations, there will remain an excellent site for other industrial uses served by a rail line that would not have been built were it not for this facility.

Conclusion

The National Association of Regulatory Utility Commissioners supports the construction and operation of an ISFSI as described in the DEIS, subject to NRC licensing and other federal, State and local laws and permitting requirements as may apply. We further urge that the Department of Energy apply the resources needed to begin operations of a geologic repository by 2010 so that it can begin accepting waste from present reactor sites and from the PFS ISFSI, in accordance with the Acceptance Priority Ranking. In that way, the people of Utah will have greater confidence that this facility is, indeed, only for temporary storage and that it will provide some benefits to the Skull Valley and the State, as well as for the Nation.

We thank you for the opportunity to present our comments.

Respectfully submitted,



Charles D. Gray
Executive Director

Dated: September 20, 2000

¹ *Northern States Power Company v. United States*, U.S. Court of Appeals, Federal Circuit No. 99-5096 and *Maine Yankee Atomic Power Co. v. United States*, U.S. Court of Appeals, Federal Circuit No. 99-5138.

² *Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada*, (DOE/EIS-0250D) U.S. Department of Energy, 1999

³ *Re-examination of Spent Fuel Shipment Risk Estimates*, NUREG/CR-6672, U.S. Nuclear Regulatory Commission/Sandia National Laboratory, 2000