

RAS 2281

October 11, 2000
DOCKETED 10/12/00

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 MOTION TO COMPEL
NRC STAFF TO RESPOND TO STATE'S EIGHTH SET OF DISCOVERY
REQUESTS (CONTENTION Z)," AND MOTION FOR PROTECTIVE ORDER

INTRODUCTION

Pursuant to the Atomic Safety and Licensing Board's October 5, 2000, "Order (Scheduling Matters)," and 10 C.F.R. §§ 2.730(c) and 2.740(c), the staff of the Nuclear Regulatory Commission ("Staff") hereby requests (a) that the Atomic Safety and Licensing Board issue a Protective Order, to protect the Staff from the "annoyance, . . . oppression, or undue burden or expense" that would result if the Staff were required to provide further answers to the "State of Utah's Eighth Set of Discovery Requests Directed to the NRC Staff" ("Eighth Request") dated September 14, 2000, which purportedly relate to Contention Utah Z, and (b) that the Licensing Board deny the motion to compel further responses to those discovery requests, which the State of Utah ("State") filed on October 3, 2000.¹

In support of this request, the Staff submits that it has properly responded in part and objected in part to the State's eighth set of discovery requests, as set forth in the "NRC Staff's Objections and Responses to the 'State of Utah's Eighth Set of Discovery Requests Directed to the NRC Staff,'" dated September 25, 2000 ("Objections and Responses"), and

¹ See "State of Utah's Motion to Compel NRC Staff to Respond to State's Eighth Set of Discovery Requests (Contention Z)," dated October 3, 2000 ("Motion to Compel").

that no further responses to those requests are required. Accordingly, for the reasons more fully set forth below and in the Staff's Objections and Responses, the Staff respectfully submits that it is entitled to a Protective Order, and that the State's Motion to Compel should be denied.

BACKGROUND AND SUMMARY

On November 24, 1997, the State filed Contention Utah Z ("No Action Alternative").² As filed by the State, Contention Utah Z asserted that the Environmental Report submitted by Private Fuel Storage, L.L.C. ("PFS" or "Applicant") "does not comply with NEPA because it does not adequately discuss the 'no action' alternative." Utah Contentions at 169. In support of this contention, the State argued that the Applicant's Environmental Report failed "to provide the balanced comparison of environmental consequences among alternatives," and further asserted the Applicant had not adequately considered the comparative environmental impacts of siting the proposed facility in the Utah desert versus reactor sites. *Id.* at 169-70; emphasis added. Among the issues raised by the State were such matters as transporting 4,000 casks of spent nuclear fuel across the country, the potential for sabotage at the facility,³ the risk of accidents from additional cask handling, and the "safety advantages" of storing spent nuclear fuel near the reactors. *Id.*

Nowhere in this contention or its supporting basis statements did the State ever mention the issue of economic costs. Further, nowhere in the contention or supporting basis statements did the State identify economic costs as a "fact" the State intended to rely

² 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 ("Utah Contentions"), at 169-70.

³ On reconsideration, the Board excluded this aspect of Contention Utah Z. See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-10, 47 NRC 288, 296 (1998).

upon in litigating this contention; nowhere did the State provide “sufficient information . . . to show a genuine dispute of material fact” existed with the Applicant with respect to this matter; and nowhere did the State identify economic costs as a matter which the Applicant’s Environmental Report should have included in its discussion of the no action alternative. Thus, if the State had intended to litigate the issue of economic costs within the scope of Contention Utah Z, it failed to raise this issue and failed to satisfy the contention pleading requirements of 10 C.F.R. § 2.714(b)(2)(ii)-(iii).

On April 22, 1998, the Licensing Board admitted Contention Utah Z as filed -- without opposition by the Staff⁴ -- finding that the contention was “supported by a basis statement sufficient to establish a genuine material dispute adequate to warrant further inquiry.”⁵ Nowhere, however, did the Licensing Board (or Staff) address the admissibility of an economic cost issue within the scope of this contention -- nor had the parties or the Licensing Board ever been put on notice that the State sought to raise that issue within the scope of this contention.⁶

In June 2000, the Staff issued its Draft Environmental Impact Statement (“DEIS”) related to the Applicant’s proposed Independent Spent Fuel Storage Installation (“ISFSI”)

⁴ See “NRC Staff’s Response to Contentions Filed by (1) the State of Utah, . . .,” dated December 24, 1997, at 68.

⁵ See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 203 (1998).

⁶ In contrast, the State raised economic cost issues in Contentions Utah X (“Need for the Facility”), and Utah CC (“One-Sided Cost-Benefit Analysis”). These contentions, however, were rejected by the Licensing Board on the grounds, *inter alia*, that the contentions and their supporting bases “fail to establish with specificity any genuine dispute,” and/or “lack adequate factual and expert opinion support.” LBP-98-7, 47 NRC at 202, 204.

and related transportation facilities.⁷ The State then filed two sets of discovery requests directed to the Staff concerning the DEIS -- both purportedly relating to Contention Utah Z. These were as follows: (1) "State of Utah's Seventh Set of Discovery Requests Directed to the NRC Staff," dated August 31, 2000 ("Seventh Request"), and (2) "State of Utah's Eighth Set of Discovery Requests Directed to the NRC Staff," dated September 14, 2000 ("Eighth Request").

On September 13, 2000, the Staff filed its objections and responses to the State's Seventh Request, in which the Staff, *inter alia*, objected to various requests (pertaining to matters such as economic costs) on the grounds that they are irrelevant to the issues raised in Contention Utah Z, as filed by the State and admitted by the Licensing Board, and are not reasonably calculated to lead to the discovery of admissible evidence.⁸ On September 20, 2000, the State moved to compel further answers by the Staff to some of those disputed requests; and on September 27, 2000, the Staff filed its response in opposition thereto.⁹

On September 25, 2000, the Staff filed its "Objections and Responses" to the State's Eighth Request, in which it (a) again objected to the State's discovery requests relating to matters (such as economic costs) that are outside the scope of Contention

⁷ NUREG-1714, "Draft Environmental Impact Statement for the Construction and Operation of 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" (June 2000).

⁸ "NRC Staff's Objections and Responses to 'State of Utah's Seventh Set of Discovery Requests Directed to the NRC Staff,'" dated September 13, 2000.

⁹ See "State of Utah's Motion to Compel NRC Staff to Respond to State's Seventh Set of Discovery Requests (Contention Z)," dated September 20, 2000; and "NRC Staff's Motion for Protective Order, and Response to 'State of Utah's Motion to Compel NRC Staff to Respond to State's Seventh Set of Discovery Requests (Contention Z),' " dated September 27, 2000.

Utah Z, on the grounds that they are irrelevant to the issues raised in the contention, as filed by the State and admitted by the Licensing Board, and are not reasonably calculated to lead to the discovery of admissible evidence; and (b) objected to certain requests on other grounds.

The State now seeks to compel further answers by the Staff to its Eighth Request, to the extent that the Staff objected to the requests as involving economic costs. Insofar as this issue was never raised in Contention Utah Z, the Staff submits that its motion for a protective order should be granted, and the State's Motion to Compel should be denied. Further, to the extent that the Staff has raised other objections to certain of the State's discovery requests, which objections are nowhere addressed in the State's Motion to Compel, no further discovery responses as to those requests should be required.¹⁰

DISCUSSION

A. Discovery on Economic Costs Is Impermissible as This Issue Is Beyond the Scope of Contention Utah Z.

The instant dispute primarily concerns the scope of permissible discovery on a single contention -- Contention Utah Z ("No Action Alternative"). The State's Eighth Set of Discovery Requests, purportedly concerning this contention, consisted of five requests for admission and 31 document requests -- almost all of which raised an issue of economic costs. One fundamental issue is presented for resolution by the Licensing Board here: Whether the State may now expand the scope of Contention Utah Z, as filed, by introducing through its discovery requests entirely new issues -- *i.e.*, the economic costs of the facility

¹⁰ For the convenience of the Licensing Board, a list of the disputed discovery requests is attached hereto. In its Motion to Compel, the State did not discuss the Staff's objections to any specific discovery request, but instead presented a general discussion of the relevance of its discovery requests *in toto*. Accordingly, the Staff refers the Licensing Board to its Objections and Responses to the State's Eighth Request, dated September 25, 2000, and relies upon each of the objections stated therein.

and/or the “no action” alternative -- which the State had never identified in either the contention or its supporting basis statements.

According to the State, discovery on the economic costs of the facility and of the no action alternative should be permitted -- even though these issues were never raised in Contention Utah Z -- “in order for the State to develop the no action alternative contention” (Motion to Compel at 4; emphasis added). This argument is wholly without merit. Simply stated, the issues raised by a contention must be “developed” and apparent at the time a contention is filed. While the Commission’s discovery rules contemplate that evidence pertaining to admitted issues may be “developed” through discovery,¹¹ it is clear that the basis and specificity pleading requirements for contentions, set forth in 10 C.F.R. § 2.714, require an intervenor to state explicitly the issues it seeks to litigate in its contentions -- and it may not expand those issues later by raising them for the first time in discovery. See, e.g., *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-88-25, 28 NRC 394, 396-97 (1988), citing *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988) (while a contention could have been written to embrace the matter raised in discovery, the intervenor did not do so; its discovery on such matters amounted to a “fishing expedition to uncover possible problems in these areas,” and was impermissible under the Commission’s Rules of Practice, which “limit discovery to the boundaries of admitted contentions” -- the scope of which is determined by “the ‘literal terms’ of the contention, coupled with its stated bases.”).

Significantly, the State does not assert that the economic cost issues raised in its Eighth Request are set forth in Contention Utah Z (No Action Alternative). Rather, the State appears to concede that this issue was not identified in the contention, in that it never

¹¹ See 10 C.F.R. § 2.740(b)(1) (permitting discovery “which is relevant to the subject matter of the proceeding, whether it relates to the claim or defense of any other party”).

addresses this repeated objection by the Staff.¹² Instead, the State argues that “merely because a [discovery] request mentions the word ‘cost’ does not mean that the issue should be relegated to Contention Utah CC, One-Sided Cost Benefit Analysis” (Motion to Compel at 4).

The State’s argument misses the point. The question is not whether the economic cost issues were raised in other (rejected) contentions, but whether the economic cost issues were raised in this contention. While the State urges the Licensing Board to apply a broad standard of “general relevancy” (Motion to Compel at 4), it ignores the established rule that discovery must be relevant to an issue that has been admitted for litigation -- as determined by the literal terms of the contention and its supporting bases. *Vermont Yankee*, 28 NRC at 396-97; *Seabrook*, 28 NRC at 97. Inasmuch as economic cost issues were not stated in this (or any other) admitted contention, no discovery on these issues is permissible. *Vermont Yankee*, 28 NRC at 396-97.

The State seeks to avoid addressing the scope of its contention by arguing that, even if the discovery sought is not relevant, such discovery should be permitted if it could lead to the discovery of admissible evidence (Motion to Compel at 3). In this regard, the State claims that it “takes issue” with the Staff’s “narrow” reading of the discovery rules, stating that “[t]he Staff has analyzed Contention Z as if it were being admitted for hearing rather than addressing discovery in terms of relevance” (*Id.* at 4). This argument is without merit. The Staff would not object to this discovery if it were relevant, or might reasonably lead to the discovery of admissible evidence, concerning any issue that was raised in the contention. However, since the matters sought to be discovered were never identified in the contention, it is clear that “the evidence sought can have no possible bearing on the

¹² See, e.g., Staff’s Objections and Responses, at 3, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22.

issues” (Motion to Compel at 4), and a fishing expedition in the name of “discovery” concerning these matters is not permissible. *Vermont Yankee, supra*, 28 NRC at 396-97.

Finally, the Licensing Board has previously rejected Contentions Utah X and Utah CC, each of which had raised an economic cost issue. *Private Fuel Storage*, LBP-98-7, 47 NRC at 202, 204. In rejecting these contentions, the Licensing Board disposed of the economic cost issues raised therein. Inasmuch as no economic cost issues were raised in Contention Utah Z, regarding the no-action alternative, the State may not now introduce, through this contention, issues that were previously rejected by the Board.¹³

B. The State Has Failed to Address Other Valid Objections Asserted by the Staff.

While many of the Staff’s objections to the State’s Eighth Request were based on the issues being related to economic costs, beyond the scope of Contention Utah Z, the Staff also objected to certain requests on other grounds (including the relevance of other, non-cost, issues). See, e.g., Staff’s Objections to Document Requests 6 (burdensome, overbroad, available elsewhere); 24 (relevance of other, non-cost issues); and 29-31 (relevance of other, non-cost issues). None of these objections are addressed in the

¹³ In this regard, the State asserts as follows regarding its requests concerning economic costs:

All of these requests have a bearing on State’s development of its no action alternative case. The State’s case is enhanced if the other scenarios supported by the Staff do not withstand scrutiny. The State may only analyze such an effect if it understands the rationale behind the Staff’s representations in the DEIS.

Motion to Compel at 5. However, the State does not explain how a cost-related discovery request could have any “bearing” on Utah Contention Z -- which does not raise any economic cost issue; and it fails to explain how any deficiencies in the “scenarios” addressed in the DEIS could affect the State’s “case” with respect to the specific issues raised in Contention Utah Z. Certainly, the State may wish to understand the cost-benefit discussion set forth in the DEIS; however, its attempt to conduct discovery on such matters simply amounts to a “fishing expedition,” inasmuch as no admitted issue in this proceeding involves those matters. See *Vermont Yankee, supra*, 28 NRC at 396.

State's Motion to Compel. Accordingly, the State appears to have waived any challenge to those objections. See 10 C.F.R. § 2.740(f) (the proponent of a motion to compel must present "arguments in support of the motion").¹⁴

Further, the Staff objected to each of the State's discovery requests on the grounds that the State had not complied with the Commission's requirements governing discovery from the Staff, in that it had not shown (a) that the information and documents sought are not available from other sources, and (b) that the information and documents are exempt from disclosure, cannot be obtained from other sources, and are necessary to a proper decision in the proceeding. See Objections and Responses at 2-3. In its Motion to Compel, the State addresses this issue by stating that it "served its Eighth Set of Discovery to the NRC Executive Director of Operations and complied with 10 CFR § 2.720(h) by stating 'this discovery is necessary to a proper decision in this proceeding and ... [the] requested documents are not reasonably obtainable through any other sources.' Eighth Set at 1." (Motion to Compel at 3).

The State's assertion is misplaced. First, the provision quoted by the State pertains to written interrogatories. See 10 C.F.R. § 2.720(h)(2)(ii). The standards in 10 C.F.R. §§ 2.744 and 2.790 pertain to documents. See 10 C.F.R. § 2.720(h)(3). Second, with respect to document requests (which comprise the bulk of the State's Eighth Request), a requestor is required to "state why [the] record or document is relevant to the proceeding." 10 C.F.R. § 2.744(a); emphasis added. The State must do more than merely recite the standard of § 2.744(d) and make blanket assertions regarding relevance, in order to make a sufficient showing that it needs the document and the document is otherwise unavailable.

¹⁴ The State also lists Document Request 7 among the requests for which it seeks to compel further answers by the Staff (Motion to Compel at 2, 4). This appears to be in error, in that the Staff committed to produce documents in response to this request -- and did so by letter dated September 29, 2000.

Rather, the requesting party must “demonstrate” the relevance of a document, its non-exempt status from disclosure under § 2.790, “or that, if exempt, its disclosure is necessary to a proper decision in the proceeding, and the document is not available from another source.” *Id.* The State has failed to satisfy these requirements.¹⁵

CONCLUSION

For the reasons set forth above, no further discovery responses to the State’s Eighth Request are necessary or appropriate. Accordingly, the Staff’s motion for a Protective Order should be granted, and the State’s Motion to Compel should be denied.

Respectfully submitted,

Sherwin E. Turk */RA/*
Catherine L. Marco */RA/*
Robert M. Weisman */RA/*
Counsel for NRC Staff

Dated at Rockville, Maryland
this 11th day of October 2000

¹⁵ In particular, the Staff notes that Document Requests 29-31 relate to the Commission’s Waste Confidence Decision Review, in which the Commission stated that a second ISFSI application is expected in the future. Documents pertaining to such an application are not relevant to the “no action” alternative for the PFS facility and are not reasonably calculated to lead to the discovery of admissible evidence. The State’s Motion to Compel does not provide any further explanation as to why such matters are relevant to the issues raised in Contention Utah Z.

DISPUTED DISCOVERY REQUESTS

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1 - UTAH Z. Do you admit that the Staff relies on the canister and overpacks costs, to be used at the PFS site, from the 1997 Business Plan?

REQUEST FOR ADMISSION NO. 2 - UTAH Z. Do you admit that the Staff relies on the canister and overpacks costs, to be used at the PFS site, from the 1998 Business Plan?

REQUEST FOR ADMISSION NO. 3 - UTAH Z. Do you admit that the 1997 Business Plan does not contain key assumptions as to the cost of canisters and overpacks to be used at the PFS site?

REQUEST FOR ADMISSION NO. 4 - UTAH Z. Do you admit that the 1998 Business Plan does not contain key assumptions as to the cost of canisters and overpacks to be used at the PFS site?

REQUEST FOR ADMISSION NO. 5 - UTAH Z. Do you admit that the cost of canisters and overpacks used for at-reactor storage will not be uniform for all at-reactor sites?

DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1 - UTAH Z. All documents that relate to key cost assumptions for canisters and overpacks contained in the PFS business plan.

DOCUMENT REQUEST NO. 2 -- UTAH Z. All documents that relate to the costs of canisters and overpacks that will be used at the PFS site.

DOCUMENT REQUEST NO. 3 - UTAH Z. All documents that relate to the cost of canisters and overpacks used for at-reactor storage.

DOCUMENT REQUEST NO. 4 - UTAH Z. All documents that relate to the statement in the DEIS "key cost assumptions in the business plan." DEIS at 8-5.

DOCUMENT REQUEST NO. 5 - UTAH Z. All documents that relate to the statement in the DEIS "canisters and

overpacks utilized by the proposed PFSF are 30 percent lower than what was assumed for the canisters and overpacks used for at-reactor storage.” DEIS at 8-5.

DOCUMENT REQUEST NO. 6 - UTAH Z. All documents that relate to the characteristics of the canisters and overpacks that will be used for at-reactor storage, such as the name or model of the canister and/or overpack and the name of the manufacturer.

DOCUMENT REQUEST NO. 7 - UTAH Z. DEIS p. 1-7 lines 43-45 refers to “15 ISFSIs operating in the U.S. . . . and approximately 15 to 20 additional ISFSIs are proposed for the near term.” Please provide documentary support for the assertion that “15 to 20 additional ISFSIs are proposed for the near term.”

DOCUMENT REQUEST NO. 8 - UTAH Z. DEIS p. 1-7. Please provide (or at least list) all documents in the possession of the Staff that discuss the actual or proposed cost of constructing and/or operating (a) the 15 operating ISFSIs, and (b) the “15 to 20 additional ISFSIs . . . proposed for the near term.”

DOCUMENT REQUEST NO. 10 - UTAH Z. DEIS p. 9-9 lines 31-34. Please provide the documents reflecting the Staff’s analysis of the economic benefits or costs of building onsite SNF storage facilities at reactors.

DOCUMENT REQUEST NO. 12 - UTAH Z. EIS 8-1 lines 39-42. Please provide the document(s) which inform the Staff that it is a correct procedure not to “make a judgment about the comparative likelihood” of the scenarios considered by the Staff.

DOCUMENT REQUEST NO. 13 - UTAH Z. DEIS 8-2 lines 1-5. Please provide the documentary support for the Staff’s decision to eliminate from consideration the “small throughput” scenario.

DOCUMENT REQUEST NO. 14 - UTAH Z. DEIS 8-2 lines 1-5. Please provide all documents relating to the decision not to include an evaluation of the “small throughput” scenario in the DEIS.

DOCUMENT REQUEST NO. 15 - UTAH Z. DEIS 8-2 lines 1-5. Please provide all documents evaluating the “small

throughput” scenario in terms of benefits and costs or as included in sensitivity analysis not used in the DEIS.

DOCUMENT REQUEST NO. 16 - UTAH Z. DEIS 8-2 lines 24-27. The analysis in the ERI Report (“Utility At-Reactor Spent Fuel Storage Costs For The Private Fuel Storage Facility Cost-Benefit Analysis Revision 2” ERI-2025-0001, April 2000 (referenced at DEIS 8-2, lines 13-19)) is based entirely on a 40 year operating life assumption for the PFS facility. Please provide all documents relating to costs and benefits assuming a 20 year operating life for the PFS facility.

DOCUMENT REQUEST NO. 17 - UTAH Z. DEIS Table 8-3 and related text. Please provide all documents describing or dealing in any way with sensitivity analyses for other sensitivity scenarios or variations considered by the Staff but not included in the DEIS.

DOCUMENT REQUEST NO. 18 - UTAH Z. Staff describes a “detailed chain of logic” (DEIS page 8-2, line 15) which leads from the ERI study (“Utility At-Reactor Spent Fuel Storage Costs For The Private Fuel Storage Facility Cost-Benefit Analysis Revision 2” ERI-2025-0001, April 2000) to calculations of benefits and costs described in Tables 8-2 and 8-3. Please provide all documents that Staff relied upon, utilized, consulted or which support the figures presented in Tables 8-2 and 8-3.

DOCUMENT REQUEST NO. 19 - UTAH Z. Please provide the data used to calculate each of the figures for Scenario I, II, III, and IV in DEIS, Table 8.2.

DOCUMENT REQUEST NO. 20 - UTAH Z. Please provide all documents that the Staff relied upon, utilized, consulted or which support the benefit and cost figures for the proposed PFSF, accepting SNF only from PFS member utilities (a facility capacity of 6,600 or 8,000 MTU with and SNF throughput of 12,565 MTU; see p. 8-1, lines 31-41). This is the scenario the Staff has labeled as the “small throughput” scenario.

DOCUMENT REQUEST NO. 21 - UTAH Z. Please provide all documents that the Staff relied on to conclude it can “make no judgment about the comparative likelihood of these scenarios” the Staff characterizes on page 8-1, lines 31-41, as “small throughput,” “medium throughput,” and “maximum throughput.”

DOCUMENT REQUEST NO. 22 - UTAH Z. Please provide all documents that Staff relied on in evaluating the analysis by ERI in PFS's February 25, 2000 EIS Commitment Resolution Letter #7 (question 5), which assumes that a reactor will choose pool storage over dry storage for post-shutdown spent fuel storage.

DOCUMENT REQUEST NO. 23 - UTAH Z. Please provide any analysis which compares costs for dry cask storage and pool storage for the following:

- 1) A reactor that has closed more than ten years before 2002;
- 2) A reactor that has closed less than ten years before 2002;
- 3) A reactor where loss of full core discharge capability is imminent;
- 4) A reactor that is assumed to require no additional SNF storage capacity until far into the future.

DOCUMENT REQUEST NO. 24 - UTAH Z. Please provide all documents that analyze a delay in the assumed completion of the PFS facility.

DOCUMENT REQUEST NO. 25 - UTAH Z. DEIS 8-9 lines 1-17. Please provide a list of the documents reviewed by the Staff to prepare this paragraph.

DOCUMENT REQUEST NO. 26 - UTAH Z. DEIS 8-9 lines 47-48, and 8-10 line 1: "From an economic perspective, the net benefit of the proposed PFSF is directly proportional to the quantity of SNF shipped to the facility. The scenarios evaluated by the staff indicate the potential for a net positive benefit." Please provide a list of documents reviewed by the Staff to support these sentences.

DOCUMENT REQUEST NO. 27 - UTAH Z. DEIS 8-10 lines 19-23. Please provide all documents supporting the statement that if PFS is not licensed, "it could lead to cessation of the power generating activities . . . at one or more nuclear power plants."

DOCUMENT REQUEST NO. 28 - UTAH Z. DEIS 8-10 lines 19-23. Please provide all documents that show or indicate that were a power reactor to close before the expiration of its license term that this would inevitably have a net adverse impact from "a societal perspective." See DEIS at 8-1 lines 22-23.

DOCUMENT REQUEST NO. 29 - UTAH Z. In 64 FR 68005, 68006 (*Waste Confidence Decision Review: Status*) (December 6, 1999), the NRC said, "the NRC is reviewing an application for an away-from-reactor Independent Spent Fuel Storage Installation (ISFSI), *and a second application is expected in fiscal year 2000.*" (Emphasis added). Please provide all documents that identify or discuss this second off-site ISFSI.

DOCUMENT REQUEST NO. 30 - UTAH Z. Refer to Document Request No. 29. Please provide all documents relating in any way to the impact of a second off-site ISFSI on the benefits and costs associated with the PFS facility, especially in light of the Staff's statement that the net benefits of the PFS facility are "directly proportional" to the quantity of SNF shipped to the facility." DEIS 8-9 lines 47-48.

DOCUMENT REQUEST NO. 31 - UTAH Z. DEIS Chapter 8 generally. Please provide all documents relating in any way to the Staff's presentation, assumptions and conclusions in chapters 8 and 9 if the geologic repository were to be built other than at Yucca Mountain.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S RESPONSE TO 'STATE OF UTAH'S MOTION TO COMPEL NRC STAFF TO RESPOND TO STATE'S EIGHTH SET OF DISCOVERY REQUESTS (CONTENTION Z),' AND MOTION FOR PROTECTIVE ORDER" in the above captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 11th day of October, 2000:

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