

September 28, 2000

ERRATA

TO

**STATE'S COMMENTS ON THE NRC STAFF'S DEIS COST BENEFIT
ANALYSIS IN LIGHT OF STAFF'S RELIANCE ON ERI'S
MATHEMATICAL MODELING OF THE MARKET FOR THE
PROPOSED PFS FACILITY (September 27, 2000)**

The sentence beginning on the third line from the bottom of page two states:

Behind the various columns is a long involved formula.

This sentence should state:

Behind many of the data entries is a long involved formula.

MAY CONTAIN PROPRIETARY INFORMATION

The following comments are based on proprietary information the State has obtained from ERI on September 15, 2000, and is supplemental to and not duplicative of the State's DEIS comments dated September 20, 2000. A discussion of the proprietary nature of the information and justification of filing late comments follows. In addition to the following discussion, a letter from Assistant Attorney General Denise Chancellor to Mr. David L. Meyer, Chief, Rules and Directives Branch, more fully describes the proprietary nature of the State's comments and the justification for filing the comments after September 21, 2000.

A. Proprietary Information

On September 15, 2000, the State received a copy of a CD-ROM containing electronic files related to ERI's analyses, "Utility At-Reactor Spent Fuel Storage Costs For the Private Fuel Storage Facility Cost-benefit Analysis." The State obtained the information, consisting of multiple-panel electronic spreadsheets, under a confidentiality and non-disclosure agreement between the State and ERI. Under that agreement, the State may use the ERI confidential information in the PFS license application proceeding, NRC Docket No. 72-22 ISFSI, and disclose the information only to the NRC, PFS and other parties in the NRC proceeding who have executed a confidentiality and non-disclosure agreement with ERI.

PFS, on behalf of ERI, submitted the data on the CD-ROM to NRC on April 14, 2000, under a claim of confidentiality pursuant to 10 CFR § 2.790. Mr. E. William Brach, Director, Spent Fuel Project Office, issued a Public Disclosure Determination dated May 19, 2000, that the ERI CD-ROM information contains proprietary commercial information and should be withheld from public disclosure. In the Public Disclosure Determination Mr. Brach stated: "Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the documents." The State is properly and directly concerned with the PFS proposal and the ERI proprietary information, and in accordance with NRC's May 19, 2000, Public Disclosure Determination and the State-ERI agreement, submits the following comments, based on the State's review of the ERI proprietary information, as a non-public document.¹

B. Justified Late-Filed Comments

On September 20, 2000, the State submitted timely DEIS comments based on the State's review of the DEIS. On September 15, 2000, the State received from PFS a copy of ERI's CD-ROM, which is the 12 scenario mathematical model to support ERI's April 2000 Report (a document that is approximately three inches thick). The CD-ROM consists entirely of spreadsheets within spreadsheets and relates to the 1997 Cost Benefit Report, the 1999 update and the 2000 update. The data contained on the CD-ROM is expansive and difficult to review. For example, the 2000 update contains 12 scenarios. Each scenario is displayed on a spreadsheet consisting of 65 columns x 600 rows, i.e. a total of 39,000 data points. Behind many of the data entries is a long involved formula. There is no narrative accompanying the data and frequently there are omissions and inconsistencies between the hard copy 2000 ERI Report and the electronic data. What this

¹ The State also submitted a three page attachment to its general DEIS comments that contains proprietary information. Those proprietary comments also relate to the ERI proprietary information and under the same rationale should be treated as a non-public document.

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shows is the complicated nature of the data and documents the State's experts reviewed in approximately eight business days.

The Federal Register notice states that comments received after September 21, 2000 "will be considered if it is practical to do so." 65 Fed. Reg. 39,206, 39,207, June 23, 2000. The State urges the NRC Staff to give due consideration to the State's comments which are only one week beyond the September 21, 2000 comment date. Moreover, the comments specifically address why NRC's reliance on the ERI Report and data will not meet the requirements of NEPA. The chain of logic and ERI's assumptions and calculations are flawed and will not support Chapter 8 of the DEIS.

C. Overview of the State's Comments²

It is extremely difficult at this time to provide an in-depth analysis of the Staff's presentation in Chapter 8 of the DEIS, given the Staff's reliance on ERI's 12 scenario mathematical model and the timing of the State's receipt of the proprietary electronic ERI data. Notwithstanding these difficulties, and noting that the conclusions set forth below are somewhat tentative given the limited time allowed for this review, it is possible to provide a number of examples or areas where the ERI analysis is pointedly unreasonable or flies in the face of actual practice or clear opportunities in the industry to address the SNF storage problem on a least cost basis.

These comments support the following general conclusions:

1. The ERI report is based on assumptions that unreasonably compound the cost of addressing the need for SNF storage in any manner other than via PFS;
2. ERI ignores a wide variety of more cost effective measures that utilities have historically and will continue to implement to minimize the cost of SNF storage;
3. ERI either ignores or assumes away any factors—especially timing factors—which would show the proposed PFS facility is not viable under circumstances which are just as likely to occur as those chosen by ERI to favor PFS;
4. Relying on and expanding upon the ERI analyses, the Staff has adopted unreasonable assumptions about costs and other factors which clearly biases the analysis in favor of the proposed PFS facility.

The economic viability of the proposed PFS facility depends upon a numbers of factors including, most prominently, the following seven: (1) when PFS opens; (2) when PFS closes; (3) when the DOE repository opens; (4) timing issues among reactors, DOE and the proposed PFS ISFSI; (5) costs in relationship to risk; (6) at-reactor ISFSI timing; and (7) demand for the PFS facility.

² 10 CFR § 51.16(b) states that when submitting proprietary information, a non-proprietary summary should also be provided. This overview section may be disclosed as non-proprietary information, but in offering this summary the State does not concede that the State's comments can be reduced to this summary overview.