

RAS 2332

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

LBP-00-28

DOCKETED 10/30/00

SERVED 10/30/00

Before Administrative Judges:

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

In the Matter of

PRIVATE FUEL STORAGE, L.L.C.

(Independent Spent Fuel Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

October 30, 2000

MEMORANDUM AND ORDER
(Denying Request to Admit Late-Filed
Contentions Utah LL Through Utah OO)

Pending with the Licensing Board is the August 2, 2000 request of intervenor State of Utah (State) to admit contentions Utah LL through Utah OO, each of which challenges some aspect of the adequacy of the spent fuel transportation risk analysis in the NRC staff's June 2000 draft environmental impact statement (DEIS) regarding the proposed Skull Valley, Utah independent spent fuel storage installation (ISFSI) of applicant Private Fuel Storage, L.L.C. (PFS). Specifically, with these four contentions the State asserts that the DEIS is deficient in its discussion of (1) the impacts of intermodal transfer from trucks to railheads near reactor sites; (2) the type of cask transportation rail cars that will be used and the accident risks associated with the heavy loads they will carry; (3) severe accident probability and consequences; and (4) maximum credible accident environmental impacts, including economic risks and consequences. Applicant PFS contends that we should reject all four contentions because they fail to merit admission under both the late-filing and the basis and specificity criteria of 10 C.F.R. § 2.714(a)(1), (b), (d). For its part, the staff objects to the admission of

contentions Utah OO and a portion of contention Utah NN as not meeting the section 2.714(a)(1) late-filing criteria and questions the admissibility of all four contentions under the basis and specificity requirements of section 2.714(b), (d).

For the reasons set forth below, we find that the contentions are not admissible under a balancing of the late-filing elements of 10 C.F.R. § 2.714(a)(1).

I. BACKGROUND

In the Board's initial ruling on the admissibility of the State's timely-filed contentions, we found admissible that portion of the State's National Environmental Policy Act (NEPA)-related contention Utah V, Inadequate Consideration of Transportation-Related Radiological Environmental Impacts, that "alleges the weight for a loaded PFS shipping cask is outside the parameters of 10 C.F.R. § 51.52 (Summary Table S-4)." LBP-98-7, 47 NRC 142, 200, reconsideration denied, LBP-98-10, 47 NRC 288, 295-96, aff'd on other grounds, CLI-98-13, 48 NRC 26 (1998). As adopted in that decision, admitted contention Utah V provides:

The Environmental Report ("ER") fails to give adequate consideration to the transportation-related environmental impacts of the proposed ISFSI in that PFS does not satisfy the threshold condition for weight specified in 10 C.F.R. § 51.52(a) for use of Summary Table S-4, so that 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).

Id. at 256.

As the language of the contention indicates, this State issue statement used as its basis the environmental report that PFS submitted as part of its July 1997 application for authorization to construct and operate its proposed Skull Valley, Utah ISFSI. Thereafter, recognizing that the NRC staff would be issuing a DEIS and a final environmental impact statement (FEIS) relative to the PFS application that, in accordance with 10 C.F.R.

§ 2.714(b)(2)(iii), could be the genesis of additional, late-filed contentions, the Board indicated that (1) the staff should notify the intervening parties and the Board of its intent to make these documents public at least fifteen days prior to their public issuance; (2) the staff should take steps to notify the intervenors of actual public release of these documents and their availability on an expedited basis; and (3) any late-filed contentions should be filed within thirty days of these documents being made available to the public. See Licensing Board Memorandum and Order (General Schedule for Proceeding and Associated Guidance) (June 29, 1998) at 4-5 (unpublished); see also LBP-00-07, 51 NRC 139, 143 n.1 (2000).

On June 16, 2000, a DEIS was issued by the staff and several cooperating federal agencies (i.e., the Bureau of Indian Affairs and the Bureau of Land Management of the United States Department of the Interior and the United States Surface Transportation Board). See Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Comm'n, Draft Environmental Statement for the Construction and Operation of an [ISFSI] on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah, NUREG-1714 (June 2000) [hereinafter DEIS]; see also 65 Fed. Reg. 39,206 (2000). Copies of DEIS were provided to the Board and the State during an evidentiary hearing session held in Salt Lake City, Utah, on Monday, June 19, 2000. See Tr. at 1387.

The State's request to admit late-filed contentions Utah LL through Utah OO were filed with the Board on August 2, 2000. See [State] Request for Admission of Late-Filed Contentions Utah LL Through OO (Aug. 2, 2000) [hereinafter State Contentions]. These contentions provide as follows:

Contention Utah LL. The DEIS fails to comply with the requirements of 10 CFR § 51.70 and NEPA in that it underestimates the risks posed by transportation of spent fuel to the PFS facility, because it ignores elements of the project which affect the transportation risks. Specifically:

1. The DEIS ignores the impacts of incident-free transportation that result from the loading of fuel and from the intermodal transfer from trucks to railheads near reactor sites.

* * * * *

2. The DEIS does not describe the type of railroad cars to be used for transporting casks to the PFS facility, or evaluate the accident risks posed by putting extremely heavy loads on the rails.

* * * * *

Contention Utah MM. The DEIS does not comply with the requirements of NEPA or 10 CFR § 51.70 because it underestimates the risk of the most severe category of accident by understating both the probability and the consequences.

The most severe transportation accident considered in the DEIS is a "Severity Category 6" accident, involving "[s]evere impact damage plus fire severe enough to cause fuel oxidation with release of greater amounts of fuel particulates than category 5." DEIS at D-6, Table D.2. The DEIS estimates that the probability of an accident of this severity is 1×10^{-12} per mile for shipment by rail. DEIS at D-7. Specifically,

1. The DEIS employs the average rail accident rate, not the rail accident rate for specific rail lines that will be used.

* * * * *

2. The probability of a severe accident is higher than estimated in the DEIS.

* * * * *

3. The DEIS underestimates the radiological consequences of a Severity Category 6 accident, by underestimating the release fraction for [Chalk River Unidentified Deposits (CRUD)].

* * * * *

Contention Utah NN. The DEIS fails to comply with the requirements of 10 CFR § 51.70 and NEPA in that it does not describe or analyze the environmental impacts of a maximum credible accident.

* * * * *

Contention Utah OO. The DEIS fails to comply with the requirements of 10 CFR § 51.70 or NEPA in that it does not address economic risks or consequences of a transportation accident.

State Contentions at 9, 12, 13, 14, 17, 20, 22. PFS and staff responses objecting to admission of these late-filed issue statements were lodged on August 30, 2000.¹ See [PFS] Response to [State] Request for Admission of Late-Filed Contentions Utah LL Through OO (Aug. 30, 2000) [hereinafter PFS Response]; NRC Staff's Response to [State] Request for Admission of Late-Filed Contentions Utah LL Through OO (Aug. 30, 2000) [hereinafter Staff Response]. Thereafter, with leave of the Board, the State filed a reply to the PFS and staff responses and, as part of that filing, included a motion to amend late-filed contention Utah LL to include a citation it asserts was inadvertently left out. See [State] Reply to [PFS] and Staff's Responses to Late-Filed Contentions Utah LL Through OO and Motion to Amend Contention LL (Sept. 7, 2000) [hereinafter State Reply]. By responses dated September 14, 2000, both PFS and the staff opposed the contention Utah LL amendment request. See [PFS] Response to [State] Motion to Amend Contention Utah LL (Sept. 14, 2000); NRC Staff's Response to [State] Motion to Amend Contention Utah LL (Sept. 14, 2000). The State, however, responded with a motion to strike a portion of the staff's response as providing further arguments regarding the merits of admitting the contentions, rather than the amendment requested by the State. See [State] Motion to Strike Part of The Staff's Response to [State] Motion to Amend Late-filed Contention Utah LL (Sept. 18, 2000). The staff then submitted a response opposing the State's motion to strike, as well as its own motion to strike certain portions of the State's reply/motion to amend,

¹ The State labeled its pleading as proprietary because of its concern about the status of Exhibit 2 to its motion, a June 16, 1998 letter to PFS that was marked confidential. See State Contentions at 12-13 & exh. 2. In its response, PFS indicated that the letter did not need to be afforded confidential treatment. See [PFS] Response to [State] Request for Admission of Late-Filed Contentions Utah LL Through OO (Aug. 30, 2000) at 8 n.10. Accordingly, we see no basis for withholding any portion of this decision from the public record.

which prompted a State response asserting the staff's motion to strike should be denied. See NRC Staff's (1) Response to "[State] Motion to Strike Part of the Staff's Response to [State] Motion to Amend Late-Filed Contention Utah LL," and (2) Motion to Strike Portions of the [State] Reply/Motion to Amend (Sept. 25, 2000); [State] Response to NRC Staff's Motion to Strike Portions of the State's Reply/Motion to Amend (Sept. 28, 2000).

II. ANALYSIS

A. Late-Filing Criteria

1. Applicable Standard

Section 2.714(b)(2)(iii) of Title 10 of the Code of Federal Regulations recognizes relative to NEPA contentions that, although a petitioner is to file its initial contentions based on the applicant's ER, it can "amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement . . . or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's document." As the Commission recognized in adopting this provision, however, it was "not intended to alter the standards in § 2.714(a) of [the] rules of practice as interpreted by NRC caselaw, e.g., Duke Power Co. (Catawaba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983), respecting late-filed contentions nor [is it] intended to exempt environmental matters as a class from the application of those standards." 54 Fed. Reg. 33,168, 33,172 (1989). Thus, notwithstanding the fact that the staff DEIS that is the purported genesis for the State's four late-filed spent fuel transportation contentions was not put before the Board and the parties until June of this year, because the deadline in this proceeding for filing timely contentions expired nearly three years ago, the State has the burden of demonstrating that its contentions Utah LL through Utah OO merit admission in accordance with the five-factor balancing analysis specified in 10 C.F.R. § 2.714(a)(1).

The first and foremost factor in this appraisal is whether good cause exists that will excuse the late-filing of the contention. See Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 244 (1986). And relevant to our evaluation of that factor here, as we have noted previously (albeit in a somewhat different context), the good cause element has two components that impact on our assessment of the timeliness of a contention's filing: (1) when was sufficient information reasonably available to support the submission of the late-filed contention; and (2) once the information was available, how long did it take for the contention admission request to be prepared and filed. See LBP-99-3, 49 NRC 40, 46-48 (assessing late-filing factors relative to petition to intervene), aff'd, CLI-99-14, 49 NRC 361 (1999). Moreover, relative to the other four factors, in the absence of good cause there must be a compelling showing on the four remaining elements, of which factors two and four -- availability of other means to protect the petitioner's interest and extent of representation of petitioner's interest by other parties -- are to be given less weight than factors three and five -- assistance in developing a strong record and broadening the issues/delaying the proceeding. See Braidwood, CLI-86-8, 23 NRC at 244-45.

2. Application to State's Late-Filed Contentions Utah LL Through Utah OO

Turning to the application of the section 2.714(a)(1) balancing test, we begin by considering the first and paramount factor, good cause for late filing. In connection with the two aspects of timeliness outlined above, PFS declares that the matters that are the subject of Contentions Utah LL through Utah OO could have been raised in November 1997 based on the PFS ER or, in the case of Utah LL, basis two, in late 1998 when PFS provided a document that is central to this State claim, and, as such, lack good cause at this juncture. See PFS Response at 7-10. The staff takes a somewhat different tack, declaring that the portion of Utah NN that alleges the DEIS is deficient because of a failure to include a discussion of the economic consequences of a maximum credible spent fuel transportation accident, and all of

Utah OO, which asserts the DEIS fails to contain any discussion of the economic risks or consequences of a spent fuel transportation accident, could have been raised in 1997 based on the PFS ER and thus fail the good cause standard. See Staff Response at 9-11. The State asserts that all these contentions meet this aspect of the good cause standard based on the fact that, in conformity with section 2.714(b)(2)(iii), the DEIS differs “significantly” from the ER on the points raised in each. See State Contentions at 3-7, 25-26; see also State Reply at 22-23.

On this aspect of the good cause element, we agree with the staff that the economic concerns in contentions Utah NN and Utah OO could have been raised relative to the ER back in 1997. On the other hand, the State is correct in asserting that the DEIS information upon which contentions Utah LL, Utah MM, and the balance of Utah NN are based was substantially different from the ER such that the good cause factor would not weigh against their filing at this time.

This does not end the matter, however. Relative to the other factor -- how promptly were the contentions filed once the requisite information was in hand -- we note that all four share a common filing date: August 2, 2000. Although the staff does not discuss this aspect of the balancing equation, applicant PFS asserts that (1) all these contentions are late under the terms of the Board’s June 28, 1998 scheduling directive; and (2) the State has failed to provide any reason that excuses its tardiness. We consider each of these points in turn.

To be sure, section 2.714(a)(1) does not specify an exact time limit for the submission of late-filed contentions; accordingly, in the absence of some other Commission directive, the matter of timeliness is one for the presiding officer to resolve in the first instance. Certainly, this reflects a reasonable administrative choice given the myriad matters that could be the subject of late-filed issues and the differing circumstances in which they could arise. Indeed, in this proceeding we have been called upon to make such findings in a number of different instances.

See, e.g., LBP-00-14, 51 NRC 301 (2000); LBP-98-29, 48 NRC 286 (1998). And in this context, we have provided general guidance that forty-five days approaches the outer boundary of timeliness. See LBP-99-3, 49 NRC at 47.

Our June 28, 1998 scheduling directive, however, reflected a somewhat different, although not inconsistent, approach to this question of timing. As was noted above, the agency's current rules of practice recognize that a DEIS or EIS can be a "triggering" document for late-filed contentions, giving these documents much the same status as the applicant's environmental report (ER) that is the locus of any initial NEPA-related contentions. Given the clear existence of these "triggering" documents, as was the case with the initial contentions, we directed that contentions relating to the DEIS or the EIS be filed by a date certain, i.e., within thirty days of the public release of those documents. However, in setting this deadline, we also endeavored to address the often-expressed concern that technical consultant availability is a significant component of any contention preparation time allotment. Consequently, we directed that the staff should provide at least fifteen days advance notice of its intent to make these documents publically available, thereby giving the other participants an opportunity to put their existing technical consultants "on alert" that their services would be needed or retain new consultants so that, with the public availability of the document, they could begin working promptly. Indeed, we recently emphasized the importance of this element, noting that we would take into account a staff failure to follow our pre-issuance notice directive in terms of any finding about timeliness relative to late-filed contentions on the DEIS or EIS. See LBP-00-07, 51 NRC at 143 n.1.

Taking our timing directive and applying it to this case, the staff gave the requested pre-issuance notice on June 12, 2000, by means of a letter that was sent to the Licensing Board and all parties by e-mail that date. See Letter from Robert Weisman, NRC Staff Counsel, to the Licensing Board (June 12, 2000). The letter indicated that the DEIS had been

completed on June 9, 2000, but was in reproduction and would be made available to the parties at the scheduled June 19, 2000 evidentiary hearing session. Thereafter, copies of the DEIS were made available to the parties on June 19, 2000, see Tr. at 1387, although the public was not officially notified of its availability until June 23, 2000, see 65 Fed. Reg. 39,206 (2000). In this circumstance, consistent with our scheduling directive contemplation that there would be forty-five days between the time of the staff pre-issuance notice and the time any late-filed contentions on the DEIS were due and that the parties would have the DEIS in hand for at least thirty days before any contentions were due to be filed, the due date for late-filed contentions regarding that document was July 27, 2000 (i.e., forty-five days from June 12, 2000). As a consequence, the State's request for late-filed admission of contention Utah LL through Utah OO, which was filed on August 2, 2000, is six days late.

In seeking to justify its late-filing of its late-filed contentions, the State puts forth a variety of reasons it contends demonstrate good cause, including (1) counsel's participation in the evidentiary hearing until June 27; (2) ongoing preparation of proposed findings of fact and conclusions of law relative to the three issues heard during June 2000; counsel's preparation of DEIS-related contention Utah KK, which was filed on time, see LBP-00-27, 52 NRC __, __ (slip op. at 7) (Oct. 30, 2000); (3) the fact there were two holidays (one federal, one Utah state) during this period; the complexity of the issues involved; the State's efforts to raise environmental transportation-related concerns on numerous occasions; and (4) the fact that its untimely filing of these contentions does not affect the schedule for the proceeding. See State Contentions at 24-25. In response, PFS declares that these items do not excuse the lateness of the State's filing because (1) during the evidentiary hearing and the drafting of proposed findings and conclusions, Dr. Marvin Resnikoff, who provided the sole expert support for contentions Utah LL through Utah OO, was available to review and analyze the DEIS; and (2) parties to NRC adjudications are expected to accept the burdens attendant upon such

participation, including meeting filing deadlines. See PFS Response at 4-5 (citing Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 338-39 (1999)). In reply, the State expresses its regret that it did not recall the Board's scheduling order setting a thirty-day filing deadline, noting that its counsel was in the midst of the June evidentiary hearing and preparation of its proposed findings and conclusions. It also asserts that the fact its expert Dr. Resnikoff was not involved in the evidentiary hearing was not a relevant factor given the need to have its counsel, who were otherwise occupied with hearing-related matters, available to draft the contentions and consult with the expert. Finally, the State declares that its delay in filing its contention will have no appreciable effect on any hearing for these contentions, which would not occur until the summer of 2001. See State Reply at 20-21.

Over the years, agency jurisprudence reflects a general reluctance to base the dismissal of contentions, late-filed or otherwise, on pleading or other procedural defects. See Sequoyah Fuels Corp. (Gore, Oklahoma Site Decontamination and Decommissioning Funding), LBP-94-8, 39 NRC 116, 120 & n.7 (citing Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 649 (1979)), aff'd in part on other grounds, CLI-94-12, 40 NRC 64 (1994); see also Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 5 (1996) (declining to dismiss intervention petition based on technical pleading defect). At the same time, the Commission recently has made it clear that it expects its presiding officers to set schedules, that parties will adhere to those schedules, and that presiding officers will enforce compliance with those schedules. See Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998).

In this instance, although the outcome may seem harsh, we conclude that the Commission's latter directive holds sway. We established the timetable for filing late-filed contentions relating to major staff issuances so that the parties' obligations would be readily apparent relative to such submissions. We indicated that the staff should give advance notice

of the anticipated public release of documents like the DEIS to permit parties to marshal their resources in anticipation of the need to frame contentions based on those documents. This was intended to permit intervenors to “hit the ground running” so as to meet the thirty-day time limit for submitting late-filed issues. We saw nothing then, and see nothing now, that renders this scheduling deadline unreasonable.

We have made it clear to the parties on more than one occasion that we are fully aware of the resource burdens that the complexity of this proceeding places on everyone (including the Board) and have lauded the efforts of those, including the State, who on a continuing basis have put forth their best efforts to meet the timing and other resource challenges involved. By the same token, we have acted to ensure that in instances when the schedules we have set have not been met for reasons that do not reflect an appropriate concern for those deadlines, parties bore the consequences of that noncompliance. See Licensing Board Memorandum and Order (Ruling on Motions to Extend Discovery and to Quash Deposition Notice) (June 14, 1999) at 3-6 (unpublished) (denying request to extend discovery deadline because of party’s failure to pursue discovery “until the proverbial ‘last minute’”). Unfortunately, the State’s showing in this instance is more reflective of the latter approach.

The State’s attempt to excuse its noncompliance based on the 1998 vintage of the thirty-day filing requirement does not account for that fact that we reiterated the existence of that requirement and emphasized the importance we placed upon it less than four months before the staff released the DEIS. See LBP-00-7, 51 NRC at 143 n.1. Further, while we are fully aware of the burdens imposed by the June 2000 evidentiary hearing and the State’s post-hearing responsibilities, we do not find particularly compelling the State’s explanation regarding Dr. Resnikoff’s ability to participate in contention preparation, given he was not involved in that hearing. And certainly none of the explanations provided by the State justifies its failure to seek an extension of the Board’s filing directive, as opposed to filing the contentions without apparent

regard for that scheduling deadline.² As a consequence, in these circumstances we find that the State has failed to meet its burden to establish good cause for its late-filing, meaning that this factor weighs against admission of its contentions in the section 2.714(a)(1) balancing process. Moreover, in this context, we find the delay, although only six days, does not mitigate the significance this factor is to be accorded given the State's failure to seek an extension prior to the expiration of the Board-directed filing deadline.

Thus, lacking good cause as to all the contentions, the State must make a compelling showing relative to the other four factors. With respect to factor two -- availability of other means to protect the petitioner's interest -- although PFS and the staff are correct in their assertion that the ability to comment on the DEIS is not a trivial opportunity for involvement in the licensing process, ultimately we agree with the State that, in this instance involving an application to construct and operate an offsite ISFSI, it is not on the same plane as the participation rights that accrue in the adjudicatory context. See Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1176-77 (1983) (ability to seek staff 10 C.F.R. § 2.206 enforcement action relief not equivalent of adjudicatory participation in reactor operating license proceeding). As such, this factor provides some measure of support for admission of the State's late-filed issues. So too does factor four -- extent of representation of petitioner's interest by other parties -- as both PFS and the staff recognize. As we noted, however, these two are given less weight in the balance than factors three and five.

In connection with factor three -- assistance in developing a strong record -- we observe that although Dr. Resnikoff has been involved in this proceeding as a State witness, in and of

² Whether, and to what degree, the State's explanations might have provided a successful basis for extending the filing deadline is a matter we need not decide since the State chose not to seek that procedural relief.

itself this does not establish that he will contribute to the development of a sound record on these late-filed issues. See Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-813, 22 NRC 59, 85 (1985). Rather, the focus is on what specific information is provided by an intervenor relative to the contentions at issue that allows the Board fairly to conclude that the party will contribute to the development of a sound record on those issues. And in this regard, as we have noted on several other occasions in this proceeding, the Commission has made it clear that a late-filed contention's proponent should, with as much particularity as possible, "identify its prospective witnesses, and summarize their proposed testimony." Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 246 (1986) (quoting Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982)). In this instance, the State has identified its witness -- Dr. Resnikoff -- and given us some clue to his testimony, albeit in the form of the narrative for the contentions and their bases. This places factor three on the admissibility side of the balance, with a moderate impact in favor of accepting the contentions.

Finally, relative to factor five -- broadening the issues/delaying the proceeding -- we find this factor essentially neutral in this instance. To be sure, admission of these late-filed contentions issues will broaden this proceeding by adding additional matters to be litigated. And, based on our June 2000 experience, this could add three to five days of hearing time that might impact on the overall schedule, albeit to a minor degree. Accordingly, although this factor goes on the admissibility side of the balance, it does so only to a slight degree.

Given this analysis, when the balance of the five factors is finally struck, although factors two through five provide some degree of support for admission of the contentions, we do not consider the overall balance to be "compelling" so as to outweigh the lack of good cause under

factor one. This being the case, we deny admission to the State's four late-filed contentions concerning DEIS-related transportation issues.³

III. CONCLUSION

Having failed to establish good cause for (1) not raising its claims about consideration of economic consequences relative to late-filed contentions Utah NN and Utah OO in connection with its challenges to the 1997 PFS ER; and (2) its failure to file late-filed contentions Utah LL through Utah OO within the time frame previously specified by Board, for which it sought no extension, the first and most important element of the 10 C.F.R. § 2.714(a)(1) five-factor test for admitting late-filed contentions balances against admission of these four contentions. None of the other four factors weighs against admission of the contentions; nonetheless, they do not provide the requisite compelling showing that is necessary to overcome the lack of good cause

³ Our ruling on the late-filing criteria means we need not reach the matter of these contentions' admissibility under the section 2.714(b), (d) criteria. We note, however, that we would have admitted contention Utah MM, subpart 3. We would have denied the admission of late-filed contention Utah LL and contention Utah MM, subparts one and two, as failing to show that a genuine dispute exists with PFS on a material issue of fact or law and contentions Utah NN and Utah OO as lacking an adequate basis.

Also, we note that our ruling here makes it unnecessary that we resolve either the State's September 7, 2000 motion to amend contention Utah LL, the granting of which would not have affected any determination we might have made denying admission of that late-filed issue, as well as the pending State and staff motions to strike relative to their pleadings relating to the State's September 7 motion to amend contention Utah LL.

under factor one. Accordingly, the State's request for admission of late-filed contentions Utah LL through Utah OO must be rejected.

For the foregoing reasons, it is this thirtieth day of October 2000, ORDERED, that the State's August 2, 2000 request for admission of late-filed contentions Utah LL, Utah MM, Utah NN, and Utah OO relating to the spent fuel transportation risk analysis in the June 2000 DEIS for the proposed PFS Skull Valley, Utah ISFSI is denied.

THE ATOMIC SAFETY
AND LICENSING BOARD⁴

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

/RA/

Dr. Jerry R. Kline
ADMINISTRATIVE JUDGE

/RA/

Dr. Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland

October 30, 2000

⁴ 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, L.L.C.) Docket No. 72-22-ISFSI
)
(Independent Spent Fuel Storage)
Installation))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (DENYING REQUEST TO ADMIT LATE-FILED CONTENTIONS UTAH LL THROUGH UTAH OO) (LBP-00-28) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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Docket No. 72-22-ISFSI
LB MEMORANDUM AND ORDER
(DENYING REQUEST TO ADMIT
LATE-FILED CONTENTIONS UTAH LL
THROUGH UTAH OO) (LBP-00-28)

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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 30th day of October 2000