RAS 2772

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
	)	
(Private Fuel Storage Facility) ISFSI	)	ASLBP No. 97-732-02-

APPLICANT'S MOTION FOR SUMMARY DISPOSITION OF UTAH CONTENTION Z – NO ACTION ALTERNATIVE

Applicant Private Fuel Storage, L.L.C. ("Applicant" or "PFS") files this motion for summary disposition of Utah Contention Z, "No Action Alternative" ("Utah Z") pursuant to 10 C.F.R. § 2.749. Summary disposition is warranted on the grounds that there exists no genuine issue as to any material fact relevant to the contention and, under applicable Commission regulations, PFS is entitled to a decision as a matter of law. This motion is supported by a Statement of Material Facts as to which PFS asserts there is no genuine dispute.

I. STATEMENT OF THE ISSUE

On April 22, 1998, the Atomic Safety and Licensing Board ("Licensing Board" or "Board") admitted Utah Z. Private Fuel Storage, L.L.C. (Independent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 203 (1998). Utah Z, as admitted, asserts that:

> The Environmental Report does not comply with NEPA because it does not adequately discuss the "no action" alternative.

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Id. at 256. In a May 18, 1998, Memorandum and Order, the Board clarified the scope of the admitted contention by dismissing the sabotage-related aspects of Utah Z. Private Fuel Storage, L.L.C. (Independent Fuel Storage Installation), LBP-98-10, 47 NRC 288, 296 (1998). In a Memorandum and Order dated November 9, 2000, the Board further clarified that Utah Z "is limited only to environmental (as opposed to economic) impacts" Private Fuel Storage, L.L.C. (Independent Fuel Storage Installation), slip op. at 4 (November 9, 2000).

In the basis for Utah Z, the State asserted that the Applicant's Environmental Report[1] "can not be used" by the NRC in its Environmental Impact Statement "to meaningfully discuss the no build alternative, because the Applicant focuses solely on the perceived disadvantages of the no build alternative." Utah Contentions[2] at 169 (emphasis in original). Specifically, the State claimed that "[t]he [ER] does not comply with NEPA" because it "does not consider the advantages of not transporting 4,000 casks of spent fuel rods thousands of miles across the country" and of "not increasing the risk of accidents from additional cask handling, etc." Id. (emphasis added). The State also asserts that the ER "fails to discuss the considerable safety advantages of storing spent fuel near the reactors, whose spent fuel pools will be available for transfers or inspections of degraded fuel." Id. at 170 (emphasis added).

Applicant moves for summary disposition of Utah Z on the grounds that there exists no genuine dispute concerning any facts material to the foregoing matters. The

[1] Environmental Report for the Private Fuel Storage Facility ("ER").

[2] State of Utah's Contentions on the Construction and Operating License Application by Private Fuel Storage, L.L.C. for an Independent Spent Fuel Storage Facility, dated November 23, 1997 ("Utah Contentions").

NRC Staff's Draft Environmental Impact Statement[3] supercedes the ER and, to the extent that the ER contained the deficiencies complained of by the State, the DEIS discusses and fully addresses each of the alleged deficiencies raised by the State. The contention, by its own language, is limited to challenging the existence of material now plainly found in the DEIS. Therefore, even assuming the original validity of the State's contention, the State's contention is incorrect and rendered moot by the DEIS, as discussed below.[4]

II. LEGAL BACKGROUND

A. Summary Disposition

The standards for motions for summary disposition are set forth in 10 C.F.R. § 2.749. A party is entitled to summary disposition of all or any part of a matter if "there is no genuine issue as to any material fact and . . . the . . . party is entitled to a decision as a matter of law." 10 C.F.R. §§ 2.749(a), (d). The legal standards relevant to summary disposition have been thoroughly discussed in previous pleadings and Board decisions in this matter, and will not be repeated here.[5] Applicant demonstrates that it is entitled to summary disposition of Utah Z below.

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[3] 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 on Tooele County, Utah (June 2000) ("DEIS").

[4] The contention challenges only whether particular issues were discussed in the environmental analysis (e.g., the application "does not consider" and "fails to discuss" certain issues). In its discussion below, Applicant provides citations to the DEIS that demonstrate that there is no genuine material dispute as to whether the issues were considered and discussed in the applicable environmental analysis set forth in the DEIS.

[5] See, e.g., Private Fuel Storage, L.L.C. (Independent Fuel Storage Installation), LBP-99-23, 49 NRC 485, 491 (1999); Applicant's Motion For Summary Disposition of Utah Contention C – Failure to Demonstrate Compliance With NRC Dose Limits, dated April 21, 1999, at 4-16.

B. National Environmental Policy Act

1. Environmental Impact Statement

The National Environmental Policy Act ("NEPA") requires that federal agencies prepare an Environmental Impact Statement ("EIS") describing the potential environmental impacts of certain proposed federal actions and discussing any reasonable alternatives. 42 U.S.C. § 4332; 40 C.F.R. § 1502.14. An EIS should provide "sufficient discussion of the relevant issues and opposing viewpoints to enable the decisionmaker to take a 'hard look' at environmental factors and make a reasoned decision." Louisiana Energy Services (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 88 (1998) (citing Tongass Conservation Soc'y v. Cheney, 924 F.2d 1137, 1140 (D.C. Cir. 1991)). The necessary level of detail required in an EIS is that which provides "information sufficient to permit a reasoned choice of alternatives as far as environmental aspects are concerned." All Indian Pueblo Council v. United States, 975 F.2d 1437, 1444 (10th Cir. 1972) (quoting NRDC v. Morton, 458 F.2d 827, 836 (D.C. Cir. 1972)).

Agency compliance with NEPA is evaluated under a "rule of reason" standard. NRDC v. Morton, 458 F.2d at 836; Louisiana Energy Services, CLI-98-3, 47 NRC at 97. The "rule of reason" guides "both the choice of alternatives as well as the extent to which the [EIS] must discuss each alternative." City of Carmel-by-the-Sea v. DOT, 123 F.3d 1142, 1155 (9th Cir. 1997). NEPA does not require the agency to assess every impact or effect of its proposed action, "but only the impact or effect on the environment." Louisiana Energy Services, CLI-98-3, 47 NRC at 88 (quoting Metropolitan Edison v. People Against Nuclear Energy, 460 U.S. 766, 772 (1983)). NEPA does not require an agency to select the most environmentally benign option if "other values outweigh the environ-

mental costs." Id. (quoting Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989)).

The "rule of reason" places limits on the consideration of alternatives to a proposed action. NEPA requires an analysis "appropriate for the proposal and not the maximum possible environmental analysis for every proposal." Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 542 (1977). Further, it is well settled that NEPA does not require evaluation of environmental impacts that are deemed only "remote and speculative" possibilities. Limerick Ecology Action v. NRC, 869 F.2d 719, 739 (3rd Cir. 1989); Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), ALAB-705, 16 NRC 1733, 1745 (1982).

2. No Action Alternative

One alternative to any proposed action is not taking any action, usually referred to as the "no action" or "no build" alternative. 40 C.F.R. §§ 1502.14(d), 1508.9(b). The no action alternative "may be thought of in terms of continuing with the present course of action until that action is changed." Association of Pub. Agency Customers v. Bonneville Power Admin., 126 F.3d 1158, 1188 (9th Cir. 1997); see also CEQ Memorandum to Agencies, 46 Fed. Reg. 18,026, 18,027 (1981). Commission rules at 10 C.F.R. Part 51 state that the EIS "discussion of alternatives will take into accounts, without duplicating, the environmental information and analyses included" in other sections of the EIS. 10 C.F.R. Part 51, Subpart A, Appendix. A, § 5 (emphasis added). Thus, an abbreviated discussion is appropriate if the impacts of the no action alternative are the "flip side" of the impacts of action, and it is "not necessary for a 'no action' discussion to repeat lengthy assessments of adverse impacts contained elsewhere" in the document. See, e.g., Citi-

zens Against Burlington, Inc. v. Busey, 938 F.2d 191, 198 n.7 (D.C. Cir. 1991); Louisiana Energy Services, CLI-98-3, 47 NRC at 98.

III. PFS IS ENTITLED TO SUMMARY DISPOSITION OF UTAH Z

PFS is entitled to summary disposition of Utah Z because there remains no genuine issue as to any material fact relevant to the contention and PFS is entitled to a decision as a matter of law. Although the State filed its contentions against the ER (as required under Commission regulation[6]), the Board should consider the State's environmental contentions as challenges to the DEIS. Louisiana Energy Services, CLI-98-3, 47 NRC at 84. As stated by the Commission in Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983):

> As a practical matter, much of the information in an Applicant's ER is used in the DES [Draft Environment Statement]. . . . [T]he filing of an environmental [contention] based on the ER will not be deferred because the staff may provide a different analysis in its DES. Should that circumstance transpire, there will be ample opportunity to either amend or dispose of the contention.

17 NRC at 1049 (emphasis added). It is, therefore, the present status of the environmental analysis (i.e., the DEIS) that is relevant in determining whether a material dispute exists. See also Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation) LBP-99-23, 49 NRC 485, 491-94 (1999) (Board dismissed Utah Contention C as moot based on PFS's revision of its radiation dose calculation which addressed the deficiencies alleged in the Contention).

[6] 10 C.F.R. § 2.714(b)(2)(iii) ("On issues arising under [NEPA], the petitioner shall file contentions based on the applicant's environmental report.").

As with contention Utah C, whatever the situation prior to the submission of the currently effective environmental analysis in the DEIS, the State's assertions are rendered incorrect and moot by virtue of the DEIS. Id. The DEIS contains the required analysis of both adverse and beneficial environmental impacts, and specifically addresses the alleged deficiencies on which the State based its claim that the Applicant's environmental analysis focused "solely on the perceived disadvantages of the no build alternative." Utah Contentions at 169 (emphasis in original). The Board, therefore, should dispose of Utah Z on the pleadings pursuant to 10 C.F.R. § 2.749.

As an initial matter, the "no-action" alternative means that the project will not take place and "may be thought of in terms of continuing with the present course of action." Association of Public Agency Customers, 126 F.3d at 1188 (quoting 46 Fed. Reg. 18,026, 18,027 (1981)). This does not mean, however, that the "no-action" alternative produces no environmental impacts. For example, as to the PFSF,

> the no-action alternative would allow for only two options in regard to the continued storage of SNF: (1) either the capacity of at-reactor SNF storage facilities would have to be expanded or new at-reactor SNF storage facilities would have to be constructed or (2) the operating reactors would have to shut down when their existing storage capacity is reached.

DEIS at 6-43. The alternative of not building the PFSF necessarily causes one of these other actions, and the associated environmental impacts, to occur. Consideration of these foreseeable impacts in the "no action" alternative is appropriate.[7] To the extent the State

[7] See, e.g., Young v. GSA, 99 F. Supp.2d 59, 74 (D.D.C. 2000) (upholding an agency's "no action" analysis that assumed private development on vacant property if the government action did not occur); Communities, Inc. v. Busey, 956 F.2d 619, 626 (6th Cir. 1992) (upholding an agency's "no action" analysis that assumed certain demolition activities would take place if a proposed airport expansion did not occur).

asserts that the DEIS "no action" alternative improperly considers reasonable, foreseeable adverse impacts from not building the PFSF, it is incorrect as a matter of law.

We describe why each individual assertion in the State's basis for Utah Z is similarly incorrect, moot, or both, in the following sections.

A. The DEIS Considers the Advantages of the No Action Alternative

The DEIS analyzes both the environmental advantages and disadvantages of the no action alternative. A discussion of the no action alternative is adequate if it demonstrates that the "impacts of inaction is the flip side of the discussion of the impacts of action." Citizens Against Burlington, 938 F.2d at 198 n.7. It is not necessary for a no action discussion "to repeat lengthy assessments of adverse environmental impacts contained elsewhere" in an EIS. Louisiana Energy Services, CLI-98-3, 47 NRC at 98. The DEIS must be read as a whole and information in one section can be considered in another section. See Citizens Against Burlington, 938 F.2d at 198 n.7; Tongass Conservation Soc'y, 924 F.2d at 1143; Sierra Club v. Adams, 578 F.2d 389, 396 (D.C. Cir. 1978).

In Utah Z, the State claimed that a meaningful discussion of the "no build" alternative is not possible, because the analysis "focuses solely on the perceived disadvantages of the no build alternative." Utah Contentions at 169 (emphasis in original). Whether this was ever the case with the ER, it certainly is not the case with respect to the DEIS. To the contrary, the DEIS discusses both the environmental advantages as well as the disadvantages of not licensing the PFSF. Indeed, it conservatively minimizes the potential environmental consequences of the no-action alternative.

In the Executive Summary, the DEIS clearly states that the "potential impacts of constructing and operating the proposed PFSF, and associated SNF transportation facili-

ties, in Skull Valley would not occur" under the no action alternative. DEIS at xxxiii-xxxiv. Even more clearly, the body of the DEIS states that:

> Under the no-action alternative, no PFSF and no transportation facilities would be constructed in Skull Valley. The impacts described in Chapters 4 and 5 of this DEIS would not occur, and Skull Valley would remain as it is today (see Chapter 3).

Id. at 6-43 (emphasis added). Chapter 4 of the DEIS, referenced in the above quotation, is a 65 page discussion of the "Environmental Consequences of Constructing and operating the Proposed PFSF;" Chapter 5 is a 65 page discussion of the "Transportation Impacts of the Proposed Action." Under the Commission's decision in Louisiana Energy Services, CLI-98-3, 47 NRC at 98, reference to this lengthy discussion of the environmental impacts that would not occur under the no action alternative (i.e., environmental advantages of the no-action alternative) is wholly appropriate.

DEIS Section 6.7 also contains impact assessments for future at-reactor ISFSIs, which includes sections on Geology, Minerals, and Soils, Water Resources, Air Quality, Ecological Resources, Socioeconomic and Community Resources, Cultural Resources, and Human Health Impacts. Id. at 6-45 to 6-47. The majority of these assessments conclude that the impact from the no action alternative is expected to be small or not significant at all (again environmental advantages of the no-action alternative). Id. Further, although as discussed earlier, the shutdown of operating nuclear power plants is also a potential consequence of the no action alternative, the DEIS merely mentions this potential major disadvantage of the no-action alternative and conservatively disregards it.[8]

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[8] In this respect, the DEIS, in discussing the "Potential Impacts of the No-Action Alternative (Section 6.7 of the DEIS), states as follows:

> While the cooperating agencies recognize that many environmental impacts could result from shutting down nuclear power reactors, a full evaluation of

Footnote continued on next page

Thus, contrary to the claims raised in Utah Z, the DEIS "does not focus solely on the perceived disadvantages of the no build alternative." Utah Contentions at 169 (emphasis in original).

Finally, in Chapter 9 ("Comparisons and Alternatives") the DEIS compares the potential impacts of each alternative action, including the no action alternative. The discussion again states that "[u]nder the no-action alternative, none of the potential impacts associated with the proposed action would occur." DEIS at 9-2. Further, with respect to each environmental impact analyzed in the DEIS, Table 9.1 of the DEIS ("Summary and comparison of potential environmental impacts") summarizes the environmental impacts, whether beneficial or adverse, of the no action alternative and compares them with the impacts from the proposed action and each of the other alternatives.[9] Id. at 9-15 to 9-39; Compare DEIS Table 9.1, with Louisiana Energy Services, CLI-98-3, 47 NRC at 98. The "impacts described in Table 9.1, and the more detailed assessments in Chapters 4 through 7, were used by the staff to reach the conclusions" contained in the DEIS. DEIS at 9-3. NEPA requires nothing more.

> these potential environmental impacts (such as the generation of additional air pollution from replacement sources of electricity) is beyond the scope of this DEIS. The local and regional impacts resulting from the loss of electric generating capacity for shutdown reactors, including the potential for increased electricity prices are speculative and are not addressed in detail in this DEIS.

DEIS at 6-43 to 6-44. Similarly in the "Comparison of Alternatives" in Chapter 9, the DEIS simply states in its summary of "The No-Action Alternative" (Section 9.4.1.5), without further amplification, that "[s]ome power reactor licensees, . . . because of physical constraints (e.g., insufficient land) may have to terminate operations prior to the expiration of their reactor license if their available spent fuel storage capacity is filled."

[9] The DEIS considered environmental impacts on: Geology, Minerals and Soil; Surface Water; Flooding; Water Use; Groundwater; Air Quality; Terrestrial Ecology; Socioeconomics and Community Resources; Land Use; Cultural Resources; Human Health (excluding SNF transportation); Human Health from Transportation of SNF; Environmental Justice; Noise; Scenic Qualities; and Recreation.

The four judicial decisions cited in Utah Z (Utah Contentions at 170) do not help the State's position. The rulings in three of these cases are premised on a total failure to consider the no-action alternative. See City of Tenakee Springs v. Clough, 915 F.2d 1308, 1312 (9th Cir. 1990); Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1230 (9th Cir. 1988); Getty Oil Co. v. Clark, 614 F. Supp. 904, 920 (D. Wyo. 1985). In the fourth case, the agency relied on data with obvious factual errors and inconsistencies directly affecting its evaluation of alternatives, including the no-action alternative, and made no attempt to resolve the errors and inconsistencies even after the data problems had been brought to its attention. See Van Abbema v. Fornell, 807 F.2d 633, 642 (7th Cir. 1986). Neither of these situations is present with respect to the claims raised in Utah Z here.

In sum, the DEIS identifies and discusses both the potential environmental advantages and disadvantages of the no action alternative. Therefore, the State's assertion that discussion of the advantages of the no-build alternative was not included or considered in analyzing the potential environmental impacts of the proposed action has been rendered moot by the DEIS.[10]

B. The DEIS Considers the Advantages of Not Transporting Spent Fuel to the PFSF

In addition to claiming that the ER failed to discuss the advantages of the no-action alternative generally, the State also asserts that the ER is inadequate because the analysis of the no build alternative "does not consider the advantages of not transporting 4,000 casks of spent fuel rods thousands of miles across the country." Utah Contentions

[10] In response to this Motion, the State may seek to claim inadequacy in the advantages of the no-action alternative discussed in the DEIS. However, to the extent that the State believes that the discussion of the no-action alternative contained in the DEIS was inadequate, the proper course of action would have been to file a new contention identifying the alleged inadequacies. The State filed no such contention and any new contention now would be excessively late.

at 169. However, the DEIS does contain an analysis of the transportation-related environmental impacts of both the proposed action and the "no action" alternative. Thus, the State's assertion is rendered incorrect and moot.

The introduction to DEIS Chapter 5, "Transportation Impacts of the Proposed Action" describes the coverage of the chapter as follows:

> This chapter discusses the impacts of cross-country transportation of SNF (i.e., transporting SNF from U.S. reactor sites) to the proposed PFSF in Skull Valley. . . . This SNF would eventually be shipped from the proposed PFSF to a permanent repository. . . . Therefore, the environmental impacts associated with cross-country transportation are considered in this DEIS. Because of the size and weight of the SNF shipping casks included in the PFSF license application, shipment by rail is the only viable cross-country option. Therefore, the focus of the cross-country transportation analysis in this chapter is on rail transportation.

DEIS at 5-1 (emphasis added). The chapter goes on to describe the environmental impacts of such transportation. Specific to the State's assertion, the DEIS states:

> The proposed PFSF will have the capacity to store 4,000 casks. PFS has indicated that on average there would be 50 incoming shipments per year carrying four spent fuel casks each. . . .
>
> . . .
>
> The average distance from nuclear power reactors east of the proposed site in Skull Valley is 3,410 km (2,119 miles). . . . For trains eventually transferring casks away from the proposed PFSF to the permanent repository, the rail distance is estimated to be 950 km (590 miles). . . . A round-trip calculation is included in this analysis to provided an upper bound on the number of railcar-km.

DEIS at 5-35 (emphasis added). This discussion clearly establishes – contrary to the State's claims in Utah Z – that the environmental impact of the transportation of 4,000 casks over thousands of miles was considered and discussed in the DEIS.

Moreover, the DEIS specifically refers to the "impacts described in Chapters 4 and 5 of this DEIS" – which include the above transportation impacts – when describing the potential impacts that, under the no action alternative, "would not occur." DEIS at 6-43 (emphasis added). Further, in the side-by-side table comparison of the impacts of alternative actions, the DEIS summarizes (under the title "Human Health [Impacts] from Transportation of SNF") the transportation impacts that would occur from transporting 4,000 casks over thousands of miles, as determined from its analysis in Chapter 5, and directly compares it to the impacts from other alternatives, including the no action alternative. DEIS, Table 9.1 at 9-34 and 9-35. The summary for the no action alternative expressly states that "[c]onstruction or expansion of at-reactor SNF storage facilities would require no transportation of radioactive materials beyond the boundaries of the existing nuclear station until a permanent repository is available." Id. (emphasis added). This summary clearly shows that the DEIS considered the impacts of transporting spent nuclear fuel to the PFSF and the advantages of the no action alternative in this respect.[11]

In short, the State's assertion that the advantages of not transporting spent fuel to PFSF were ignored is plainly incorrect and does not provide a basis for Utah Z.[12]

C. The DEIS Considers the Risk of Accidents From Cask Handling and Related Activities

The State also asserts that the ER is inadequate because the analysis of the no build alternative fails to "consider the advantages of . . . not increasing the risk of acci-

[11] Besides refuting the State's assertion that transportation impacts were not discussed, we note that this side-by-side comparison also undercuts the State's previous assertion that the environmental analyses focused "solely on the perceived disadvantages" of the no action alternative, as discussed supra § III.A.

[12] The State has already sought to challenge the adequacy of the DEIS's analysis of transportation impacts, and that challenge was rejected by the Board for being untimely. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-00-28, 52 NRC 226 (2000).

dents from additional cask handling." Utah Contentions at 169. To the contrary, the DEIS explicitly considered cask handling accidents and concluded that the environmental impacts were not significant enough to warrant further discussion. Moreover, to the extent that cask handling accidents have any environmental impacts, the DEIS explicitly discusses how the no-action alternative affects these impacts. The DEIS discussion of cask handling is completely consistent with NEPA and the Commission's regulations.

In the DEIS, the NRC Staff analyzed four categories of "design events" to assess potential radiological impacts from "possible off-normal operations and accidents" at the PFSF. DEIS at 4-45. Design Events III and IV included, inter alia, "storage cask drop or tip-over." Id. at 4-47. The DEIS states that based on the NRC Staff's evaluation, "[n]one of the credible accident scenarios reviewed to date resulted in off-site radiological consequences." Id. A cask drop, therefore, no matter how often it occurred, would not increase the off-site risk (or consequences) from the PFSF. Simply put, the DEIS addresses and concludes that there is no impact (either beneficial or adverse) from the expected increased cask handling.

Even assuming, arguendo that environmental impacts from an accident that is not credible are required to be addressed in the DEIS, the existing DEIS discussion is appropriate.[13] As discussed earlier, the DEIS specifically refers to the "impacts described in Chapters 4 and 5 of this DEIS" when describing potential impacts that, under the no action alternative, "would not occur." DEIS at 6-43. This includes the impacts from cask

[13] It would have been completely appropriate for the DEIS not to have discussed the environmental impacts of cask handling at all. Environmental impacts are to be discussed in an EIS "in proportion to their significance." City of Alexandria v. Slater, 198 F.3d 862, 870 (D.C. Cir. 1999); 40 C.F.R. § 1502.2(b). As there are no environmental impacts from cask handling accidents, no DEIS discussion is required. Adopting the State's view, the DEIS would have to discuss all activities which have no environmental impacts. Not only is this contrary to the express purpose of NEPA, but a practical impossibility.

handling which are discussed in DEIS Chapter 4. The DEIS, in the side-by-side comparison of the impacts of alternative actions, also states under the "Human Health (Excluding SNF Transportation Impacts)" impacts of the no action alternative that (1) off-site radiological doses from additional on-site SNF storage at nuclear reactors "are expected to be small and . . . will be well within NRC regulatory limits," and (2) radiological doses to workers "would be small" and "would be expected to be less than the proposed action."[14] DEIS, Table 9.1, at 9-33 (emphasis added).

In sum, the potential environmental impacts from additional cask handling at the PFSF are addressed and discussed in the DEIS. The State's assertion is, therefore, both baseless and rendered moot by the DEIS.

D. The DEIS Discusses Storing Spent Fuel Near the Reactors

Finally, the State challenges a PFS statement in the ER that "construction of additional onsite ISFSIs at plant sites will result in more sites disturbed and greater environmental impact than constructing one site in a remote, desert environment." State Contentions at 169-70. The State goes on to charge that the related underlying environmental analysis is inadequate because the no build alternative "fails to discuss the considerable safety advantages of storing spent fuel near the reactors whose spent fuel pools will be available for transfers or inspections of degraded fuel" and fails to consider that the PFSF would cause environmental disturbance in an otherwise largely undisturbed setting. Utah Contentions at 170.[15] Once again, the State's assertion that a specific issue is not dis-

[14] This is yet another advantage of the no action alternative identified in the DEIS undercutting the State's assertion that the environmental analyses focused "solely on the perceived disadvantages" of the no action alternative, as discussed supra § III.A.

[15] The reference in this sentence to the alleged "safety advantages of storing spent fuel near the reactors [with] spent fuel pools" concerns a safety claim raised by the State (Utah Contention J) which the Board rejected because the contention and its bases "impermissibly challenge[d] agency regulations or rulemak-

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cussed or considered in the relevant environmental analysis (i.e., the DEIS) is incorrect, moot, or both. See, e.g., DEIS §§ 2.2.5, 6.7, 9.4.1.5, and Table 9.1.

First, the statement in the ER regarding a "greater environmental impact" from at-reactor ISFSIs appears nowhere in the DEIS. To the contrary, the DEIS explicitly identifies that the Commission has generically determined that the storage of spent nuclear fuel at reactor sites will not have a significant incremental effect on the quality of the human environment:

> The Commission has made a general determination that, if necessary, spent fuel generated in any reactor can be stored without significant environmental impacts for at least 30 years beyond the licensed life for operation of that reactor at on-site or off-site ISFSIs (see 10 CFR 51.23 and 49 Fed. Reg. 34688; Aug. 31, 1984). The NRC has reviewed the Waste Confidence Decision twice [i.e., in 1990 (55 Fed. Reg. 38474; Sept. 18, 1990) and in 1999 (64 Fed. Reg. 68005; Dec. 6, 1999)] since it was first issued, and in both cases, the Commission basically reaffirmed the findings of the original decision.

DEIS at 6-44 (emphasis added); see also id. ("The Commission concludes that this proposed rulemaking, entitled 'Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites' will not have a significant incremental effect on the quality of the human environment"). In other words, the no action alternative of at-reactor storage of spent fuel would produce no significant environmental impacts.

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ing-associated generic determinations." Private Fuel Storage, L.L.C., LBP-98-7, 47 NRC at 189-90; see also Applicant's Response to NRC Staff, State of Utah and OGD Motions for Reconsideration and Clarification, May 13, 1998 at 9-14. In accordance with these generic determinations, the DEIS concludes that canister leakage is not a credible event, but nevertheless assumes an hypothetical event in which such leakage does occur and assesses the impact of such an event. DEIS at 4-47 and 4-48. Such impacts would not occur under the no action alternative. Thus, as with cask handling accidents, even assuming, arguendo that environmental impacts from non-credible events are required to be addressed in the DEIS, the existing DEIS discussion is appropriate. See Section III.C, supra.

In addition, the DEIS contains an analysis of the environmental impacts of existing at-reactor storage facilities.

> Eight existing at-reactor ISFSIs with specific licenses issued by NRC were previously identified in Chapter 1 (see Figure 1.5). For all eight ISFSIs, an environmental assessment was completed and a finding of no significant impact was reached. For the no-action alternative with respect to the proposed PFSF, the NRC staff assumes that at-reactor ISFSIs would be constructed at reactor sites where additional storage capacity is needed and where physical restraints, such as available land at the reactor site, do not preclude the construction or operation of an ISFSI. The staff also assumes that the design, construction, and operation of future ISFSIs would be similar to that of existing ISFSIs. While a detailed examination of each reactor site where an at-reactor ISFSI could be built has not been completed, the staff does not expect, as a general matter, based on previous NRC studies discussed above, that the construction and operation of future at-reactor ISFSIs would result in significant environmental impacts.

DEIS at 6-44 (emphasis added). Thus, the DEIS does not assert that on-site storage would have "greater environmental impact," but in fact concludes that the no action alternative of on-site storage would not result in significant environmental impacts.

Further, the DEIS expressly acknowledges that the PFSF would be located in an otherwise largely undeveloped setting. For example, in summarizing the environmental impacts of the proposed PFSF, the DEIS states that "[p]otentially adverse impacts to the scenic qualities of Skull Valley would occur because the proposed PFSF would be the only development in the largely undeveloped valley." DEIS at 9-6. The DEIS similarly notes that the new rail line would cross "undeveloped public rangeland" and "would directly impact one cultural resource (i.e., the Hastings Cutoff Trail) that is considered eligible for listing on the National Register of Historic Places" and "may impact another . . . that has not yet been fully evaluated." Id. at 9-3; see also id. at 9-5, 9-6, and Table 9.1.

In comparing the proposed PFSF to the no-action alternative, this same section of the DEIS (section 9.4.1) notes that "potential impacts of the proposed action," including those above, "would not occur under the [no-action] alternative." Id. at 9-8.

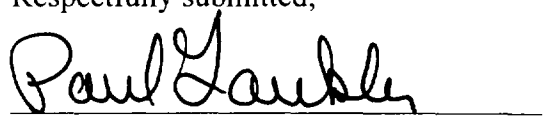
Thus, the DEIS analysis of the environmental impacts from the PFSF is based on the premise that the no-action alternative of at-reactor spent fuel storage facilities would have no significant environmental impacts. The DEIS contains both generic and specific environmental impact analyses supporting this conclusion and further expressly recognizes the largely undeveloped setting of Skull Valley. To the extent that the State asserts otherwise, the assertion is factually incorrect or rendered moot by the DEIS.

In summary, the State alleges that the environmental analysis of the no action alternative is invalid because of an asserted failure to "address all sides of the no action alternative." Utah Contentions at 170. As a practical matter, the State's entire basis for Utah Z reduces to unhappiness with the results of environmental analyses. It is well established, however, that NEPA "does not mandate particular results, but simply prescribes the necessary process" for the evaluation of environmental effects. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989); accord All Indian Pueblo Council, 975 F.2d at 1445; Louisiana Energy Services, CLI-98-3, 47 NRC at 88. The DEIS addresses each assertion forming the basis of the State's contention. There is, therefore, no genuine disputed of material fact and PFS is entitled to a decision as a matter of law.

IV. CONCLUSION

For the foregoing reasons, the Board should grant PFS summary disposition of Utah Z.

Respectfully submitted,



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Dated: February 14, 2001

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
	)	
(Private Fuel Storage Facility) ISFSI	)	ASLBP No. 97-732-02-

STATEMENT OF MATERIAL FACTS
ON WHICH NO GENUINE DISPUTE EXISTS

Applicant submits, in support of its motion for summary disposition of Utah Z, this statement of material facts as to which the Applicant contends there is no genuine issue to be heard.

1. Private Fuel Storage, L.L.C. ("PFS") submitted an Environmental Report ("ER") with its initial License Application dated June 20, 1997.

2. On November 23, 1997, the State of Utah filed as part of its contentions, Contention Utah Z, challenging the adequacy of the environmental analysis of the "no action" (i.e., not building the proposed facility) alternative. Private Fuel Storage, L.L.C. (Independent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 203 (1998).

3. In its Memorandum and Order of April 22, 1998, the Board admitted Utah Z as follows: "The Environmental Report does not comply with NEPA because it does not adequately discuss the 'no action' alternative." Private Fuel Storage, L.L.C. (Independent Fuel Storage Installation), LBP-98-10, 47 NRC 288, 296 (1998).

4. In June 2000, the NRC Staff issued 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 on Tooele County, Utah" ("DEIS").

5. As a basis for Utah Z, the State asserts that a meaningful discussion of the no build (i.e., no action) alternative is not possible, because the ER analysis focuses solely on the perceived disadvantages of the no build alternative. "State of Utah's Contentions on the Construction and Operating License Application by Private Fuel Storage, L.L.C. for an Independent Spent Fuel Storage Facility," dated November 23, 1997 ("Utah Contentions") at 169.

6. The DEIS contains an analysis of both the environmental advantages and disadvantages of the no action/no build alternative in Chapter 6, as supplemented by analyses in Chapters 4 and 5. DEIS Table 9.1 summarizes the environmental impacts of the no action alternative, whether beneficial or adverse, and compares them with the impacts from the proposed action and each of the other alternatives.

7. As a basis for Utah Z, the State asserts that the ER is inadequate because the analysis of the no build alternative fails to consider the advantages of not transporting 4,000 casks of spent fuel rods thousands of miles across the country. Utah Contentions at 169.

8. The DEIS no action analysis specifically identifies the impacts described in Chapters 4 and 5 when describing potential impacts that would not occur if the proposed facility was not built. These impacts include consideration of not transporting 4,000 casks of spent fuel across the country, as described in DEIS section 5.7.1.2.

9. As a basis for Utah Z, the State asserts that the ER is inadequate because the analysis of the no build alternative fails to consider the advantages of not increasing the risk of accidents from additional cask handling. Utah Contentions at 169. This assertion assumes less cask handling would result in less off-site impact.

10. The DEIS explicitly considers the potential impacts of cask handling accidents and properly reflects the insignificant environmental impacts of cask handling accidents. DEIS at 4-47. The NRC Staff assessed the radiological impact from off-normal operations and accidents, including storage cask drop or tip-over. Id. The NRC Staff concludes that a cask drop would not increase the off-site risk or consequences from the facility. Id.

11. As a basis for Utah Z, the State asserts that the ER is inadequate because the analysis of the no build alternative fails to discuss the safety advantages of storing spent fuel near the reactors. Utah Contentions at 170.

12. The DEIS explicitly identifies that the Commission has determined that the storage of spent nuclear fuel at reactor sites is safe and will not have a

significant incremental effect on the quality of the human environment. DEIS at 6-44.

13. As a basis for Utah Z, the State asserts that the ER is wrong in its conclusion that the construction of additional onsite ISFSIs at plant sites will result in greater environmental impact than constructing one site on the Goshute Reservation. Utah Contentions at 169-70.

14. The DEIS environmental analysis does not contain a conclusion that there is a greater environmental impact from at-reactor ISFSIs. Rather, the analysis is based on the premise that construction of ISFSI facilities at reactor sites will have no significant environmental impacts. DEIS at 6-44.

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	)	
PRIVATE FUEL STORAGE L.L.C.	)	Docket No. 72-22
	)	
(Private Fuel Storage Facility)	)	ASLBP No. 97-732-02-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Motion For Summary Disposition of Utah Contention Z - No Action Alternative were served on the persons listed below (unless otherwise noted) by electronic mail with conforming copies by U.S. mail, first class postage prepaid, this 14th day of February 2001.

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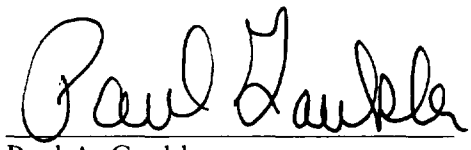

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