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

INTRODUCTION

Pursuant to 10 C.F.R. § 2.749, the staff of the Nuclear Regulatory Commission (Staff) hereby responds to the "Applicant's Motion For Summary Disposition of Utah Contention Z -- No Action Alternative" (Motion), filed by Private Fuel Storage, L.L.C. (PFS or Applicant) on February 14, 2001. For the reasons set forth below and in the affidavit of Scott C. Flanders, the Staff submits that issues pertaining to Utah Contention Z have been resolved, and there does not exist a genuine dispute of material fact with respect to these matters. Inasmuch as there does not exist a genuine dispute of material fact, the Applicant is entitled to a decision in its favor as a matter of law. The Staff, therefore, submits that the Applicant's Motion should be granted.

BACKGROUND

In June 1997, the Applicant filed its license application for its proposed Independent Spent Fuel Storage Installation (ISFSI). The PFS application consisted of several documents, including an Environmental Report (ER), which addressed many issues pertaining to National Environmental Policy Act of 1969 (NEPA).

In November 1997, the State filed its safety and environmental contentions relating to the PFS application.[1] Utah Contention Z, one of the admitted contentions that concerned environmental issues, addressed the Applicant's discussion of the "no action alternative." *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 203 (1998) (admissible as supported by a basis sufficient to establish a genuine material dispute adequate to warrant further inquiry). As admitted by the Licensing Board, the contention states: "The Environmental Report does not comply with NEPA because it does not adequately discuss the "no action" alternative." *Id.*

The contention was supported by a basis statement that stated that the Applicant's ER focuses "solely on the perceived disadvantages of the no build alternative," and the Applicant does not provide a balanced comparison of environmental consequences among alternatives because the Applicant does not properly consider the no build alternative. Utah Contentions at 169 (emphasis in original). The State provided several examples of advantages of the no action alternative which it asserted the application does not consider: 1) the advantages of not transporting 4,000 casks of spent fuel rods thousands of miles across the country; 2) the advantages of not enhancing the potential for sabotage at a centralized storage facility; 3) the advantage of not increasing the risk of accidents from additional cask handling; and 4) the safety advantages of storing spent fuel near the reactors, where spent fuel pools will be available for transfers or inspections of degraded fuel.[2] *Id.* at 169-170. The State additionally asserted that the

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[1] "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).

[2] On May 18, 1998, the Licensing Board excluded consideration of impacts of sabotage as a litigable basis of the contention. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-10, 47 NRC 288, 296 (1998). In addition, the Licensing Board later clarified that contention Utah Z is limited to environmental (as opposed to economic) impacts. *See* "Memorandum and Order (Ruling on Contention Utah Z Discovery Production Requests)," dated

(continued...)

proposed site is an undisturbed site used "primarily for grazing and an area of cultural and historical significance to a number of groups, including Native Americans." *Id.* at 170.

In June 2000, the Staff published the "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," NUREG-1714 (DEIS). Therein, the Staff addressed the no-action alternative. *See* DEIS Executive Summary at xxxiii - xxxiv; xli-xlii; DEIS at § 2.2.5 (No-Action Alternative) and § 6.7 (Potential Impacts of the No-Action Alternative). *See also* Table 9.1 (Summary and comparison of potential environmental impacts) and DEIS § 9.4.1.5 (The No Action Alternative).

On February 14, 2001, the Applicant filed the instant Motion. The Applicant bases its Motion on the grounds that there exists no material dispute of fact with respect to the matters raised by the State in Utah Contention Z. Specifically, the Applicant asserts that the State's contention is limited to the issue of whether particular matters were addressed at all in the Applicant's environmental analysis and that the contention is rendered moot by the Staff's consideration of those matters in the DEIS. Motion at 2-3.

DISCUSSION

A. Legal Standard Governing Motions for Summary Disposition

The Commission's regulations set forth the procedure for summary disposition. *See* 10 C.F.R. § 2.749. The legal standards for summary disposition have been discussed in detail in this proceeding. *See, e.g.*, "NRC Staff's Response to Applicant's Motion for Summary Disposition of Utah Contention L (Geotechnical)," dated January 30, 2001, at 4-7. That discussion is incorporated herein by reference.

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[2](...continued)
November 9, 2000, slip op. at 4, 7.

B. Alternatives under NEPA

The NRC's duties under NEPA are addressed in 10 C.F.R. Part 51. An applicant for an ISFSI pursuant to 10 C.F.R. Part 72 must file an ER. 10 C.F.R. §§ 51.60(b)(iii) and 51.45. Following the environmental scoping process, the Staff must issue its draft EIS (DEIS), which shall include a preliminary analysis that considers and weighs the environmental effects of the proposed action; the environmental impacts of alternatives to the proposed action; and alternatives available for reducing or avoiding adverse environmental effects. 10 C.F.R. §§ 51.70 and 51.71(d). The Staff then must issue its final EIS (FEIS) based on a review of information provided by the applicant, information provided by commenters on the DEIS, and information and analysis the Staff itself obtains. 10 C.F.R. § 51.97(c).

An agency's "primary duty" under NEPA is to take a "hard look" at environmental impacts. *See Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-03, 47 NRC 77, 88 (1998), *quoting Public Utilities v. Federal Energy Regulatory Commission*, 900 F.2d 269, 282 (D.C. Cir. 1990). NEPA requires federal agencies to prepare an environmental impact statement (EIS) for all proposals that would significantly affect the quality of the human environment. *Hydro Resources, Inc.* (Leach Mining & Milling License), CLI-01-04, 54 NRC ___, slip op. at 16 (Jan. 31, 2001), *citing* 42 U.S.C. § 4332(2)(C). The EIS must describe the potential environmental impacts of a proposed action and any reasonable alternatives. *Claiborne*, CLI-98-03, 47 NRC at 87. In assessing the adequacy of an EIS, a "rule of reason" test is employed to determine whether the EIS contains a "reasonably thorough discussion of the significant aspects of probable environmental consequences." *Hells Canyon Alliance v. United States Forest Serv.*, 227 F.3d 1170, 1177 (9th Cir. 2000), *citing Neighbors of Cuddy Mountain v. United States Forest Serv.*, 137 F.3d 1372, 1376 (9th Cir. 1998).

The no action discussion should contain a concise, descriptive summary comparing the advantages and disadvantages of the no action alternative to the proposed action. *Claiborne*, CLI-98-03, 47 NRC at 98. The no action discussion should delineate the principal reasons why the no action alternative was eliminated from discussion. *Id.* The reasons for the rejection of the no action alternative should at least be self-evident and implicit in the EIS. *Hydro Resources, Inc.*, CLI-01-04, slip op. at 31-32. The reader must be able to understand how the agency weighed the various benefits and costs of not building the facility. *Id.*

Generally, the EIS includes a discussion of the agency alternative of taking no action, which is most simply viewed as "maintaining the status quo." *Hydro Resources, Inc.*, CLI-01-04, slip op. at 31, *quoting Association of Public Agency Customers v. Bonneville Power Administration*, 126 F.3d 1158, 1188 (9th Cir. 1997). While the no action alternative must receive "some" analysis, the EIS discussion need not be extensive. *See Akiak Native Community v. United States Postal Serv.*, 213 F.3d 1140, 1148 (9th Cir. 2000); *Hydro Resources, Inc.*, CLI-01-04, slip op. at 31. The no action discussion may be brief and may refer to assessments of adverse impacts addressed in other parts of the EIS. *Claiborne*, CLI-98-03, 47 NRC at 98. *See also Hydro Resources, Inc.*, slip op. at 21 (the EIS "should be read and understood as a whole").

C. The Applicant Is Entitled to Summary Disposition of Utah Contention Z

1. The Board Should View the State's Contention as a Challenge to the DEIS

The adequacy of the Staff's environmental review as reflected in the adequacy of a draft or final EIS may be an appropriate issue for litigation in a licensing proceeding. *See Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1049 (1983). The Commission has recognized, however, that some matters may be capable of being raised prior to the Staff's issuance of a DEIS, and need not await publication of the DEIS. *Id.* In fact, the

Commission's regulations pertaining to intervention require that contentions raising NEPA-based issues must focus on the Applicant's ER. 10 C.F.R. § 2.714(b)(iii).

Following the issuance of the Staff's draft or final EIS, a petitioner can amend its contentions or raise new contentions if there are data or conclusions in the Staff's draft or final EIS that differ significantly from the ER. *Id.* Should the Staff set forth a different analysis in its DEIS, ample opportunity exists "to either amend or dispose of the contention." *Catawba*, CLI-83-19, 17 NRC at 1049. Indeed, the Licensing Board has stated early in this proceeding that contentions superseded by the subsequent issuance of licensing-related documents "can be dealt with by either modifying or disposing of the superseded contentions." *See* "Memorandum and Order (Ruling on Motions to Suspend Proceeding and for Extension of Time to File Contentions)," October 17, 1997, slip op. at 6, *citing Catawba*, CLI-83-19, 17 NRC at 1050 (emphasis added).

In the instant case, the State could not anticipate in 1997 what the Staff's DEIS would address. *See Catawba*, CLI-83-19, 17 NRC at 1049 (recognizing that the adequacy of the DEIS cannot be determined before its preparation). Therefore, the State was required to submit contentions based on the Applicant's discussion of the no-action alternative in its ER, to challenge any perceived inadequacies therein. The State did this, alleging that the ER was inadequate because it focused solely on the disadvantages of the no action alternative and did not consider specific advantages. Utah Contentions at 169-170. The State's challenge to the ER may be considered to be a challenge to the Staff's consideration of that information in its DEIS. *See Claiborne*, CLI-98-3, 47 NRC at 84 (contentions filed based on ER are appropriately deemed to be challenges to the EIS). *See also Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-96-25, 44 NRC 331, 338 (1996) (contentions that assert deficiencies in the Applicant's ER also necessarily include the "same general deficiency" that remains applicable to the EIS). Therefore, the general deficiency alleged by the State with respect to the Applicant's ER -- the assertion that

the ER focused solely on the disadvantages of the no action alternative and did not consider specific advantages -- could also apply to the Staff's environmental analysis. However, as described below, the Staff, in its DEIS, has resolved these matters. Therefore, the Staff's issuance of its DEIS addressing the general deficiency raised by the State demonstrates that there is no genuine dispute of material fact and the Applicant is entitled to summary disposition as a matter of law.

2. Scope of Utah Contention Z

The State's contention alleges that the ER does not comply with NEPA because "it does not adequately discuss the 'no action' alternative." Utah Contentions at 169. According to the contention's basis statement, the no action alternative discussion is inadequate because the Applicant focuses "solely on the perceived disadvantages of the no build alternative." *Id.* (emphasis in original). The State provides several examples of advantages of the no action alternative which it asserts the application did not consider or the Applicant failed to discuss: 1) the advantages of not transporting 4,000 casks of spent fuel rods thousands of miles across the country; 2) the advantage of not increasing the risk of accidents from additional cask handling; and 3) the safety advantages of storing spent fuel near the reactors, where spent fuel pools will be available for transfers or inspections of degraded fuel. *Id.* at 169-170.

Here, it is clear from the basis of the contention that the scope of the contention is limited to the purported absence of matters it claims should have been considered in the no action alternative discussion. *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988) (the scope of a contention is limited to its terms coupled with its stated bases). Further, an intervenor is "bound by the literal terms of its own contention." *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 709 (1985), *aff'd in part and review otherwise declined*, CLI-86-5, 23 NRC 125 (1986). The State

alleged in its contention that certain matters were not addressed. Inasmuch as the Staff has addressed these matters in its DEIS, and the State has never amended its contention to challenge the adequacy of the DEIS discussion, the State's contention should be dismissed.[3]

3. The DEIS Discussion of the No Action Alternative Demonstrates That There Exists No Genuine Dispute of Material Fact

The ER inadequacies outlined above have been addressed in the DEIS. Therein, the Staff addressed the no-action alternative. *See* DEIS Executive Summary at xxxiii - xxxiv; xli-xlii; DEIS at § 2.2.5 (No-Action Alternative) and § 6.7 (Potential Impacts of the No-Action Alternative). *See also* Table 9.1 (Summary and comparison of potential environmental impacts) and DEIS § 9.4.1 (Summary of Potential Impacts).

a. Advantages of No Action Alternative

The contention asserts that the no action alternative discussion is inadequate because the Applicant focuses "solely on the perceived disadvantages of the no build alternative." Utah Contentions at 169 (emphasis in original). The State's contention claims that the Staff cannot rely on the Applicant's "inadequate and one-sided discussion of the no build alternative." *Id.* at 170. The State also asserts that the Staff will not satisfy NEPA if it does not "adequately address all sides of the no action alternative." *Id.* The DEIS, however, does not focus solely on the perceived disadvantages of the no build alternative.[4] In fact, as set forth below, the DEIS fully documents

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[3] In order for the State to challenge the substantive merits of the information and assessments appearing in the DEIS, it must file an amended contention or a new contention that addresses all of the factors in 10 C.F.R. § 2.714 for late-filed contentions, including good cause for filing late. It appears doubtful that the State would be able to demonstrate good cause in that the deadline for DEIS-based contentions expired long ago. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-31, 52 NRC 340, 343 (2000).

[4] The State admits that "some advantages and disadvantages of the no-action alternative are discussed in the DEIS," although the State now asserts -- without ever having amended its contention -- that it considers the discussion to be incomplete. *See* "State of Utah's Objections and Response to Applicant's Sixth Set of Discovery Requests to Intervenor State of Utah" (State's Discovery Response), dated February 28, 2001, at 27.

the potential adverse impacts of the proposed action and then states that such impacts would be avoided by the no action alternative.

DEIS Chapters 4 and 5 address impacts regarding geology and soils, water resources, air quality, ecology, human health, socioeconomics, and transportation-related impacts. The DEIS states that "[t]he potential impacts of constructing and operating the proposed PFSF, and associated SNF transportation facilities, in Skull Valley would not occur under [the no action] alternative." DEIS Executive Summary at xxxiii-xxxiv. *See also* DEIS Executive Summary at xli and DEIS § 9.4.1.5 ("The potential impacts of the proposed action would not occur under [the no action] alternative."). The DEIS also states that under the no action alternative:

> [t]he 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).

DEIS § 6.7. Table 9.1 summarizes and compares the impacts of the alternatives as analyzed in detail in Chapters 4, 5, 6, and 7. For each potentially affected resource in Table 9.1, the magnitude, extent, or degree of the potential impact is compared among alternatives, including the no action alternative. *See* DEIS § 9.3 (Comparison of Potential Impacts) and Table 9.1.

In addition, the DEIS addresses the advantages of the no action alternative. In this regard, the DEIS asserts that the Staff does not expect that the construction and operation of future at-reactor ISFSIs would result in significant impacts. *See* DEIS § 6.7. Also, the Staff considered the Commission's determination that spent fuel generated in any reactor can be stored "without significant environmental impacts" for at least 30 years beyond the licensed life of that reactor at an onsite or offsite ISFSI. DEIS at 6-44. Also, Table 9.1 addresses the impacts of the no action alternative and labels many of them as "small" or "minimal." *See* Table 9.1. Therefore, the DEIS does not focus solely on the disadvantages of the no action alternative, but considers both its advantages and disadvantages. The DEIS discussion demonstrates that there exists no genuine dispute of material fact with respect to this matter, and it should be dismissed.

b. Transportation Impacts

The contention asserts that the application does not consider the advantages of not transporting 4,000 casks of spent fuel rods thousands of miles across the country. Utah Contentions at 169. The DEIS does consider the advantages of not transporting 4,000 casks across the country.[5] In fact, the DEIS states in many places that the potential impacts of the proposed action would not occur under the no action alternative. *See, e.g.,* DEIS Executive Summary at xli and DEIS § 9.4.1.5. The absence of these potential adverse impacts is an advantage of the no action alternative. These potential adverse impacts are discussed in Chapter 5, which addresses the impacts "of cross-country transportation of SNF (i.e., transporting SNF from U.S. reactor sites) to the proposed PFSF in Skull Valley." DEIS at 5-1. In particular, section 5.7 addresses the human health impacts of SNF transportation across the country. The Staff evaluated the annual and cumulative radiological impacts of transporting SNF to the PFSF and considered them to be small. DEIS at 5-53; Table 9.1 at 9-34 to 9-35. The Staff also found that the accident risk to the public from shipping campaigns would be small, and that the non-radiological health risk associated with the generation of air pollutants by the vehicles during shipment would be small. DEIS at 5-35, 5-36; Table 9.1 at 9-34 to 9-35. These impacts, albeit small, would not occur under the no action alternative. Therefore, there exists no genuine dispute of material fact with respect to this matter, and it should be dismissed.

c. Cask Handling

The contention asserts that the application does not consider the advantages of not increasing the risk of accidents from additional cask handling. Utah Contentions at 169. The DEIS

[5] The State admits that "some advantages of not transporting spent nuclear fuel rods to the PFSF are discussed in the DEIS," but now asserts, without any amendment to its contention, that the discussion is incomplete or not "fairly balanced." *See* State's Discovery Response, at 28.

does consider the advantages of not increasing the risk of accidents from additional cask handling.[6] First, as mentioned above, the DEIS states that "[t]he potential impacts of constructing and operating the proposed PFSF, and associated SNF transportation facilities, in Skull Valley would not occur under [the no action] alternative." DEIS Executive Summary at xxxiii-xxxiv.

Further, Table 9.1 summarizes and compares the impacts of the alternatives as analyzed in detail in Chapters 4, 5, 6, and 7. For each potentially affected resource in Table 9.1, the magnitude, extent, or degree of the potential impact is compared among alternatives. *See* DEIS § 9.3 (Comparison of Potential Impacts) and Table 9.1. Specifically, Table 9.1 of the DEIS states with respect to non-radiological accidents that occupational accidents during the operation of the PFSF would be expected to result in no fatal injuries and several nonfatal injuries. Table 9.1 at 9-32. Table 9.1 additionally states with respect to radiological doses to workers that "[t]he average individual dose to workers engaged in SNF transfer operations at the proposed PFSF is estimated as 0.0445 Sv/yr (4.45 rem/yr) . . . ." Table 9.1 at 9-33 (emphasis added).

In Chapter 4, the DEIS states with respect to occupational injuries that there would be "only small impacts" to worker health and safety due to potentially fatal and nonfatal injuries resulting from normal operation activities. DEIS at 4-40. The DEIS indicates that these operation activities "involve receiving, transferring, storing and shipping the SNF. . . ." DEIS at 4-41 (emphasis added). With respect to fatal injuries the DEIS specifically states that "based on a statistical analysis of the trucking and warehousing industry, it was estimated that there is about a 37 percent chance that a fatality would occur during the 40 year period of operations." *Id.* With respect to nonfatal injuries, the DEIS specifically states "an analysis of the trucking and warehousing industry statistics indicated that the expected number of nonfatal injuries at the proposed PFSF during normal

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[6] The State admits that "some risk of accidents from cask handling and related activities are discussed in the DEIS," but now asserts, without having amended it contention, that the discussion incomplete or not "fairly balanced." *See* State's Discovery Response, at 28.

operations over 40 years would be 1.9." *Id.* With respect to radiological doses as a result of accidents, the staff concluded that there appear to be "no credible mechanisms (either from off-normal operations or from hypothetical accidents) that would result in the release of radioactive material into the environment." DEIS at 4-48. The Staff considered that exposures would be small and therefore potential impacts would be small. *Id.*; *see also* DEIS at 4-47 to 4-48.

Therefore, inasmuch as the DEIS addresses accidents from cask handling, no genuine dispute of material fact exists with respect to this matter.

d. Advantages of At-Reactor Storage

The contention asserts that the Applicant fails to discuss "the safety advantages of storing spent fuel near the reactors," where spent fuel pools will be available for transfers or inspections of degraded fuel. Utah Contentions at 170. This assertion, however, refers to the safety issues raised in Contention Utah J, which was not accepted for litigation. *See Private Fuel Storage*, LBP-98-7, 47 NRC at 198-190. Therefore, only environmental matters remain with respect to this issue -- *i.e.*, the potential environmental benefits of at reactor storage.[7]

The DEIS discusses the environmental impacts of storing spent fuel near the reactors.[8] The NRC has examined the environmental impacts of at-reactor ISFSIs. The DEIS recognizes that the Commission has made a general determination that 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. DEIS at 6-44, *citing* 10 C.F.R. § 51.23 and

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[7] Indeed, the State appears to have abandoned this matter. In discovery, the State was asked to "[i]dentify and fully explain each advantage and disadvantage of the no-action alternative that the State claims is not discussed in the DEIS . . . ." *See* State's Discovery Response at 29. The State's response did not raise the purported advantage of the availability of spent fuel pools for transferring or inspecting degraded fuel as an advantage of the no action alternative that the DEIS failed to address. *Id.* at 29-31.

[8] The State admits that "the DEIS discusses the NRC's conclusion that the storage of spent fuel at reactor sites will not have a significant incremental effect on the quality of the human environment." State's Discovery Response at 28.

49 Fed. Reg. 34,688 (1984). The DEIS also discusses the environmental impacts of storing SNF away from the reactors at the proposed facility. *See supra*, discussion at 11-12. Therefore, this issue has been addressed, no genuine dispute of material fact remains with respect to this matter, and it can and should be dismissed.

CONCLUSION

For the reasons set forth above, the Applicant's Motion should be granted.

Respectfully submitted,

/RA/
Catherine L. Marco
Counsel for NRC Staff

Dated at Rockville, Maryland
this 6th day of March 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-ISFSI
	)	
(Independent Spent Fuel Storage Installation)	)	

AFFIDAVIT OF SCOTT C. FLANDERS CONCERNING UTAH CONTENTION Z

I, Scott C. Flanders, being duly sworn, do hereby state as follows:

1. I am employed as a Senior Project Manager in the Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC) in Washington, D.C. A statement of my professional qualifications is attached hereto.

2. This Affidavit is prepared in response to the "Applicant's Motion For Summary Disposition of Utah Contention Z -- No Action Alternative" (Motion), filed by Private Fuel Storage, L.L.C. (PFS or Applicant) on February 14, 2001, and the "Statement of Material Facts on Which No Genuine Dispute Exists," attached thereto.

4. As part of my official responsibilities, I supervised and participated in the preparation of the NRC Staff's "Draft Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Facility on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah," NUREG-1714, June 2000 (DEIS).

5. Also as part of my official responsibilities, I have reviewed the Applicant's Motion and the Statement of Material Facts attached thereto. On the basis of my review

of the Applicant's Motion and the DEIS, I am satisfied that the Statement of Material Facts attached to the Applicant's Motion is correct.

6. Utah Contention Z alleges that the Applicant's Environmental Report (ER) does not comply with NEPA because "it does not adequately discuss the 'no action' alternative." Utah Contentions (November 23, 1997), at 169. According to the contention's basis statement, the no action alternative discussion is inadequate because the Applicant focuses "solely on the perceived disadvantages of the no build alternative." The State provides several examples of advantages of the no action alternative which it asserts the application did not consider or the Applicant failed to discuss: 1) the advantages of not transporting 4,000 casks of spent fuel rods thousands of miles across the country; 2) the advantage of not increasing the risk of accidents from additional cask handling; and 3) the safety advantages of storing spent fuel near the reactors. *Id.* at 169-70.

7. The advantages and disadvantages of the no action alternative have been addressed in the DEIS. Chapters 4, 5 and 6 of the DEIS describe the environmental impacts of the proposed action. The environmental impacts described in these chapters include the impacts resulting from the transportation of spent nuclear fuel (SNF) and the impacts resulting from normal, off-normal, and accident conditions at the proposed PFS facility. Section 6.7 of the DEIS describes the NRC Staff's assessment of the environmental impacts of the no action alternative. Sections 9.3, 9.4, and Table 9.1 provide a comparison of the environmental impacts of the alternatives, including the no action alternative, as analyzed in detail in Chapters 4, 5, 6, and 7 of the DEIS. The DEIS therefore addresses the specific issues raised in this contention, *i.e.*, 1) the advantages of not transporting 4,000 casks of spent fuel rods thousands of miles across the country (Chapters 5, 6, and Table 9.1); 2) the advantage of not increasing the risk of accidents from

additional cask handling (Chapter 4, 5 and Table 9.1) ; and 3) the impacts associated with at-reactor storage of SNF (Chapter 6 and Table 9.1).

8. I hereby certify that the foregoing is true and correct to the best of my knowledge, information and belief.

_/RA/_____
Scott C. Flanders

Sworn to before me this
6th day of March 2001

_____
Notary Public

My Commission expires:_____

Scott Flanders
Statement of Professional Qualifications

Mr. Flanders is currently a Senior Project Manager with the U.S. Nuclear Regulatory Commission (NRC). During his employment with the NRC, Mr. Flanders has served in both technical and project management capacities. Mr. Flanders has conducted nuclear power plant inspections, and has prepared safety evaluations and environmental assessments. He was the Environmental Project Manager for the Watt Bar Supplemental Final Environmental Statement (NUREG-0498, Supplement 1).

EDUCATION

Bachelor of Science in Mechanical Engineering, University of Maryland, College Park, MD, 1990

Masters of Business Administration Candidate (2001), American University, Washington D.C.

ADDITIONAL PROFESSIONAL TRAINING

Writing Environmental Impact Statements/Environmental Assessments
NEPA Compliance
Environmental Regulation

PROFESSIONAL EXPERIENCE

1993 to 1999 Project Manager in the Office of Nuclear Reactor Regulation.

From 1998 to 1999, Mr. Flanders served as the NRC Project Manager for the Shearon Harris Nuclear Power Plant. In this role, he was responsible for coordinating and performing the technical review of all licensee submittals; including amendments, exemptions, ASME relief requests, and responses to NRC generic communications. He also conducted 10 CFR 50.59 reviews and inspections, performed FSAR (10 CFR 50.71(e)) reviews, and prepared input to licensee SALP reports. He served as the primary liaison between the NRC and the licensee.

From 1995 to 1998, Mr. Flanders served as the agency's lead Project Manager for the Westinghouse Owners Group (WOG) and the Baltimore Gas and Electric Company (BGE) license renewal activities. He participated in the review of license renewal activities for these applications, including both technical and environmental issues. In this role, he also reviewed system and component technical reports such as pressurized water reactor containments, reactor pressure vessels, and component supports. Mr. Flanders was co-author of a paper titled," The United States Regulatory Approach For Ensuring The Safety Of Existing Nuclear Power Plants, IAEA-SM-342/46," and a paper on license renewal that was presented at the American Nuclear Society 1994 annual meeting.

From 1994 to 1995, Mr. Flanders led a 20-person government and contractor environmental team responsible for reviewing the operational environmental impacts of the Watts Bar Nuclear Plant and preparing a supplemental final environmental impact statement. He was responsible

for developing project schedules, organizing and managing plant and site inspections, preparing written correspondence, providing environmental policy recommendations to management, and organizing and participating in public meetings. He also served as the primary liaison between the NRC and the license applicant.

From 1993 to 1995, Mr. Flanders served as an environmental reviewer. In this role, he participated in several environmental reviews. Below is a list of some of these activities:

He prepared an environmental assessment for the renewal of the Georgia Tech Research Reactor, including an evaluation of environmental impacts such as the heat dissipation and radiological waste.

He prepared a technical evaluation for a Callaway license amendment that involved changes to the licensee's environmental protection plan and Appendix B technical specifications. Specifically, the amendment involved a change to the maintenance practice pertaining to historic archaeological sites on the Callaway site.

He assisted in the development of portions of the Generic Environmental Impact Statement (GEIS) for license renewal. The GEIS establishes the bounds and significance of the environmental impacts associated with license renewal, applicable to all operating light-water reactors, and addresses over 104 environmental issues. He also prepared responses to public comments on the GEIS for License Renewal.

He was a member of the team that developed the agency's policy for addressing need for power and alternatives issues for license renewal environmental reviews, in support of the Part 51 rulemaking for license renewal. To resolve these issues and develop the agency's position, the staff prepared a number of options to address these issues and presented them for public comment at several regional workshops.

He was a principal contributor to the development of the NRC policy regarding the performance of Severe Accident Mitigation Design Alternative (SAMDAs) reviews for license renewal.

He assisted in the development of Revision 1 to NRR Office Letter 906, “Procedural Guidance for Preparing Environmental Assessments and Considering Environmental Issues.”

1991 to 1993 Participant in NRC Office of Nuclear Reactor Regulation Reactor Engineer Intern Program.

As a Reactor Engineer Intern, Mr. Flanders completed an extensive training program that included: 13 weeks of reactor technology training, with courses in nuclear physics, nuclear technology, radiation protection, and plant operations; and 7 weeks of training in NRC and government policy. Mr. Flanders also served in several NRC offices, with individual responsibilities that included preparation of safety evaluations reports and license amendments, performing power plant inspections, assessing operating plant events, and briefing NRC senior management on plant events and complex regulatory issues.

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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 APPLICANT'S MOTION FOR SUMMARY DISPOSITION ON UTAH CONTENTION Z -- NO ACTION ALTERNATIVE" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the United States mail, first class, as indicated by an asterisk, with copies by electronic mail as indicated, this 6th day of March 2001.

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