

RAS 2914

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

LBP-01-13
DOCKETED 03/30/01
SERVED 03/30/01

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

March 30, 2001

MEMORANDUM AND ORDER
(Denying Request for Admission of Late-Filed Contention Utah PP)

Pending with the Licensing Board in this 10 C.F.R. Part 72 proceeding concerning the application of Private Fuel Storage, L.L.C. (PFS), for a license to construct and operate an independent spent fuel storage installation (ISFSI) on the reservation of the Skull Valley Band of Goshute Indians in Skull Valley, Utah, is a request by intervenor State of Utah (State) for admission of late-filed contention Utah PP, Exceedance of Rail Loading Capacities. With this issue statement, the State seeks to challenge 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 site. Specifically, this contention charges that the DEIS fails to address the environmental impacts and risks associated with the movement of loaded spent fuel transportation casks on railway cars that are not separated by spacer or buffer cars, and whose allowable weight exceeds the guidelines for transport on United States railways. Applicant PFS and the staff both contend that the Board should reject this contention because it fails to meet the 10 C.F.R. § 2.714(a)(1) late-filing criteria and the section 2.714(b), (d) basis and specificity requirements.

For the reasons set forth below, we find that the contention is not admissible under a balancing of the late-filing factors articulated in 10 C.F.R. § 2.714(a)(1).

I. BACKGROUND

In the Board's April 22, 1998 decision holding that the State, along with several other petitioners, had established its standing and had submitted at least one admissible contention, the Board 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 alleged that the weight for a loaded PFS shipping cask was outside the parameters specified in 10 C.F.R. § 51.52. See LBP-98-7, 47 NRC 142, 199-200, reconsideration granted in part and denied in part on other grounds, LBP-98-10, 47 NRC 288, aff'd on other grounds, CLI-98-13, 48 NRC 26 (1998). As adopted in that order, contention Utah V reads,

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 is apparent from its language, the State utilized as the basis for this contention the environmental report (ER) submitted by PFS as part of its July 1997 license application, which contains information intended to aid the agency in complying with its NEPA requirements, including preparation of a DEIS. On June 12, 2000, the staff notified the Board and the parties that the DEIS had been completed on June 9, 2000, and was in the reproduction process. See Letter from Robert M. Weisman, NRC Staff Counsel, to the Licensing Board (June 12, 2000).

On June 16, 2000, a DEIS was publicly issued by the staff, along with cooperating federal agencies the Bureau of Indian Affairs and the Bureau of Land Management, both from the Department of the Interior, and the United States Surface Transportation Board. See Office of Nuclear Material Safety and Safeguards, United States Nuclear Regulatory Commission, 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 (June 23, 2000). Copies of the DEIS were made available to the parties at the evidentiary hearing held in Salt Lake City, Utah, on June 19, 2000. See Tr. at 1387.

The State responded with three DEIS-related late-filed contention submissions. On July 27, 2000, the State proffered late-filed contention Utah KK, Potential Impacts to Military Training and Testing and State Economy. This was followed on August 2, 2000, by late-filed contentions Utah LL through Utah OO, which challenged various aspects of the DEIS transportation analysis. Finally, on October 25, 2000, less than a week before the Board's ruling finding the first two sets of contentions inadmissible, see LBP-00-27, 52 NRC 216 (2000) (contention Utah KK); LBP-00-28, 52 NRC 226 (2000) (contentions Utah LL through Utah OO), petition for interlocutory review denied, CLI-01-1, 53 NRC 1 (2001),¹ the State submitted

¹ With regard to late-filed contention Utah KK, the Board held that although the State had filed contention Utah KK within the allotted time period, the substance of that issue statement could have been raised long before the DEIS was issued. This failure to fulfill the good cause criterion, when balanced with the other four factors, failed to fulfill the late-filing requirements of section 2.714(a)(1). See LBP-00-27, 52 NRC at 221-24.

The Board also rejected late-filed contentions Utah LL through Utah OO, albeit for a different reason. The State request for admission of these late-filed contentions was submitted to the Board on August 2, 2000. Applying the section 2.714(a)(1) late-filing criteria, the Board noted that even though that section does not specify an exact time limit for submission of late-filed contentions, the presiding officer has the authority to impose appropriate time limits. In this case, the Licensing Board had established a deadline using DEIS submission as a trigger for the submission of DEIS-related late-filed contentions. Although the original

late-filed contention Utah PP, Exceedance of Rail Loading Capacities, which is now before the Board. This contention provides:

The DEIS, NUREG-1714, fails to comply with the National Environmental Policy Act and 10 C.F.R. § 51.71(d) because it fails to address the environmental impacts of transporting loaded spent fuel transportation casks on railway cars that are not separated by spacer or buffer cars and whose allowable weight exceeds guidelines for transportation on U.S. railway lines.

See [State] Request for Admission of Late-Filed Contention Utah PP (Exceedance of Rail Loading Capacities) (Oct. 25, 2000) at 2 [hereinafter State Request].

In its motion, the State argues that this late-filed contention should be admitted because, while the DEIS anticipates that each loaded railcar containing spent nuclear fuel (SNF) would be separated by a spacer or buffer car, it became apparent in PFS's September 25, 2000 DEIS comments that PFS only plans to put a spacer car at the end of each train. The result of this recently revealed shipping configuration change is to concentrate the weight of a PFS rail shipment of loaded fuel casks as it moves along track routes, the environmental effects of which (i.e., increased probability of bridge failures; increased probability of cask damage/releases because of smaller railcar separation; greater "en route" public exposures because of reduced train speeds) have not been analyzed in the DEIS. See id. at 2-10. By responses filed November 9, 2000, PFS and the staff oppose the State's motion for admittance of late-filed contention Utah PP, asserting that this issue statement, being

scheduling order directed the parties to file any contentions within 30 days of the public release of the DEIS, it contained the caveat that the staff was to give at least 15 days notice before the release to permit the parties to put their technical experts "on alert" so they could begin working immediately upon issuance. Accounting for the staff's failure to give the full 15 days notice of the release of the DEIS, the Board calculated the contention filing deadline as July 27, 2000. Because contentions Utah LL through Utah OO were filed six days past this deadline without any request to extend the deadline, the Board found good cause for late-filing was lacking and, after balancing this factor with the other four section 2.714(a) elements, concluded that the contentions were not admissible. See LBP-00-28, 52 NRC at 234-39.

impermissibly late, fails to satisfy the section 2.714(a)(1) late-filing factors as well as the section 2.714(b), (d) standards for an admissible contention. See [PFS] Response to [State] Request for Admission of Late-Filed Contention Utah PP (Nov. 9, 2000) at 3-14 [hereinafter PFS Response]; NRC Staff's Response to [State] Request for Admission of Late-Filed Contention Utah PP (Nov. 9, 2000) at 6-15 [hereinafter Staff Response].

II. ANALYSIS

A. Section 2.714(a)(1) Late-Filing Criteria

1. Applicable Standard

Section 2.714(b)(2)(iii) of Title 10 of the Code of Federal Regulations requires that a petitioner file its initial contentions based on an applicant's ER. However, a petitioner 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 recognized by the Commission 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. (Catawba 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 (Aug. 11, 1989). Thus, notwithstanding the fact that the relatively recent staff DEIS and the PFS comments in response to it are the purported genesis of contention Utah PP, the State has the ultimate burden of demonstrating that contention Utah PP merits admission in accordance with the five-factor balancing test set forth in 10 C.F.R. § 2.714(a)(1) because the deadline for filing timely contentions in this proceeding expired over three years ago.

In evaluating the admissibility of a late-filed contention, 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 relative 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-99-10, 49 NRC 318 (1999). Moreover, relative to the four other 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 interests 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. We now turn to the application of the 10 C.F.R. § 2.714(a)(1) balancing factors.

2. Application of Late-Filing Factors to Contention Utah PP

We once again begin our analysis of the State's late-filed issue statement with the first and paramount factor -- good cause for late-filing. The State argues that it first became aware of the change to the PFS shipping plan (i.e., the purported elimination of spacer cars between all cask cars) when the State received the PFS comments regarding the DEIS on September 25, 2000. See State Request at 2, 7-8; id. exh. 2, at 12 (Letter from John L. Donnell, PFS Project Director, to NRC Document Control Desk (Sept. 21, 2000)). These

comments, the State claims, establish that the information provided by PFS differed from what the staff had assumed to be the case when it presented its DEIS. According to the State, up to that point it had relied on the staff DEIS and testimony given at the June 2000 evidentiary hearing held in Salt Lake City, Utah, both of which suggested that PFS would use a buffer car between each loaded railcar. See State Request at 2 & n.2 (citing DEIS at 5-45; John D. Parkyn Prefiled Testimony on Contention Utah E, Construction Costs (May 15, 2000) at 7, 8 (cost of buffer cars); Tr. at 1872, 1881-82, 1961, 2000). It was only after the September 21, 2000 PFS DEIS comments, which it received four days later, that the State became aware of the PFS design change. And since its contention Utah PP was filed on October 25, 2000, this is within the thirty-day window prescribed by the Board in its original scheduling order. Moreover, the State declares, the contention conforms to the dictates of section 2.714(b)(2)(iii) in that the PFS comments on the DEIS differed significantly with the points addressed by the staff in the DEIS and, as such, need to be addressed under NEPA. See id. at 8.

In response to these State claims, PFS and the staff assert that information on the PFS railcar arrangement was available to the State as early as June 2000, as seen in the testimony of John D. Parkyn cited by the State, thus requiring the State to file this contention at the latest within thirty days of his testimony. See PFS Response at 3-5; Staff Response at 8-9. Further, according to the staff, the contention could have been filed as early as December 1999, when PFS issued ER revision six indicating that buffer cars were associated with the security car and the mainline locomotives rather than the cask cars. See Staff Response at 8.

As for the issue of increased railcar weight, the staff argues that the State does not even address good cause relating to this matter. The staff asserts that the State has long been aware of the proposed weight of the railcars, as shown by its filing of contention Utah LL on August 2, 2000, in which the State asserted that the weight of a car would be

approximately 211 tons. See [State] Request for Admission of Late-Filed Contentions Utah LL through OO (Aug. 2, 2000) at 6. Furthermore, the staff declares, the document relied upon by the State as the basis for its railcar weight claim has a publication date of 1958 and thus obviously is not recently available so as to justify good cause for late filing. See Staff Response at 6-7; see also PFS Response, exh. 2 (168 Railway Equipment and Publication Co., Railway Line Clearances and Car Dimensions Including Weight Limitations of Railroads in the United States, Canada, Mexico, and Cuba (May 1958 ed.)).

We conclude the State has not satisfied its burden to show good cause for late-filing with respect to contention Utah PP. Assuming the original PFS application did not disclose the buffer car configuration with sufficient clarity, the State nonetheless had several opportunities to address this matter much earlier. There was sufficient information available in the ER within an appropriate time after the December 1999 application amendment to file a contention on the fixed components of the train if the State had any concerns about its environmental consequences. With respect to the placement of buffer cars, the ER then stated that:

For the duration of time that the first shipping cask is being moved from rail car to heavy haul trailer and delivered to the PFSF, a maximum of two (more likely one) other shipping cask rail cars would be parked on the adjacent rail sidings located at the ITP. These casks (or cask) would represent the remaining part of the single purpose train (which would also include the security car and associated buffer car). The mainline locomotives, associated buffer car, and empty cask cars awaiting return to the delivery cycle will be picked up by Union Pacific

[PFS], Environmental Report [for] Private Fuel Storage Facility, at 3.3-8 to -9 (rev. 6) (emphasis supplied); see also Staff Response at 8. This language clearly indicates that under the PFS protocol, the buffer car use was to be associated with the security car and the mainline locomotives: one buffer immediately behind the mainline locomotives and one in between the last cask car and the security car.

Yet, even if this ER amendment did not act as a trigger for a late-filed contention, testimony given at the June 2000 Salt Lake City evidentiary hearing by PFS Board of Managers Chairman John Parkyn clearly started the clock running regarding any DEIS-related contention concerning the number of spacer cars to be utilized. As both PFS and the staff observe, the following testimony by Mr. Parkyn in connection with another contention -- Utah E, Financial Assurance -- was enough to make the State aware of PFS's intention to use only two spacer cars:

Q. Mr. Parkyn, maybe you can explain what constitutes what I sort of think as a unit train for PFS in terms of the locomotive, the equipment. What is it that would be sort of a shipment that constitutes a full train?

A. Well, listing the fixed components that wouldn't vary would be: two locomotives, the security car, and two buffer cars, one between the locomotive and the first fuel loaded car and one between the last loaded fuel car and the security car which carries staff. And then there would be one or more loaded fuel cars in the middle.

Tr. at 1881.²

Although the State seeks to rely on this colloquy as support for its good cause arguments, from the above statement it is apparent the State was on notice of the PFS railcar protocol by at least June 20, 2000, the day this testimony was elicited. Having had access to

² This testimony, which was presented in the course of the State's cross-examination of PFS witness Parkyn on contention Utah E/Confederated Tribes F, Financial Assurance, was part of a June 20, 2000 evidentiary session that was closed by the Board because it was anticipated that significant portions of the testimony would involve proprietary information. Subsequently, at the Board's request, the parties reviewed this and other transcripts of closed sessions and provided the Board with (1) a joint filing indicating, among other things, that there was no objection to the public release of this portion of the hearing transcript, see Joint Filing on Portions of the Hearing Transcripts, Pre-Filed Testimony, and Exhibits Concerning Utah E That Can be Placed on the Public Record (Sept. 15, 2000) at 2; id. app. A at 4; and (2) a joint filing reflecting two proposed corrections relative to this segment of the transcript, see Joint Corrections to the Transcript of the Evidentiary Hearing (Sept. 15, 2000) at 10. The Board adopts the parties' suggestions relative to the release of, and corrections to, this portion of the transcript.

the staff DEIS in essentially the same time frame, the State should have filed any contentions in connection with the spacer cars and the DEIS within the Board-specified window for DEIS-related late-filed contentions, i.e., by the end of July 2000. See supra note 1. Because it did not do so until October 25, 2000, however, the State failed to satisfy the good cause requirement of section 2.714(a)(1).³

Turning to the other factors in section 2.714(a)(1), as was noted above, in the absence of good cause, there must be a compelling showing by the State on the remaining four elements to allow admission of a late-filed contention. With regard to factors two and four -- the availability of other means to protect the petitioner's interest and the extent to which the petitioner's interest will be represented by other parties -- as both PFS and the staff agree, and as we have noted in a similar situation in this proceeding, these factors weigh in favor of admissibility. See LBP-00-28, 52 NRC at 238 (State's interest on DEIS-related contentions not otherwise represented and, although not a trivial opportunity for involvement in licensing process, ability to comment on DEIS not on same plane as rights that accrue in adjudicatory context).

With respect to the first of the more heavily weighted non-good cause elements -- assistance in developing a strong record -- the State claims that its witnesses, Dr. Marvin Resnikoff and Matthew R. Lamb of Radioactive Waste Management Associates, will contribute significant information to the record. In this regard, the State asserts that by reason of his extensive professional experience in SNF transportation issues, Dr. Resnikoff will be able to (1)

³ In this regard we note that, notwithstanding the fact that Mr. Parkyn's description of the use of spacer cars was delivered while discussing a nonenvironmental matter, i.e., financial qualifications, this does not provide "good cause" for waiting until nearly three months later to file DEIS-related contention Utah PP. Information synthesis, particularly as it relates to information provided during cross-examination by and in the presence of counsel who subsequently submitted the late-filed contention request, is a burden the intervenor must assume.

demonstrate the environmental impacts and risks posed when railcars containing SNF transportation casks are not separated by buffer cars; and (2) articulate the defects in the DEIS for failing to address the issue. Mr. Lamb, on the other hand, purportedly can ascertain rail weights for the proposed Maine to Utah route that is analyzed in the DEIS. See State Request at 9. PFS and the staff assert, however, that the State's witnesses will not add to the development of a sound record because neither Dr. Resnikoff nor Mr. Lamb demonstrate any special expertise or experience in the areas of railcar or bridge design and their acceptable load levels. See PFS Response at 6-7; Staff Response at 10-11. Furthermore, according to PFS, the document Railway Line Clearances on which the State relies as a basis for this contention is totally obsolete, having been published in 1958, and thus would not aid the in creation of a sound record because it does not account for "42 years of technological change and railroad construction." PFS Response at 9 n.10; see also Staff Response at 11.

The State has failed to make a compelling showing for admission with regard to factor three. Although, as the State points out, Dr. Resnikoff has aided it in preparing various transportation comments on the DEIS and other environmental contentions relating to transportation issues, including admitted contention Utah V and rejected late-filed contentions Utah LL through Utah OO, see State Request at 9, and Dr. Resnikoff notes that he has "extensive professional experience in the areas of nuclear waste storage, transportation, and disposal," see id. exh. 1, at unnumbered p. 1 (Oct. 25, 2000 Declaration of Dr. Marvin Resnikoff), these assertions are wholly lacking in the detail necessary to bring this factor into play as providing significant support for contention admissibility. Moreover, Dr. Resnikoff's declaration that he "expect[s] to be able to expand upon and refine [his] testimony, after having an opportunity to review materials produced by the Applicant and the NRC Staff in discovery," id. at numbered p. 2, does nothing to enhance its present status as support for admissibility

under this factor. As for witness Lamb, although the State proffers a detailed explanation of what Mr. Lamb will attest to, i.e., the rail load limits for United States railroads based on the 1958 version of the guidance publication Railway Line Clearances, see State Request at 5-8, 10, it offers no explanation of Mr. Lamb's qualifications to testify on this matter, other than a familiarity with the PFS license application, the DEIS, and the "general track loading and clearance requirements for railroads in the United States." Id. exh. 1, at unnumbered p. 4 (Oct. 25, 2000 Declaration of Matthew R. Lamb). In fact, his testimony appears to be derived from conversations with Federal Railroad Administration (FRA) official Gordon Davids, rather than from his own analysis of the issues. See Staff Response, attach. B (E-Mail from Gordon Davids, FRA, to Matthew Lamb, Radioactive Waste Management Associates (Oct. 25, 2000) attached to October 25, 2000 Affidavit of William B. O'Sullivan), see also State Request at 5 nn.5 & 7, 5-6 n.9. Further, to the degree his testimony is based on the 1958 version of Railway Line Clearances, his analysis undoubtedly will be less useful in light of changes in technology and construction of railroads, as is reflected in the more recent addition of Railway Line Clearances provided by PFS and the staff. See PFS Response, exh. 1 (208 Primedia Information, Inc., Railway Line Clearances (1998-99 ed)); Staff Response, attach. A (210 Primedia Directories, Railway Line Clearances (2000-01 ed.)). Accordingly, with regard to factor three, the State has not met its burden in showing it will aid in the development of a sound record, so that this factor provides little or no weight in favor of the admissibility of late-filed contention Utah PP.

In connection with factor five -- broadening the issues/delaying the proceeding -- the State declares that admission of late-filed contention Utah PP can be accommodated in the existing schedule and litigated with the other NEPA contentions that have already been admitted to the proceeding, which now are not scheduled for evidentiary hearing until

November and December of 2001. See State Request at 10. PFS and the staff disagree, asserting that a new contention on spacer cars and rail loads will broaden the issues and result in delay in the proceeding even though environmental contentions have not yet been adjudicated. Inclusion of a new contention at this phase of the hearing, they maintain, will require more time for discovery, summary disposition motions, and the preparation of testimony, which would impinge an already tight schedule. See PFS Response at 7; Staff Response at 12.

We conclude factor five weighs moderately in favor of admissibility. This is mainly because the intervening parties' NEPA-related contentions now are scheduled to be litigated in late 2001 as a result of a recent schedule change arising from the applicant's submission of additional information to the staff concerning several admitted contentions, which caused the staff to delay issuance of the FEIS and prepare a supplement to its Safety Evaluation Report (SER). See Licensing Board Memorandum and Order (General Schedule Revision) (Feb. 22, 2001) at 1-2 (unpublished).

Given this analysis of the five factors, when the balance is finally struck, although factors two, four, and five provide some degree of support for admission of contention Utah PP, in light of the State's failing regarding element three, we do not find 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 of the State's late-filed contention Utah PP.⁴

⁴ Our ruling on the late-filing criteria means we need not reach the matter of this contention's admissibility under the section 2.714(b), (d) criteria. We note, however, that we would have denied admission of contention Utah PP. Relying, among other things, on an essentially obsolete railway weight limitation document and an incorrect assumption about the number of axles that will be used on PFS railcars, this contention lacks an adequate basis and fails to demonstrate the existence of a material factual dispute.

III. CONCLUSION

Having failed to establish the requisite good cause for not raising its claims about a deficiency in the DEIS analysis of rail load related spent fuel transfer risk in the time frame provided for submitting DEIS-related late-filed contentions, the State also has failed to establish good cause for late-filing under the first and foremost 10 C.F.R. § 2.714(a)(1) factor for admitting late-filed contentions. Nor has it shown that factor three -- ability to contribute to the record -- provides support for admissibility. Although section 2.714(a)(1) factors two, four, and five -- availability of other means to protect the petitioner's interests/extent of representation of petitioner's interests by other parties/broadening the issues-delaying the proceeding -- weigh in favor of admitting the contention, they do not provide the requisite compelling showing that is necessary to overcome the lack of good cause under factor one, particularly given the State's failure to make a showing placing factor three on the admissibility side of the balance.

Accordingly, the State's request for admission of late-filed contention Utah PP is rejected.

For the foregoing reasons, it is this thirtieth day of March 2001, ORDERED, that:

1. Relative to page 1881, lines 12-23, of the transcript of the Board's June 20, 2000 evidentiary hearing session regarding contention Utah E/Confederated Tribes F, Financial Assurance, the parties' September 15, 2000 joint filings regarding transcript release and transcript corrections are granted; and
2. The October 25, 2000 request of the State for admission of late-filed contention Utah PP, Exceedance of Rail Loading Capacities, is denied.

THE ATOMIC SAFETY

AND LICENSING BOARD⁵

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

/RA/

Dr. Jerry R. Kline
ADMINISTRATIVE JUDGE

/RA/

Dr. Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland

March 30, 2001

⁵ 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, Ohnko 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 FOR ADMISSION OF LATE-FILED CONTENTION UTAH PP) (LBP-01-13) 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
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REQUEST FOR ADMISSION OF LATE-FILED
CONTENTION UTAH PP) (LBP-01-13)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 30th day of March 2001