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**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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

**APPLICANT'S MOTION FOR SUMMARY DISPOSITION  
OF UTAH CONTENTION V – INADEQUATE  
CONSIDERATION OF TRANSPORTATION-RELATED  
RADIOLOGICAL ENVIRONMENTAL IMPACTS**

Applicant Private Fuel Storage, L.L.C. ("Applicant" or "PFS") files this motion for summary disposition of Utah Contention V, "Inadequate Consideration of Transportation-Related Radiological Environmental Impacts" ("Utah V"), 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 V. Private Fuel Storage, L.L.C. (Independent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 199-201 (1998). Utah V, as admitted, asserts that:

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

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SECY-02

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.<sup>1</sup> The State's request for admission of a late-filed amended Utah V challenging the adequacy of 10 C.F.R. § 51.52, Table S-4 ("Table S-4"), to assess convergent transportation impacts, was denied by the Board on June 1, 2000.<sup>2</sup>

In the basis for Utah V, as admitted, the State asserted that the PFS Environmental Report<sup>3</sup> "failed to show that the threshold conditions specified in 10 [C.F.R. §§] 51.52(a)(1)-(6)" were met. Utah Contentions at 146.<sup>4</sup> The State submitted various bases for the contention that, except for cask weight, were dismissed by the Board. LBP-98-7, 47 NRC at 200-01. The State concluded that "because [PFS] has not satisfied the conditions specified in 10 [C.F.R. §§] 51.52(a)(1)-(6), PFS must provide 'a full description and detailed analysis of the environmental effects of transportation of fuel and wastes to and from the reactor.'" Utah Contentions at 148-49 (quoting 10 C.F.R. § 51.52(b)).

In June 2000, the NRC Staff issued its Draft Environmental Impact Statement.<sup>5</sup> In addition to discussing impacts based on Table S-4, the DEIS undertakes a "full description and detailed analysis of the environmental effects of transportation" – not based on Table S-4 – as sought by the State in Utah V. See DEIS § 5. Indeed, the State has ac-

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<sup>1</sup> In its ruling on requests for reconsideration the Board denied a request by PFS to further limit the scope of Utah V. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-10, 47 NRC 288, 295-96 (1998).

<sup>2</sup> Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-00-14, 51 NRC 301, 311 (2000).

<sup>3</sup> PFS, "Environmental Report for the Private Fuel Storage Facility" (1997) ("ER").

<sup>4</sup> 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 (Nov. 23, 1997) ("Utah Contentions").

<sup>5</sup> 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").

knowledge that the DEIS analysis “generally adopts the methodology demanded by the State in Contention V.” State of Utah’s Request for Admission of Late-Filed Contentions Utah LL Through OO (Relating to the DEIS’s analysis of spent fuel transportation risks) (Aug. 2, 2000) (“State’s Request”) at 2. Unlike Utah Z and Utah AA, the State sought to file new contentions as required by Commission rules in an attempt to challenge the adequacy of the new analysis in the DEIS in some specific respects, see State’s Request, but the State’s request to admit late-filed contentions challenging the DEIS transportation analysis was rejected by the Board.<sup>6</sup> The State did not seek to amend or revise Utah V based on the DEIS, and the time for such has long passed.

PFS moves for summary disposition of Utah V on the grounds that there no longer exists a genuine dispute concerning any facts material to its resolution. The State’s assertions regarding the ER are admittedly rendered moot by the DEIS because the NRC Staff’s DEIS, which is the current environmental analysis, undertakes a detailed analysis of the environmental effects of spent fuel transportation, wholly independent of Table S-4, as sought by the State in Utah V. Based on a lack of genuine disputed facts, the Board should grant PFS summary disposition of Contention Utah V.

## II. LEGAL BASIS

### 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

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<sup>6</sup> Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-00-28, 52 NRC 226 (2000) (denying the State’s Request for admission of late-filed contentions Utah LL through OO relating to the DEIS analysis); reh’g denied, LBP-00-31, 52 NRC 340 (2000); aff’d, CLI-01-01, slip op. (Jan. 10, 2001). The Board also subsequently denied admission of another late-filed contention, Utah PP, challenging the DEIS analysis of spent fuel transportation impacts. Memorandum and Order (Denying Request for Admission of Late-Filed Contention Utah PP) (Mar. 30, 2001).

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.<sup>7</sup> PFS demonstrates that it is entitled to summary disposition of Utah V below.

**B. National Environmental Policy Act**

NEPA requires that an Environmental Impact Statement (EIS) describe the potential environmental impacts of a proposed federal action significantly affecting the quality of the human environment and discuss 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 to 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)). As long “as the agency’s decision is ‘fully informed’ and ‘well-considered,’ it is entitled to judicial deference and a reviewing court should not substitute its own policy judgment.” Transmission Access Policy Study Group v. Federal Energy Regulatory Comm’n, 225 F.3d 667, 736 (D.C. Cir. 2000) cert. denied, Board of Water, Light & Sinking Fund Comm’rs v. FERC, 121 S.Ct. 1188 (2001) (quoting NRDC v. Hodel, 865 F.2d 288, 294 (D.C. Cir. 1988)); see also All Indian Pueblo Council v. U.S., 975 F.2d 1437, 1445 (10<sup>th</sup> Cir. 1992); City of Carmel-by-the-Sea v DOT, 123 F.3d 1142, 1150 (9<sup>th</sup> Cir. 1997). The necessary level of detail re-

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<sup>7</sup> 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 (Apr. 21, 1999) at 4-16.

quired 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, 975 F.2d at 1444 (quoting NRDC v. Morton, 458 F.2d 827, 836 (D.C. Cir. 1972)).

The NRC regulations implementing NEPA are contained in 10 C.F.R. Part 51. NEPA applies only to “federal actions” and, therefore, only to the NRC Staff’s environmental analysis (i.e., the DEIS). Long Island Lighting Co. (Shoreham Nuclear Power Station), CLI-91-2, 33 NRC 61, 70 (1991) (citing cases). For Commission purposes, an environmental impact statement is defined as “a detailed written statement as required by section 102(2)(c) of NEPA.” 10 C.F.R. § 51.14. The regulations include criteria for identifying licensing and regulatory actions regarding NRC Staff preparation of environmental impact statements, environmental assessments, and categorical exclusions. 10 C.F.R. §§ 51.20-22. Commission regulations also specify scope and content requirements for draft, final, and supplemental environmental impact statements. See generally id. §§ 50.70-97. Specific methodologies (i.e., particular assumptions or equations) for performing analysis of potential environmental impacts are not required by rule.

### **III. PFS IS ENTITLED TO SUMMARY DISPOSITION OF UTAH V**

PFS is entitled to summary disposition of Utah V because there remains no genuine issue as to any material fact relevant to the contention and it is entitled to a decision as a matter of law. The State’s asserted basis for Utah V, failure to comply with 10 C.F.R. § 51.52, has been rendered moot by the DEIS’s independent, detailed analysis – not based on Table S-4 – of potential environmental impacts from transportation of spent nuclear fuel to and from the PFSF. Lacking any factual dispute, the Board should dispose of Utah V on the pleadings pursuant to 10 C.F.R. § 2.749.

**A. The State's Assertions in Utah V Are Properly Considered Challenges to the DEIS Transportation Analysis**

Although the State filed its contentions against the ER (as required under Commission regulation<sup>8</sup>), the Board should consider the State's environmental contentions as challenges to the DEIS. Claiborne, CLI-98-3, 47 NRC at 84. It is, therefore, the present status of the environmental analysis (i.e., the DEIS) that is relevant in determining whether a material dispute exists with respect to Utah V. Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1049 (1983); 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).

Further, an "intervenor is not free to change the focus of its admitted contention, at will, as the litigation progresses." Public Serv. Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 n. 11 (1988). Rather, the Commission's "longstanding practice requires adjudicatory boards to adhere to the terms of admitted contentions." Claiborne, CLI-98-3, 47 NRC 77, 105 (1998).<sup>9</sup> Although the State submitted new, late-filed contentions attempting to challenge the substance of the DEIS's in-

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<sup>8</sup> 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.").

<sup>9</sup> The "reach of a contention necessarily hinges upon its terms coupled with its stated basis." Seabrook, ALAB-899, 28 NRC at 97. The "scope of a contention is determined by the 'literal terms' of the contention, coupled with its stated bases." Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), LBP-88-25, 28 NRC 394, 396 (1988). A contention, therefore, is properly viewed as a general allegation focused by the specific assertions in the contention's basis, which provides the specificity necessary for the contention's admission. See Baltimore Gas & Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325 (1998) (vague and unparticularized contentions are inadmissible).

dependent transportation analysis, the Board rejected this attempt,<sup>10</sup> and time has long passed for the State to revise Utah V based upon the DEIS. See 10 C.F.R.

§ 2.714(b)(2)(iii).<sup>11</sup> Therefore, Utah V stands as admitted by the Board.

**B. The NRC Staff's Transportation Analysis in the DEIS Fully Addresses the State's Claims in Utah V**

Utah V alleges only that the environmental analysis violates NEPA by not adequately evaluating the transportation-related impacts because the document “failed to show that the threshold conditions specified in 10 [C.F.R. §§] 51.52(a)(1)-(6) [for the use of Table S-4] are met.” Utah Contentions at 146. Therefore, the Staff's subsequent analysis of transportation impacts in the DEIS, wholly independent of Table S-4, fully addresses and resolves the claims raised by the State in Utah V.

As the language of Utah V makes clear, the regulatory underpinning of the contention is 10 C.F.R. § 51.52, specifically Table S-4. The State asserts that because the proposed PFSF shipping cask is heavier than that assumed in Table S-4, conclusions based on Table S-4 of the environmental impacts of transporting spent nuclear fuel to and from the PFSF are invalid. Id. at 147-48. The State argues, among other points, that “once an accident occurs, the higher inventory of spent fuel inside the larger cask raises the consequences of a radiological release” beyond that assumed in Table S-4. Id. at 148. The State then concludes that “because it has not satisfied the conditions specified in 10 [C.F.R. §§] 51.52(a)(1)-(6), PFS must provide “a full description and detailed analysis of

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<sup>10</sup> The Board rejected the State's late-filed contentions Utah LL – OO regarding transportation-related environmental effects as without “good cause.” See LBP-00-28, 52 NRC at 239. Further, the Board noted that it would have denied admission of the majority of the submitted contentions on the merits. Id.

<sup>11</sup> The Board provided that any contentions based on the DEIS “should be submitted no later than thirty days” after the DEIS was made available. Memorandum and Order (General Scheduling for Proceeding and Associated Guidance) slip op. at 5 (June 29, 1998). The State did not seek to revise Utah V within the allotted time.

the environmental effects of transportation of fuel and wastes to and from the reactor,” citing 10 C.F.R. § 51.52(b). *Id.* at 148-49.

The DEIS contains “a full description and detailed analysis of the environmental effects of transportation of” spent nuclear fuel to and from the PFSF, independent of Table S-4, that the State claims was missing from the ER. *See* DEIS § 5. The DEIS analysis used the RADTRAN4 computer code to model and estimate the potential radiological impacts from incident-free transport and potential transportation accidents using PFS-specific parameters for cask loading.<sup>12</sup> DEIS at 5-38, 5-43. The RADTRAN4 code calculates the dose to the public in an area that runs along the rail line based on expressing the dose rate as a function of distance from a point source. The NRC Staff selected the longest route, originating at the Maine Yankee reactor and 2,781 miles long, to analyze in the DEIS with RADTRAN4. *Id.*, App. C at C-2. Changes in population density were also considered in estimating the impacts of shipping SNF to and from the PFSF over the life of the facility. *Id.* at 5-40.

In other words, the DEIS contains a “full description and detailed analysis of the environmental effects of transportation of fuel and wastes to and from the reactor, including values for the environmental impact under normal conditions of transport and for the environmental risk from accidents in transport.”<sup>13</sup> 10 C.F.R. § 51.52(b). Indeed, the State itself determined that “the DEIS generally adopts the methodology and scope de-

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<sup>12</sup> The DEIS RADTRAN 4 analysis assumed each cask was loaded with 24 PWR fuel assemblies, rather than the 7 PWR assemblies assumed in NUREG-0170. DEIS at 5-43.

<sup>13</sup> The Staff noted that, although its RADTRAN4 analysis did not rely upon any information from Table S-4, “the results for the proposed PFSF are consistent with earlier analyses of SNF risks reported in NUREG-0170.” *Id.* at 5-33; *see also*, NUREG/CR-6672, “Reexamination of Spent Fuel Shipment Risk Estimates” (2000) (confirming that NUREG-0170 bounds the risk of spent fuel shipping, by a large margin in the case of accidents, using contemporary scenarios and equipment and refined methodologies).



manded by the State in Contention [Utah] V, particularly the use of the RADTRAN4 computer model in place of reliance on Table S-4.” State’s Request at 2. Therefore, as with Contention Utah C, the State’s asserted deficiencies concerning an analysis have been addressed by publication of a new analysis (here the DEIS). See LBP-99-23, 49 NRC at 491. Directly analogous to the Board’s treatment of Utah C, whatever may have been the situation prior to the issuance of the DEIS, the State’s assertions are rendered moot by the analysis therein.

Accordingly, the State’s assertions in Utah V regarding the appropriateness and adequacy of relying upon Table S-4 and 10 C.F.R. § 51.52(a) criteria are no longer applicable. The State’s assertions in Utah V do not raise any genuine issue with respect to the DEIS RADTRAN4 analysis results, which the NRC Staff obtained without reliance on Table S-4. Indeed, the State has acknowledged that

The Staff’s analysis evaluates the impact of incident-free transport and accidents in transporting half the nation’s commercial irradiated fuel to the PFS facility, by studying and generalizing the specific case of shipping irradiated fuel from the Maine Yankee reactor to the proposed PFS facility in Skull Valley. . . .

The transportation analysis in the DEIS bears little resemblance to and hardly relies on the [ER]. As set forth in the State’s original Contention V, the analysis in the ER was completely inadequate because it relied on Table S-4, which is in turn based on grossly outdated and inadequate transportation analyses. . . . Although the NRC Staff vigorously opposed the admissibility of Contention V, the DEIS generally adopts the methodology and scope demanded by the State in Contention V, particularly the use of the RADTRAN 4 computer model in place of reliance on Table S-4.

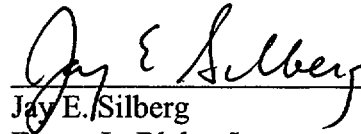
State’s Request at 2 (internal citations omitted) (emphasis added).

Thus, the State's concerns with the ER which it raised in Utah V have been addressed in the DEIS. Specifically, the State's assertion that the ER environmental analysis "failed to show that the threshold conditions specified in 10 [C.F.R. §§] 51.52(a)(1)-(6) [for use of Table S-4] are met," thereby requiring a detailed analysis of transportation environmental impacts, has been rendered moot by the DEIS RADTRAN4 analysis wholly independent of Table S-4. Therefore, there is no remaining genuine dispute of material fact concerning Utah V 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 V.

Respectfully submitted,



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Dated: April 16, 2001

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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

**STATEMENT OF MATERIAL FACTS  
ON WHICH NO GENUINE DISPUTE EXISTS**

Applicant submits, in support of its motion for summary disposition of Utah V, 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 for the Private Fuel Storage Facility ("PFSF") dated June 20, 1997.
2. The ER analysis of transportation-related environmental impacts was based on 10 C.F.R. § 51.52, Table S-4 ("Table S-4"), and no detailed analysis was performed.
3. On November 23, 1997, the State of Utah filed as part of its contentions, Contention Utah V, challenging the adequacy of the analysis of transportation-related radiological environmental impacts. Private Fuel Storage, L.L.C. (Independent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 199-201 (1998). In its Memorandum and Order of April 22, 1998, the Board admitted contention Utah V as follows: "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.
4. The State asserted that "analysis in the ER was completely inadequate because it relied on Table S-4." State of Utah's Request for Admission of Late-Filed Contentions Utah LL Through OO (Relating to the DEIS's analysis of spent fuel transportation risks) (Aug. 2, 2000) ("State's Request").

5. 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").
6. The DEIS contains an analysis of the environmental effects of transporting spent nuclear fuel to and from the PFSF and estimated the potential radiological impacts from incident-free transport and potential transportation accidents. See generally DEIS § 5.
7. In the DEIS transportation analysis, the NRC Staff analyzed the environmental effects of transporting spent fuel to and from the PFSF using the RADTRAN 4 computer code to model the incident-free radiological exposure and the consequences of radiological releases due to severe accidents. DEIS at 5-38, App. D.
8. The NRC Staff's DEIS RADTRAN transportation analysis did not rely upon, or in any way use, Table S-4.
9. The State determined that the transportation analysis in the DEIS bears little resemblance to and hardly relies on the ER. State's Request at 2. The State also determined that the DEIS generally adopted the methodology and scope demanded by the State in Contention V, particularly the use of the RADTRAN 4 computer model in place of reliance on Table S-4. Id.

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of Applicant's Motion for Summary Disposition of Utah Contention V – Inadequate Consideration of Transportation-Related Radiological Environmental Impacts were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 16th day of April 2001.

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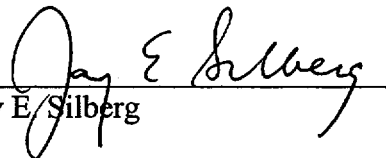
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