

May 15, 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))

NRC STAFF'S RESPONSE TO APPLICANT'S MOTION FOR SUMMARY
DISPOSITION OF UTAH CONTENTION AA -- RANGE OF ALTERNATIVES

INTRODUCTION

Pursuant to the Atomic Safety and Licensing Board's April 20, 2001, "Order (Granting Request to Defer Depositions and Extend Summary Disposition Response Time)," and 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 AA -- Range of Alternatives" ("Motion") filed by Private Fuel Storage, L.L.C. ("PFS" or "Applicant") on April 18, 2001. For the reasons set forth below and in the attached affidavit of Gregory P. Zimmerman, the Staff submits that the issues pertaining to Utah Contention AA have been resolved, there does not exist a genuine dispute of material fact with respect to these matters, and the Applicant is therefore entitled to a decision in its favor as a matter of law. Accordingly, the Staff 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, as pertinent here, an Environmental Report ("ER"), which addressed the environmental impacts of the Applicant's proposed facility.

In November 1997, numerous safety and environmental contentions relating to the PFS application were filed by the State of Utah (“State”) and other petitioners to intervene -- including two contentions challenging the adequacy of the Applicant’s consideration of alternatives in its Environmental Report: Contention Utah AA filed by the State,¹ and Contention Castle Rock 13 filed by Castle Rock Land and Livestock, L.C., *et al.* (“Castle Rock”).² On April 22, 1998, the Licensing Board issued its ruling on the petitioners’ standing to intervene and the admissibility of their contentions. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142 (1998). Therein, the Board, *inter alia*, admitted Contentions Utah AA and Castle Rock 13, finding that their supporting bases established a genuine material dispute adequate to warrant further inquiry concerning a single issue: “the adequacy of the PFS alternative site analysis” under the National Environmental Policy Act of 1969 (“NEPA”). *Id.* at 203 and 218-19. The Board then consolidated these contentions into one contention, *Id.*, which asserted: “The Environmental Report fails to comply with the National Environmental Policy Act because it does not adequately evaluate the range of reasonable alternatives to the proposed action.” *Id.* at 256.³

In June 2000, the Staff published its “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, *inter alia*, addressed the Applicant’s site

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 “Contentions of Petitioners Castle Rock Land and Livestock, L.C., Skull Valley Co., Ltd, and Ensign Ranches of Utah, L.C. on the License Application of the Private Fuel Storage Facility,” filed November 21, 1997 (“Castle Rock Contentions”).

³ Following the withdrawal of Intervenor Castle Rock from the proceeding, this contention was retained intact and redesignated as Contention Utah AA. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-99-6, 49 NRC 114, 118 (1999).

selection process and criteria, and presented an evaluation of alternative sites. See DEIS § 2.2.3 (“Alternative Sites”), § 7.1 (“Site Selection Process”), and Appendix F (“Site Selection/Evaluation Forms”); see *generally*, DEIS Chapters 7 (“Evaluation of an Alternative Site in Wyoming”) and 9 (“Comparison of Alternatives”).

On April 18, 2001, the Applicant filed the instant Motion, on the grounds that there does not exist a genuine dispute of material fact with respect to the matters raised in Contention Utah AA. Specifically, the Applicant asserts (a) that the State’s contention is limited to the issue of whether particular matters were addressed at all in the Applicant’s environmental analysis, (b) that the contention is rendered moot by the Staff’s consideration of those matters in the DEIS, and (c) that the discussion of alternative sites in the DEIS satisfies NEPA as a matter of law. Motion at 2-3.

As set forth below and in the Affidavit of Gregory P. Zimmerman, the Staff has reviewed the Applicant’s Motion and the Statement of Material Facts attached thereto, and is satisfied that the statements of fact contained therein are correct. Further, the Staff believes that there no longer exists a genuine dispute of material fact concerning the issues raised in Contention Utah AA, and that summary disposition of this contention is therefore appropriate at this time.

DISCUSSION

A. Legal Standards Governing Motions for Summary Disposition.

Pursuant to 10 C.F.R. §2.749(a), “[a]ny party to a proceeding may move, with or without supporting affidavits, for a decision by the presiding officer in that party’s favor as to all or any part of the matters involved in the proceeding. The moving party shall annex to the motion a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard.” In accordance with 10 C.F.R. §2.749(b), when a properly supported motion for summary disposition is made, “a party opposing the motion may not rest upon the mere allegations or denials of his answer; his answer by affidavits or as otherwise provided in

this section must set forth specific facts showing that there is a genuine issue of fact.” In addition, an opposing party must annex to its answer a short and concise statement of material facts as to which it contends there exists a genuine issue to be heard. 10 C.F.R. § 2.749(a). All material facts set forth in the moving party’s statement will be deemed to be admitted unless controverted in the opposing party’s statement. *Id.*⁴ Pursuant to 10 C.F.R. § 2.749(d), “[t]he presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavit, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.”⁵

⁴ *Accord, Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units I and 2), ALAB-841, 24 NRC 64, 93 (1986). General denials and bare assertions are not sufficient to preclude summary disposition when the proponent of the motion has met its burden. *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102 (1993). Although the opposing party does not need to demonstrate that it will succeed on the issues, it must at least demonstrate that a genuine issue of fact exists to be tried. *Id.*; *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-92-8, 35 NRC 145, 154 (1992) (to avoid summary disposition, the opposing party had to present contrary evidence that was so significantly probative as to create a material issue of fact).

⁵ The Commission’s summary disposition procedures have been analogized to Rule 56 of the Federal Rules of Civil Procedure. *See, e.g., Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753-54 (1977); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation) LBP-99-32, 50 NRC 155, 158 (1999). Indeed, the Commission, when considering motions for summary disposition filed pursuant to 10 C.F.R. § 2.749, generally applies the same standards that the Federal courts use in determining motions for summary judgment under Rule 56 of the Federal Rules. *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102 (1993). Decisions arising under Rule 56 of the Federal Rules may thus serve as guidelines to the Commission’s adjudicatory boards in applying 10 C.F.R. § 2.749. *Perry*, 6 NRC at 754. Under Rule 56, the party seeking summary judgment has the burden of proving the absence of genuine issues of material fact. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Advanced Medical Systems*, 38 NRC at 102. In addition, the record is viewed in the light most favorable to the party opposing the motion. *Poller v. CBS, Inc.*, 368 U.S. 464, 473 (1962); *Kerr-McGee Chemical Corp.* (West Chicago Rare Earths Facility), ALAB-944, 33 NRC 81, 144 (1991). If the moving party makes a proper showing for summary disposition and the opposing party fails to show that there is a genuine issue of material fact, the District Court (or Licensing Board) may summarily dispose of all of the matters before it on the basis of the filings in the proceeding, the statements of the parties, and affidavits. *See* Rule 56(e), Fed. R. Civ. P.; 10 C.F.R. § 2.749(d); *Advanced Medical Systems*, 38 NRC at 102.

The Licensing Board in this proceeding has previously ruled upon various motions for summary disposition filed by PFS, in accordance with these principles. In doing so, the Board succinctly summarized the standards for granting summary disposition, as follows:

Under 10 C.F.R. § 2.749(a), (d), summary disposition may be entered with respect to any matter (or all of the matters) in a proceeding if the motion, along with any appropriate supporting material, shows that there is “no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.” The movant bears the initial burden of making the requisite showing that there is no genuine issue as to any material fact, which it attempts to do by means of a required statement of material facts not at issue and any supporting materials (including affidavits, discovery responses, and documents) that accompany its dispositive motion. An opposing party must counter each adequately supported material fact with its own statement of material facts in dispute and supporting materials, or the movant’s facts will be deemed admitted. See *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102-03 (1993).

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-99-23, 49 NRC 485, 491 (1999) (granting summary disposition of Contention Utah C).⁶

Finally, the Commission has encouraged the use of summary disposition procedures “on issues where there is no genuine issue of material fact so that evidentiary hearing time is not unnecessarily devoted to such issues.” *Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 457 (1981).⁷ Likewise, the Appeal Board has recognized that summary

⁶ *Accord, Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation) LBP-99-31, 50 NRC 147, 152 (1999) (Contentions Security-A, B, and C); LBP-99-32, 50 NRC 155, 158 (1999) (Utah G); LBP-99-33, 50 NRC 161, 164-65 (1999) (Utah M); LBP-99-34, 50 NRC 168, 173-74 (1999) (Utah B); LBP-99-35, 50 NRC 180, 184 (1999) (Utah K); LBP-99-36, 50 NRC 202, 207 (1999) (Utah R); LBP-99-42, 50 NRC 295, 301 (1999) (Utah H); LBP-00-06, 51 NRC 101, 112 (2000) (Utah E).

⁷ The Commission recently endorsed this policy statement, but indicated that “Boards should forego the use of motions for summary disposition except upon a written finding that such a motion will likely substantially reduce the number of issues to be decided, or otherwise expedite the proceeding.” *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 20-21 (1998). The Staff submits that summary disposition of this contention will reduce the number of issues to be decided and will serve to expedite the proceeding.

disposition provides “an efficacious means of avoiding unnecessary and possibly time-consuming hearings on demonstrably insubstantial issues.” *Wisconsin Electric Power Co.* (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1263 (1982); *Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit1), ALAB-590, 11 NRC 542, 550 (1980).⁸

As more fully set forth below, the Staff submits that summary disposition of Contention Utah AA is appropriate, in accordance with these established standards.

B. Legal Requirements for an Alternative Site Analysis under NEPA.⁹

The Commission has established a comprehensive set of regulations addressing its responsibilities under NEPA, in 10 C.F.R. Part 51. An applicant for an ISFSI pursuant to 10 C.F.R. Part 72 must file an environmental report. 10 C.F.R. §§ 51.60(b)(iii) and 51.45. Following the environmental scoping process, the Staff must issue a draft environmental impact statement (“EIS”), which is to 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, based on a review of information provided by the applicant, information provided by commentors on the Draft EIS, and information and analysis which the Staff itself obtains. 10 C.F.R. § 51.97(c).

⁸ It is well settled that an agency may ordinarily dispense with an evidentiary hearing where no genuine issue of material fact exists. *Veg-Mix, Inc. v. U.S. Dep’t of Agriculture*, 832 F.2d 601, 607-08 (D.C. Cir. 1987).

⁹ This section discusses general principles pertaining to the preparation of an EIS and an alternate site analysis. The Licensing Board need not address these principles, however, because Contention Utah AA does not challenge the adequacy of the alternate site analysis in the DEIS. Rather, Contention Utah AA alleges only that the Applicant’s Environmental Report failed to address certain matters, or that the discussion of those matters in the ER was unclear. Accordingly, the sole issue before the Licensing Board is whether the matters alleged to be omitted or unclear in the Applicant’s ER were later addressed in the DEIS.

NEPA requires federal agencies to take a “hard look” at environmental consequences, as well as reasonable alternatives to the proposed action. See *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-03, 47 NRC 77, 89 (1998); *Boston Edison Co.* (Pilgrim Nuclear Generating Station, Unit 2), ALAB-479, 7 NRC 774, 779 (1978). An agency is required to prepare an EIS for all proposals that would significantly affect the quality of the human environment. *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-04, 53 NRC 31, 44 (2001). Consideration of alternatives has been referred to as the “linchpin” of the entire EIS. *New England Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87, 95 (1st Cir. 1978). In considering alternate sites, an agency should carefully study the environmental effects of building the facility at those sites and factor that analysis into the ultimate decision. *Id.*

License applicants use the site screening process to identify sites meeting the goals of the proposed action. See *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 103 (1998). An applicant may deem only one of many possible sites to be reasonable. *Id.* at 104, citing *Tongass Conservation Society v. Cheney*, 924 F.2d 1137, 1141-42 (D.C. Cir. 1991). When reviewing a license application filed by a private applicant, a federal agency may appropriately “accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project.” *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-04, 53 NRC 31, 55 (2001), citing *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 197 (D.C. Cir.), cert. denied, 502 U.S. 994 (1991); *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 104 (1998), citing *City of Grapevine v. DOT*, 17 F.3d 1502, 1506 (D.C. Cir. 1994), cert. denied, 513 U.S. 1043 (1994). For those alternatives that have been eliminated from detailed study, the EIS should “briefly discuss” why they were ruled out. *Louisiana Energy Services*, 47 NRC at 104, citing 40 C.F.R. § 1502.14(a). An EIS must “rigorously explore . . . all reasonable alternatives.” *Id.* (emphasis in original). In assessing the adequacy of

an agency's EIS, discussing the impacts of a proposed action and any reasonable alternatives, 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 Service*, 227 F.3d 1170, 1177 (9th Cir. 2000), citing *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1376 (9th Cir. 1998); *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-97-8, 45 NRC 367, 399 (1997), *rev'd in part on other grounds*, CLI-98-3, 47 NRC 77 (1998); *Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1011-12 (1973).

In comparing alternatives to a site selected by an applicant, the NRC considers whether an alternate site is "obviously superior" to the applicant's proposed site. This standard has been upheld by the courts. For example, the First Circuit Court of Appeals held as follows:

The obvious superiority standard . . . is designed to guarantee that a proposed site will not be rejected in favor of a substitute unless, on the basis of appropriate study, the Commission can be confident that such action is called for. Given the necessary imprecision of the cost-benefit analysis involved and the fact that the proposed site will inevitably have been subjected to far closer scrutiny than any alternate site, we cannot say that it is unreasonable to insist on a high degree of assurance that the extreme action of denying an application is appropriate. This is especially so since NEPA does not require that a plant be built on the single best site for environmental purposes. All that NEPA requires is that alternative sites be considered and that the effects on the environment of building the plant at the alternative sites be carefully studied and factored into the ultimate conclusion.

New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 95 (1st Cir. 1978).

As stated in *NECNP*, "the proposed site will inevitably have been subjected to far closer scrutiny than any alternate site." An EIS discussion of alternate sites should describe the characteristics of the alternate sites and the reasons for their rejection; a more rigorous examination of alternative sites is not required, unless there is "tangible evidence" of an "obviously superior" site. *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC

77, 104 (1998), *citing Roosevelt Campobello International Park Commission v. EPA*, 684 F.2d 1041, 1047 (1st Cir. 1982). *See also Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 529-30 (1977), *aff'd*, *New England Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87, 95 (1st Cir. 1978).

C. Summary Disposition of Utah Contention AA Is Appropriate, in that the DEIS Addresses the Deficiencies Alleged in Contention Utah AA.

In Contention Utah AA, the State and Castle Rock challenged the adequacy of the Applicant's site selection process and consideration of alternative sites in its Environmental Report. This contention, filed in November 1997, did not (and could not) challenge any information which PFS submitted after this contention was filed -- and it similarly did not and could not challenge the Staff's DEIS, inasmuch as the DEIS was published in June 2000, two and one-half years after the filing of this contention.¹⁰ At no time did the Intervenors seek to amend this contention after its filing in November 1997, either to address any new information provided by PFS after the original contention was filed or to challenge the adequacy of the Staff's DEIS.¹¹

Where a contention challenges an applicant's environmental report, the contention may be viewed as a challenge to the Staff's EIS. *See, e.g., Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 84 (1998). Accordingly, where a contention asserts that

¹⁰ In order for the State to challenge the information and assessments appearing in the DEIS, the State was required to timely file an amended or new contention that addresses the five factors listed in 10 C.F.R. § 2.714 for late-filed contentions, including good cause for filing late. The deadline for filing DEIS-based contentions expired in July 2000. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-27, 52 NRC 221-22 (2000).

¹¹ In contrast, the State has sought to amend other contentions, including at least one environmental contention, based on new information. *See, e.g., Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-14, 51 NRC 301 (2000) (Amended Contention Utah V (transportation impacts)). Similarly, the State has filed new contentions based on the DEIS. *See, e.g., Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-13, 53 NRC ____ (March 30, 2001) (Contention Utah PP (DEIS rail load factors)); LBP-00-28, 52 NRC 226 (2000) (Contentions Utah LL through Utah OO (DEIS transportation analysis)), *reconsideration denied*, LBP-00-31, 52 NRC 340 (2000); LBP-00-27, 52 NRC 216 (2000) (Contention Utah KK (DEIS military and economic impacts)).

the ER failed to consider some matter or did not explain clearly how that matter was treated, those assertions may be deemed to apply to the Staff's EIS as well.

Here, Contention Utah AA asserted that various matters had not been addressed or were not clear in the Applicant's Environmental Report. Significantly, the Staff's DEIS subsequently addressed each of these allegations -- but Contention Utah AA was never amended to challenge the adequacy of the Staff's discussion of these issues. Accordingly, the sole issue before the Board is whether these matters have now been addressed in the DEIS. As set forth below, summary disposition of this contention is appropriate, in that there no longer exists a genuine dispute of material fact with respect to the specific matters alleged in Contention Utah AA.¹²

The following discussion lists each of the specific allegations in Contention Utah AA, and demonstrates that these matters were addressed in the Staff's DEIS. First, the State asserted that the Environmental Report was deficient in that there was "no discussion or tabulation" of the results of "phase two" of the Applicant's site screening process. Utah Contentions at 173.¹³ The Staff's DEIS, however, describes phase two of the Applicant's site screening process, and provides the results from the phase two screening. See DEIS at 7-3 to 7-4. As described in the DEIS, of the

¹² It is well established that the scope of a contention is limited to its terms coupled with its stated bases. *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988). 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*, CLI-86-5, 23 NRC 125 (1986). Thus, a contention which asserts that a particular matter has not been considered in an applicant's environmental report may be interpreted to challenge the lack of any consideration of that matter in the Staff's DEIS -- but it may not be interpreted to challenge the merits of the DEIS discussion, since the contention did not raise any question concerning the merits of the DEIS.

¹³ The State also characterized the Applicant's discussion of siting alternatives in its Environmental Report as "woefully inadequate." Utah Contentions at 172. The State, however, did not particularize this assertion except as described in its challenges to certain phases of the site selection process (discussed *infra*). Further, the State failed to identify any specific deficiencies with respect to the Applicant's description of "phase one" of its site screening process, in which the number of candidate sites was reduced from 38 to 18 sites. See DEIS at 7-3. The DEIS explains the results of phase one of the screening process, and provides copies of the evaluation forms utilized by PFS in its phase one screening of the 38 sites. See DEIS, App. F, Exhibits F.1 - F.38.

18 sites remaining after phase one of the screening process, four sites were identified by the PFS Board of Managers as warranting further detailed evaluation. The DEIS identifies these sites as: (1) City of Caliente and Lincoln County, Nevada; (2) Goshute Tribe; Skull Valley, Utah; (3) NEW Corporation, Fremont County, Wyoming; and (4) United Nuclear Corporation; McKinley County, New Mexico. *Id.* at 7-4.¹⁴ Therefore, the DEIS “discusses” this matter, and summary disposition with respect to this issue is appropriate.

Second, the State asserted that the Environmental Report was deficient in its discussion of “phase three” of the Applicant’s site screening process, on the grounds that (1) there is “no mention” of whether the Applicant sent the questionnaire used to determine site suitability to all 38 site owners or only to the Skull Valley Band of Goshutes; and (2) there is “absolutely no discussion or tabulation” of the responses to the questionnaire. Utah Contentions at 173. These matters, however, have been specifically addressed in the DEIS. The DEIS indicates that the site selection questionnaire form was sent to the owners or promoters of the three candidate sites that remained for consideration after phase two of the screening process (Goshute Tribe, Skull Valley, UT; NEW Corp., Fremont County, WY; and United Nuclear Corp., McKinley County, NM). See DEIS at 7-4. In addition, the DEIS provides copies of the responses received by PFS from representatives of the three final candidate sites. See DEIS Appendix F, Exhibits F.39 to F.41.¹⁵ Further, the DEIS states that based on the questionnaire responses and field investigations, an

¹⁴ As indicated in the DEIS, one of these sites (the City of Caliente and Lincoln County, Nevada) decided not to participate further, leaving three sites for further consideration by PFS. See DEIS at 7-4.

¹⁵ The State also asserted in Contention Utah AA that a reader of the Environmental Report is “absolutely baffled” to understand what “three remaining sites” the Applicant refers to because the only sites mentioned are the original 38 sites and the final two sites on the Skull Valley Reservation. Utah Contentions at 173-74. As set forth above, however, the DEIS identifies the “three remaining sites” as the Skull Valley Goshute Reservation, the NEW Corporation site in Wyoming, and the United Nuclear Corporation site in New Mexico. DEIS at 7-4. Therefore, summary disposition of this assertion is appropriate.

evaluation matrix was prepared, which concluded that the New Mexico site did not appear to have sufficient land for the size of the project. DEIS at 7-4. Therefore, the DEIS specifically addresses these issue raised by the State with respect to the Environmental Report, and summary disposition with respect to these issues is appropriate.

Third, the State asserted that the final screening phase was to choose between two sites on the reservation that were “almost contiguous to each other.” Contentions at 173-74. The DEIS, however, indicates that of the three sites remaining for consideration after phase three of the screening process, one site (the United Nuclear Corporation site in New Mexico) was determined to lack sufficient land for the size of the project -- thus leaving two sites, the Skull Valley Reservation and the NEW Corporation’s Wyoming site -- for further consideration by PFS. The DEIS further indicates that these two sites were subjected to field investigations to further study their technical and licensing viability; the two sites were found to rank closely to each other and negotiations with both were authorized to proceed. DEIS at 7-4 -- 7-5. Through the negotiation process, the Skull Valley site was ultimately selected. *Id.* PFS then selected two locations on the Skull Valley Reservation to evaluate more closely. DEIS at 2-33. Thus, the DEIS addresses this issue, raised by the State with respect to the Environmental Report, and summary disposition of this issue is therefore appropriate.

Fourth, the State asserted that it is “a mystery” how the Applicant arrived at the final two sites. Contentions at 174. The DEIS, however, addresses this issue, setting forth the process by which the Applicant arrived at the two sites as a result of its phase one, phase two and phase three screening processes. *See* DEIS at 7-4. As discussed in the DEIS, PFS applied a set of disqualifying factors to 38 selected potential sites. *Id.* at 7-3. PFS prepared information sheets for each of these sites, which are provided in Appendix F; and it used these information sheets along with additional screening information to select the sites to be recommended for in-depth study and

analysis. *Id.* A site selection questionnaire and field studies were then used to determine the suitability of the remaining sites. *Id.* Two final candidate siting areas were identified that would likely meet NRC's regulations and would not be unreasonably expensive to develop. *Id.* at 7-4. Finally, the remaining two sites were subjected to field investigations to determine their technical and licensing viability. *Id.* Thus, the means by which PFS arrived at the two sites is detailed in the DEIS and is not a "mystery." Therefore, summary disposition of this matter is appropriate.

Fifth, the State asserted that the Applicant's overarching criterion "seems to be a willing jurisdiction." Utah Contentions at 174. While a "willing jurisdiction" was one of the factors considered by PFS in phase one of its screening process, numerous other factors were considered by PFS, as set forth in the DEIS. Thus, in addition to the factor of a willing host jurisdiction, PFS considered public acceptance, favorable proximity to transportation access, and the absence of jurisdictional restrictions, such as statutes or other legal restrictions that would prohibit the siting of an ISFSI. DEIS at 7-3. Subsequently, PFS applied other factors, such as in its phase three attempt to identify at least two sites that would likely meet NRC's regulations and not be unreasonably expensive to develop. *Id.* at 7-4. Inasmuch as the DEIS identifies the factors which were used by PFS in its site selection process, summary disposition of this issue is appropriate.

Sixth, the State asserted that the Environmental Report does not discuss the application of 10 C.F.R. Subpart E, §§ 72.90-108, Site Evaluation Factors, to the candidate sites. Utah Contentions at 174. The State's specification of this issue fails to state a legally sufficient basis for the contention. As set forth in the Applicant's Motion, the Subpart E siting evaluation factors need to be considered only with respect to the proposed site, and generally do not apply to an alternative site analysis. See Motion at 18-19. Subpart E ("Siting Evaluation Factors") of 10 C.F.R. Part 72 sets forth various requirements for consideration with respect to sites proposed to be used for an ISFSI or MRS. Thus, pursuant to 10 C.F.R. § 72.90(a), "site characteristics that may directly affect

the safety or environmental impact of the ISFSI or MRS must be investigated and assessed.” (Id., emphasis added). For example, under 10 C.F.R. § 72.90(b), “proposed” sites . . . must be examined with respect to events that could affect safety; under § 72.90(c), design basis events must be determined for each combination of “proposed site and proposed ISFSI or MRS design”); under § 72.90(d), “proposed sites” are to be disqualified for certain stated reasons; under § 72.90(e), the environmental effects of “each proposed site” is to be considered; and under § 72.100(a), “the proposed site” must be evaluated with respect to the effects on population.¹⁶ In any event, however, the DEIS indicates that PFS did apply a seismology siting criterion to candidate sites in the second phase of its site-selection process. See DEIS at 7-3. Therefore, summary disposition with respect to this issue is appropriate.

Seventh, the State asserted that the Environmental Report failed to consider the adequacy of transportation corridors and risk analyses. Utah Contentions at 174. However, the DEIS indicates that PFS applied a disqualifying screening factor in phase one that addressed whether the various sites were within reasonable proximity of transportation infrastructure. DEIS at 7-3. In phase two of the process, further screening of the potential sites against various safety and environmental criteria was performed, including proximity to flood plains; stability of geological conditions; proximity to strong near-field ground motion from historical earthquakes on large known capable faults; and population density. *Id.* In phase four of the process, the remaining two sites were evaluated based on numerous environmental, technical, and permitting factors. *Id.* at 7-4.

¹⁶ The only mention of alternative sites that occurs in 10 C.F.R. Part 72 Subpart E is in 10 C.F.R. § 72.102(e), which states, “[i]n an evaluation of alternative sites, those which require a minimum of engineered provisions to correct site deficiencies are preferred. Sites with unstable geologic characteristics are to be avoided.” This regulation does not require that an applicant perform an alternative site analysis, nor does it prescribe how any such analysis is to be conducted; rather, it identifies a site selection criterion that is to be applied to a site that is selected for construction and operation of a proposed ISFSI.

Further, the Staff specifically evaluated the impacts of constructing and operating an ISFSI, including associated transportation facilities, and the adequacy of transportation corridors, at the two final candidate sites (the Skull Valley Reservation and the NEW Corporation site in Wyoming). See DEIS Chapter 5 and §§ 7.3 - 7.4. The Staff compared the potential impacts of constructing and operating an ISFSI (and associated transportation facilities) in Wyoming with those of a similar facility in Skull Valley. See, e.g., DEIS § 7.6. In addition, the Staff performed a detailed transportation analysis, specifically considering the issue of transportation risks at both the Skull Valley and Wyoming sites. See DEIS, §§ 5.7 and 7.4.2, and DEIS Appendix D. Therefore, the DEIS has addressed these issues, and summary disposition of these issues is appropriate.

Eighth, the State asserted that the Applicant's site selection criteria were not "applied at all levels of screening." Utah Contentions at 174. The DEIS identifies the site selection criteria that were applied during each phase of the site screening process. See DEIS 7-1 through 7-5. To the extent that the State appears to assert that the same criteria should be used at all phases of screening, its assertion would appear to require an unnecessary duplicative effort, in that the same disqualification factor would be applied to a site more than once.¹⁷ Nor has the State provided a technical or legal reason why site selection criteria need to be "applied at all levels of screening." However, regardless of whether the State's identification of this issue states a valid concern, the DEIS discusses the PFS site selection process and identifies the criteria that were applied by PFS at each stage of its screening process. DEIS at 7-3 - 7-4. Further, the Staff evaluated the PFS site-selection process and concluded that it had structure and appeared practicable. DEIS at 7-5. The State has not challenged this conclusion or modified its contention following publication of the DEIS. Therefore, summary disposition of this issue is appropriate.

¹⁷ In any event, the phase one screening criteria and results appear to have been available for consideration by PFS during phase two of the process, as well. See DEIS at 7-3 (PFS Board members were provided with an information sheet for all 38 sites that contained responses based upon phase one and phase two screening criteria).

Ninth, the State asserted that information used in the screening process has not been described and tabulated. Utah Contentions at 174. As stated above, however, the DEIS describes the information used by PFS in the screening process, and discusses the results of each phase of the screening process. See DEIS at 7-3 -- 7-5. Inasmuch as the DEIS addresses this matter, summary disposition of this issue is appropriate.

Finally, Contention Castle Rock 13 (which was consolidated with Contention Utah AA) asserted that there is “no discussion in the ER” of the environmental effects and impacts, technical and other costs and benefits of alternatives, between the Skull Valley and NEW Corporation alternative site; and that there is “no such required analysis” with regard to the Skull Valley site and any other location. Castle Rock Contentions at 50-51. However, the DEIS provides a detailed discussion of the characteristics of the Wyoming site and the impacts of construction and operation of an ISFSI (and related transportation facilities) at both that site and the proposed PFS site in Skull Valley. See, e.g., DEIS § 7.6 and Table 7.11.¹⁸ Inasmuch as the DEIS addresses these matters, summary disposition of this issue is appropriate.

CONCLUSION

For the reasons set forth above, the Staff submits that the Applicant’s motion for summary disposition of Contention Utah AA should be granted.

Respectfully submitted,

/RA/

Catherine L. Marco
Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland

¹⁸ As discussed *supra* at 8-9, an EIS is required to “briefly discuss” why alternatives that were eliminated from detailed study were ruled out. *Claiborne*, CLI-98-3, 47 NRC at 103. Here, the DEIS explained why other alternatives were eliminated from further study. DEIS at §§ 7-1 - 7-5.

this 15th day of May 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 GREGORY P. ZIMMERMAN

COUNTY OF ANDERSON)
) SS:
STATE OF TENNESSEE)

I, Gregory P. Zimmerman, being duly sworn, do hereby state as follows:

1. I am employed as Leader of the Environmental Impact Analysis Program, in the Center for Energy and Environmental Analysis, at Oak Ridge National Laboratory (ORNL) in Oak Ridge, Tennessee. I am providing this affidavit under a technical assistance contract between the NRC Staff and ORNL. 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 AA -- Range of Alternatives" ("Motion"), filed by Private Fuel Storage, L.L.C. ("PFS" or "Applicant") on April 18, 2001, and the "Statement of Material Facts on Which No Genuine Dispute Exists" ("Statement of Material Facts") attached thereto.

3. As part of my official responsibilities, I served as team leader and participated in an evaluation of the environmental impacts performed by the NRC Staff related to the Applicant's proposed construction and operation of an independent spent fuel storage installation ("ISFSI") on the Reservation of the Skull Valley Band of Goshutes located in Skull Valley, Utah. I further assisted in the supervision and preparation of the NRC Staff's ("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, issued in June 2000 ("DEIS"), and am currently assisting in supervision and preparation of the Staff's Final EIS related to this proposed facility.

4. Also as part of my official responsibilities, I have reviewed the Applicant's Motion and the Statement of Material Facts attached thereto, in which PFS seeks summary disposition of Contention Utah AA. On the basis of my review of the Applicant's Environmental Report ("ER"), the Applicant's Motion and the DEIS, I am satisfied that the Statement of Material Facts attached to the Applicant's Motion is correct.

5. Utah Contention AA alleges that "the Environmental Report fails to comply with the National Environmental Policy Act because it does not adequately evaluate the range of reasonable alternatives to the proposed action," with respect to the Applicant's alternative site analysis.

6. The issues raised in Contention Utah AA concerning alternative sites and the Applicant's site selection process were considered and addressed in the DEIS. *See, e.g.*, DEIS § 7.1 ("Site Selection Process") and DEIS Appendix F ("Site Selection/Evaluation Forms"). Thus, the DEIS discusses: (1) the criteria used by the Applicant to screen sites at each phase of the site selection process; (2) the results from each phase of the Applicant's screening process; (3) the use of the site screening questionnaire (with copies of the responses provided as exhibits to Appendix F); and (4) the process by which the Applicant arrived at the final slate of candidate sites. In addition, the Staff conducted an evaluation of the alternate site located in Fremont County, Wyoming, and compared the impacts of construction and operation of an ISFSI (and associated transportation facilities) at that site to the impacts of construction and operation of an ISFSI (and associated transportation facilities) at the Skull Valley site. *See* DEIS §§ 7.2 - 7.6. The DEIS's

treatment of the specific allegations contained in Contention Utah AA are more fully described in the Staff's response to the Applicant's Motion, attached hereto.

7. Based on my review of Contention Utah AA and the DEIS, and the Staff's response to the Applicant's Motion attached hereto, I am satisfied that each of the specific allegations contained in Contention Utah AA have been addressed in the DEIS.

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

Gregory P. Zimmerman

Sworn to before me this
15th day of May 2001

Notary Public

My Commission expires: _____

GREGORY P. ZIMMERMAN

Leader, Environmental Impact Analysis Program
Center for Energy and Environmental Analysis
Oak Ridge National Laboratory
Oak Ridge, TN 37831

Education:

M.S. Degree, Mechanical Engineering, University of Tennessee, Knoxville, 1977
B.S. Degree, Mechanical Engineering, University of Tennessee, Knoxville, 1975.

General Qualifications:

Mr. Zimmerman has over 20 years' experience at Oak Ridge National Laboratory (ORNL) in risk and safety analyses, radioactive waste management, and environmental impact assessment. In 1988, he participated in the preparation of a Programmatic Environmental Impact Statement (EIS) for the U.S. Army's proposal to destroy the national stockpile of lethal chemical weapons, and in 1989, he assumed program management responsibility at ORNL for the preparation of eight site-specific EISs related to that U.S. Army program. He has also provided assistance to the U.S. Department of Energy (DOE) and U.S. Nuclear Regulatory Commission (NRC) in the preparation of environmental impact assessments and EISs. In his involvement with those programs, Mr. Zimmerman has conducted accident analyses, exposure assessments, and dose analyses for facilities handling radioactive materials and wastes under the jurisdiction of both the DOE and the NRC.

Mr. Zimmerman developed a mathematical technique for blending population data with information about atmospherically dispersed pollutants in order to quantify the spatial distribution of potential human health impacts. This analytical technique has been successfully applied to the siting of hazardous facilities and has potential application to the investigation of issues related to environmental justice or environmental equity.

Experience:

January 1977 to Present —

OAK RIDGE NATIONAL LABORATORY
Oak Ridge, TN

ORNL is a multi-program national science and technology laboratory managed for the U.S. Department of Energy by UT-Battelle, LLC. In his program manager duties, Mr. Zimmerman is responsible for coordinating and supervising the technical progress of a multidisciplinary team of individuals who conduct environmental impact analyses and assessments for a variety of federal agencies. The program specializes in the preparation of environmental impact statements and assessments. His managerial responsibilities include the development of schedules, budgets, and work assignments, as well as technical oversight, quality control, preparation, and assembly of final project deliverables and documents.

Mr. Zimmerman is presently assisting the NRC Staff in its environmental review of a license application by Private Fuel Storage, L.L.C. for a proposed independent spent fuel storage

installation to be constructed and operated on the Reservation of the Skull Valley Band of Goshute Indians, located within the boundaries of Tooele County, Utah. As part of this effort, along with members of the NRC Staff, he is coordinating an environmental impact analysis review being performed by a team of reviewers at ORNL and other federal agencies and contractors. In this regard, he supervised and assisted 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, issued in June 2000 ("DEIS"); and is participating in the development of the Staff's Final EIS for this proposed facility.

In 1993, Mr. Zimmerman led the ORNL effort to assist the NRC Staff in its review of the license application of Envirocare of Utah for an 11e.(2) byproduct disposal facility near Clive, Utah. He provided technical assistance to the NRC Staff and coordinated the preparation of the NRC Staff's final EIS as part of this effort. In 1995, Mr. Zimmerman conducted radiological and chemical accident analyses for the NRC Staff's license renewal review of Nuclear Metals, Inc., in Concord, Mass. In 1994 to 1996, he served as the ORNL Core Team leader for Performance Evaluations of fifteen potential DOE mixed, low-level (radioactive) waste disposal sites. This project was a coordinated effort between ORNL and Sandia National Laboratories.

September 1975 to December 1976 — UNIVERSITY OF TENNESSEE
Department of Mechanical Engineering, Knoxville, TN

Under a graduate research assistantship, Mr. Zimmerman participated in nuclear safety studies involving heat and mass transfer in nuclear reactors cooled by liquid metals.

March 1971 to June 1974 — NATIONAL AERONAUTIC & SPACE
ADMINISTRATION (NASA), Huntsville, AL

As part of his cooperative education experience, Mr. Zimmerman assisted with mission planning aspects of the U.S. Space Shuttle program, including payload packaging and scheduling, as well as in-flight operations and orbital mechanics & maneuvering.

Technical Specialties:

Project and Program Management	Environmental Impact Analyses
Risk and Accident Analyses	Nuclear Waste Management
Heat Transfer and Thermodynamics	Nuclear Weapons Effects
Scientific Programming (Computers)	

Professional/Academic Awards and Honors:

Member of Tau Beta Pi, the engineering honorary society.
Joel F. Bailey Award for academic achievement in engineering,
University of Tennessee, 1975
Martin Marietta Energy Systems, Inc., *Significant Event Award*, July 1991.
UT-Battelle, *Significant Event Award*, October 2000.

Selected Publications:

K.S. Gant and G.P. Zimmerman, *Tooele Chemical Agent Disposal Facility: Review and Evaluation of Information for Updating the 1989 Final Environmental Impact Statement*, ORNL/TM-13542, Oak Ridge National Laboratory, Oak Ridge, Tenn., July 1999.

R.M. Reed and G.P. Zimmerman, "Analyses of Environmental Justice Concerns for the U.S. Army's Chemical Stockpile Disposal Program," proceedings of *Environmental Forum VII*, Denver, Colo., April 28 and 29, 1999, sponsored by the Program Manager for Chemical Demilitarization, Aberdeen Proving Ground, Md.

Co-author, U.S. Department of the Army, *Final Environmental Impact Statement for Pilot Testing of Neutralization/Supercritical Water Oxidation of VX Agent at Newport Chemical Activity, Indiana*, Program Manager for Chemical Demilitarization, Aberdeen Proving Ground, Md., December 1998.

Blasing, T.J., G.F. Cada, C.E. Easterly, L.N. McCold, G.P. Zimmerman, *Environmental Assessment: Renewal of Materials Licenses for ALARON Corp. Northeast Regional Service Facility, Wampum, Pennsylvania*, NUREG/CR-5549, prepared by the Oak Ridge National Laboratory, Oak Ridge, Tenn., for the Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, D.C., December 1998.

Project leader, U.S. Department of the Army, *Final Environmental Impact Statement for Pilot Testing of Neutralization/Biotreatment of Mustard Agent at Aberdeen Proving Ground, Maryland*, Program Manager for Chemical Demilitarization, Aberdeen Proving Ground, Md., July 1998.

Co-author, U.S. Department of the Army, *Revised Final Environmental Impact Statement for Disposal of Chemical Agents and Munitions Stored at Pine Bluff Arsenal, Arkansas*, Program Manager for Chemical Demilitarization, Aberdeen Proving Ground, Md., April 1997.

G.P. Zimmerman, *Review and Evaluation of Updated Numerical Input Values for Determining Risks to Threatened and Endangered Species near the Umatilla Chemical Depot, Oregon*, prepared for the Program Manager for Chemical Demilitarization, Aberdeen Proving Ground, Md., by the Oak Ridge National Laboratory, Oak Ridge, Tenn., April 1997.

R.L. Miller, C.E. Easterly, D.A. Lombardi, I.E. Treitler, R.T. Wimbrow, and G.P. Zimmerman, *Environmental Assessment for Proposed License Renewal of Nuclear Materials, Inc., Concord, Massachusetts*, NUREG/CR-6528, prepared by Oak Ridge National Laboratory, Oak Ridge, Tenn., for U.S. Nuclear Regulatory Commission, Office of Nuclear Materials Safety and Safeguards, Washington, D.C., February 1997.

Project leader, U.S. Department of the Army, *Revised Final Environmental Impact Statement for Disposal of Chemical Agents and Munitions Stored at Umatilla Depot Activity, Oregon*, Program Manager for Chemical Demilitarization, Aberdeen Proving Ground, Md., November 1996.

Technical Core Team Leader, U.S. Department of Energy, *Performance Evaluation of the Technical Capabilities of DOE Sites for Disposal of Mixed Low-Level Waste*, DOE/ID-10521 (Vols. 1, 2, and 3) and SAND96-0721 (Vols. 1, 2, and 3), prepared by Sandia National Laboratories, Albuquerque, New Mexico, March 1996.

J.D. Tauxe, D.W. Lee, J.C. Wang, and G.P. Zimmerman, "A Comparative Subsurface Transport Analysis for Radioactive Waste Disposal at Various DOE Sites," P95-79881, *Proceedings of the 1995 Fall Meeting of the American Geophysical Union*, San Francisco, Calif., December 11-15, 1995.

Contributor, National Research Council, *Recommendations for the Disposal of Chemical Agents and Munitions*, National Academy Press, Washington, D.C., 1994. [provided the text and Figure 4-3 on the comparative risk of destroying the U.S. stockpile of chemical weapons versus continuing to store the stockpile.]

G.P. Zimmerman, *The National Environmental Policy Act (NEPA): A Training Session on Its Requirements and Its Implementation*, presented at the request of the NEPA Office of the U.S. Army Chemical Materiel Destruction Agency, Aberdeen, Maryland, February 15, 1994.

Project leader, U.S. Nuclear Regulatory Commission, *Final Environmental Impact Statement to Construct and Operate a Facility to Receive, Store, and Dispose of 11e.(2) Byproduct Material Near Clive, Utah*, NUREG-1476, U.S. Nuclear Regulatory Commission, Office of Nuclear Materials Safety and Safeguards, Washington, DC, August 1993.

Co-author, *Chemical Stockpile Disposal Program Final Programmatic Environmental Impact Statement*, Vols. 1, 2, and 3, Program Executive Officer–Program Manager for Chemical Demilitarization, Aberdeen Proving Ground, MD, January 1988.

G.P. Zimmerman, *Better Understanding of Bubble Behavior in Liquid Environments: The Rise and Collapse of Large Vapor Bubbles*, Master's Thesis, University of Tennessee, Department of Mechanical Engineering, 1977.

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))

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO APPLICANT'S MOTION FOR SUMMARY DISPOSITION OF UTAH CONTENTION AA -- RANGE OF ALTERNATIVES," in the above captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 15th day of May, 2001:

G. Paul Bollwerk, III, Chairman*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to GPB@NRC.GOV)

Office of the Secretary*
ATTN: Rulemakings and Adjudications
Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copies to SECY@NRC.GOV
and HEARINGDOCKET@NRC.GOV)

Dr. Jerry R. Kline*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to JRK2@NRC.GOV)

Office of the Commission Appellate
Adjudication
Mail Stop: 16-C-1 OWFN
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Peter S. Lam*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to PSL@NRC.GOV)

James M. Cutchin, V*
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail to JMC3@NRC.GOV)

Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Jay E. Silberg, Esq.**
Ernest Blake, Esq.
Paul A. Gaukler, Esq.
Sean Barnett, Esq.
Shaw Pittman
2300 N Street, N.W
Washington, DC 20037-8007
(E-mail copy to jay_silberg,
paul_gaukler, sean_barnett, and
ernest_blake@shawpittman.com)

Danny Quintana, Esq.**
Danny Quintana & Associates, P.C.
68 South Main Street, Suite 600
Salt Lake City, UT 84101
(E-mail copy to quintana
@Xmission.com)

Denise Chancellor, Esq.**
Fred G. Nelson, Esq.
Laura Lockhart, Esq.
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, UT 84114-0873
(E-mail copy to dchancel@State.UT.US)
and jbraxton@email.usertrust.com)

Connie Nakahara, Esq.**
Utah Dep't of Environmental Quality
168 North 1950 West
P. O. Box 144810
Salt Lake City, UT 84114-4810
(E-mail copy to cnakahar@state.UT.US)

Diane Curran, Esq.**
Harmon, Curran, Spielberg & Eisenberg
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
(E-mail copy to
dcurran@harmoncurran.com)

John Paul Kennedy, Sr., Esq.**
1385 Yale Ave.
Salt Lake City, UT 84105
(E-mail copy to john@kennedys.org)

Joro Walker, Esq.**
Land and Water Fund of the Rockies
1473 South 1100 East, Suite F
Salt Lake City, UT 84105
(E-mail copy to lawfund@inconnect.com)

Land and Water Fund of the Rockies**
2260 Baseline Road, Suite 200
Boulder, CO 80302

Samuel E. Shepley, Esq.
Steadman & Shepley, LC
550 South 300 West
Payson, Utah 84651-2808
(E-mail copies to: slawfirm@hotmail.com,
Steadman&Shepley@usa.com, and
DuncanSteadman@mail.com)

/RA/

Sherwin E. Turk
Counsel for NRC Staff