

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 V -- INADEQUATE CONSIDERATION
OF TRANSPORTATION-RELATED RADIOLOGICAL ENVIRONMENTAL IMPACTS

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 V -- Inadequate Consideration of Transportation-Related Radiological Environmental Impacts" (Motion), filed by Private Fuel Storage, L.L.C. (PFS or Applicant) on April 16, 2001. For the reasons set forth below and in the attached "Affidavit of Robert J. Lewis Concerning Utah Contention V" (Lewis Affidavit), the Staff submits that issues pertaining to Utah Contention V have been resolved, and there does not exist a genuine dispute of material fact with respect to these matters. Inasmuch as there does not exist a genuine dispute of material fact, the Applicant is entitled to a decision in its favor as a matter of law. The Staff, therefore, submits that the Applicant's Motion should be granted.

BACKGROUND

In June 1997, the Applicant filed its license application for its proposed Independent Spent Fuel Storage Installation (ISFSI). The PFS application consisted of several documents, including

an Environmental Report (ER), which addressed many issues pertaining to the National Environmental Policy Act of 1969 (NEPA).

In November 1997, the State filed numerous safety and environmental contentions relating to the PFS application.¹ Utah Contention V, one of the contentions that concerned environmental issues, addressed the Applicant's discussion of the transportation-related environmental impacts of the proposed ISFSI. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 199-201 (1998). The Licensing Board admitted only one portion of the contention, which alleged that the weight for a loaded PFS shipping cask is outside of the parameters of 10 C.F.R. § 51.52 (Table S-4), and that a detailed description of transportation impacts must therefore be provided. *Id.* The contention, as revised and admitted by the Licensing Board, states 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.

In June 2000, the Staff published the "Draft Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah," NUREG-1714 (DEIS). Therein, the Staff addressed the transportation-related environmental impacts of the proposed ISFSI. *See* DEIS Chapter 5, Section 5.7.2 (Radiological

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).

impacts of transportation); DEIS Appendix C (Rail Routes to the Proposed PFSF Site); and DEIS Appendix D (Transportation Risks Analysis).

On April 16, 2001, the Applicant filed the instant Motion, asserting that there does not exist a genuine dispute of material fact with respect to the matters raised by the State in Contention Utah V. Specifically, the Applicant asserts that the State's contention is rendered moot by the Staff's DEIS, because the DEIS provides a detailed analysis of the environmental effects of spent fuel transportation, wholly independent of Table S-4. Motion at 3.

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." The legal standards governing summary disposition have been applied by the Licensing Board on numerous occasions in this proceeding, and are discussed in the "NRC Staff's Response to Applicant's Motion for Summary Disposition of Utah Contention AA -- Range of Alternatives," filed simultaneously herewith, at 3-6. That discussion is incorporated herein by reference.

B. Impacts under NEPA

The NRC's duties under NEPA are addressed in 10 C.F.R. Part 51. An applicant for an ISFSI under 10 C.F.R. Part 72 must file an ER. 10 C.F.R. §§ 51.60(b)(iii) and 51.45. Following the environmental scoping process, the Staff must issue its draft EIS (DEIS), which shall include a preliminary analysis that considers and weighs the environmental effects of the proposed action; the environmental impacts of alternatives to the proposed action; and alternatives available for

reducing or avoiding adverse environmental effects. 10 C.F.R. §§ 51.70 and 51.71(d). The Staff then must issue its final EIS (FEIS) based on a review of information provided by the applicant, information provided by commentors on the DEIS, and other information and analysis obtained by the Staff. 10 C.F.R. § 51.97(c).

An agency's "primary duty" under NEPA is to take a "hard look" at environmental impacts. *See Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-03, 47 NRC 77, 88 (1998), quoting *Public Utilities v. Federal Energy Regulatory Commission*, 900 F.2d 269, 282 (D.C. Cir. 1990). NEPA requires federal agencies to prepare an environmental impact statement (EIS) for all proposals that would significantly affect the quality of the human environment. *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-04, 53 NRC 31, 44 (2001), citing 42 U.S.C. § 4332(2)(C). The EIS must describe the potential environmental impacts of a proposed action and any reasonable alternatives. *Claiborne*, CLI-98-03, 47 NRC at 87.²

C. Summary Disposition of Utah Contention V Is Appropriate.

It is well established that the scope of a contention is limited to its terms coupled with its stated bases. *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988). 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).

Contentions based on an applicant's ER are appropriately deemed to be challenges to the Staff's EIS. *See Claiborne*, CLI-98-3, 47 NRC at 84; *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1049 (1983). Following the issuance of the Staff's EIS,

² In assessing the adequacy of an EIS, a "rule of reason" test is employed to determine whether the EIS contains a "reasonably thorough discussion of the significant aspects of probable environmental consequences." *Hells Canyon Alliance v. United States Forest Serv.*, 227 F.3d 1170, 1177 (9th Cir. 2000), citing *Neighbors of Cuddy Mountain v. United States Forest Serv.*, 137 F.3d 1372, 1376 (9th Cir. 1998).

an opportunity exists for a petitioner to amend its contention or file new contentions if the Staff sets forth an analysis in the EIS that differs significantly from the applicant's ER. *Catawba*, CLI-83-19, 17 NRC at 1049. A contention which asserts that some matter has not been omitted from an applicant's ER, however, cannot be interpreted to challenge the adequacy of any analyses performed later, unless the bases of the contention have been revised to raise that challenge.

Contention Utah V alleges 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 the environmental effects of transportation of fuel and wastes to and from the reactor.' 10 C.F.R. § 51.52(b)." Utah Contentions at 148-49. Thus, the scope of this contention is limited to whether a case-specific analysis should be performed that does not rely upon Table S-4 in determining the transportation-related radiological environmental impacts of the Applicant's proposal.³

Here, the Staff's DEIS set forth an analysis that differs significantly from the Applicant's ER in that, unlike the Applicant, the Staff did not rely on Table S-4 to describe transportation-related radiological environmental impacts.⁴ Instead, as discussed below, the Staff performed a "full description and detailed analysis" of the radiological environmental effects of transportation, utilizing case-specific information and analyses, as Contention Utah V asserts should be done in lieu of relying on Table S-4.

The State had an opportunity to amend Contention Utah V, to challenge the adequacy of the Staff's analysis, but did not do so. Rather, the State filed four additional contentions

³ The State sought to amend this contention earlier in the proceeding, prior to the issuance of the DEIS. See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-14, 51 NRC 301 (2000). That proposed amendment was rejected by the Licensing Board, pursuant to 10 C.F.R. § 2.714(a)(1). *Id.*

⁴ Pursuant to 10 C.F.R. § 51.52(a), the Staff determined that the proposed ISFSI did not satisfy all of the conditions specified to use the results of Table S-4; therefore, consistent with 10 C.F.R. § 51.52(b), the Staff performed a case-specific assessment of the proposed PFS transportation activities. See Lewis Affidavit at ¶ 7.

(Contentions Utah LL through OO) challenging various aspects of the transportation risk analyses contained in the DEIS. These contentions, however, were rejected by the Licensing Board,⁵ with the result that the State's only admitted contention raising transportation issues is Contention Utah V, which asserts that a case-specific analysis should be performed.⁶

The DEIS discussion of transportation-related radiological environmental impacts eliminates any genuine dispute of material fact with respect to the assertions contained in Contention Utah V. Section 5.7.2 of the DEIS describes the Staff's analysis of the transportation-related radiological environmental impacts of the proposed action. As indicated therein, the Staff did not rely on Table S-4, but, rather used PFS-specific considerations and computer analyses to assess the incident-free and accident-related radiological impacts of cross-country and regional transportation of spent fuel to and from the PFS facility. See DEIS at 5-36; Lewis Affidavit at ¶¶ 7 and 8.⁷ Therefore, there is no genuine dispute of material fact with respect to the specific allegations contained in Contention Utah V, and summary disposition of this contention is appropriate as a matter of law.

⁵ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-28, 52 NRC 226 (2000) (finding the contentions were impermissibly late and the late-filing criteria of 10 C.F.R. § 2.714(a)(1) did not support their admission).

⁶ The Staff notes that even if Contentions Utah LL - OO had been admitted, summary disposition would still be appropriate with respect to Contention Utah V, which asserts that Table S-4 may not be relied upon here.

⁷ As set forth in the attached Affidavit of Robert J. Lewis (at ¶¶ 7-8), the RADTRAN4 computer code was used to model both incident-free radiological exposure and the consequences of radiological releases due to severe accidents. See DEIS § 5.7.2.2. A general description of the RADTRAN4 Computer Model and a summary of the major assumptions used in estimating the doses for the cross-country and regional analyses are presented in DEIS Appendix D ("Transportation Risks Analysis"). Inputs to the RADTRAN4 computer analysis were taken in part from the INTERLINE computer code, which was used to generate the route and population density numbers. See DEIS § 5.7.2.2, and Appendix D at D-3. The INTERLINE computer code and the resulting routing analysis are described in DEIS Appendix C ("Rail Routes to the Proposed PFSF Site"). The analysis used other inputs, such as population density information from the U.S. Census Bureau for the year 1990 and later year projections, and the number of SNF transports that may occur if the facility is licensed. See DEIS § 5.7.2.2 and DEIS Appendix D.

CONCLUSION

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

Respectfully submitted,

/RA/

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

Dated at Rockville, Maryland
this 15th day of May 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
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PRIVATE FUEL STORAGE, L.L.C.) Docket No. 72-22-ISFSI
)
(Independent Spent)
Fuel Storage Installation))

AFFIDAVIT OF ROBERT J. LEWIS
CONCERNING UTAH CONTENTION V

COUNTY OF MONTGOMERY)
) SS:
STATE OF MARYLAND)

I, Robert J. Lewis, being duly sworn, do hereby state as follows:

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

2. This Affidavit is prepared in response to the "Applicant's Motion For Summary Disposition of Utah Contention V -- Inadequate Consideration of Transportation-Related Radiological Environmental Impacts" (Motion), filed by Private Fuel Storage, L.L.C. (PFS or Applicant) on April 16, 2001, and the "Statement of Material Facts on Which No Genuine Dispute Exists" (Statement of Material Facts) attached thereto.

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

NUREG-1714, June 2000 (DEIS). In particular, I participated in preparation of the Staff's analysis of transportation impacts contained in DEIS § 5.7.2, and Appendices C and D contained in the DEIS.

5. Also as part of my official responsibilities, I have reviewed the Applicant's Motion and the Statement of Material Facts attached thereto. On the basis of my review of the Applicant's Motion and the DEIS, I am satisfied that the Statement of Material Facts attached to the Applicant's Motion is correct.

6. Utah Contention V alleges that the Applicant's 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).

7. The transportation-related environmental impacts of PFS's proposed ISFSI have been addressed in the DEIS. Pursuant to 10 C.F.R. 51.52(a), the Staff determined that the proposed ISFSI did not satisfy all of the conditions for use of Table S-4; therefore, consistent with 10 C.F.R. § 51.52(b), the Staff performed a case-specific analysis to assess the incident-free and accident-related radiological impacts of cross-country and regional transportation of spent fuel to and from the PFS facility. See DEIS at 5-36. The Staff used PFS-specific considerations and computer analyses to assess both the incident-free and accident-related radiological impacts for cross-country and regional transportation.

8. The Staff's transportation analysis is detailed in Chapter 5 and Appendices C and D of the DEIS. The DEIS used the RADTRAN4 computer code to model both incident-free radiological exposure and the consequences of radiological releases due to

severe accidents. See DEIS § 5.7.2.2. A general description of the RADTRAN4 Computer Model and a summary of the major assumptions used in estimating the doses for the cross-country and regional analyses are presented in DEIS Appendix D (“Transportation Risks Analysis”). Inputs to the RADTRAN4 computer analysis were taken in part from the INTERLINE computer code, which was used to generate the route and population density numbers. See DEIS § 5.7.2.2, and Appendix D at D-3. The INTERLINE computer code and the resulting routing analysis are described in DEIS Appendix C (“Rail Routes to the Proposed PFSF Site”). The analysis used other inputs, such as population density information from the U.S. Census Bureau for the year 1990 and later year projections, and the number of SNF transports that may occur if the facility is licensed. See DEIS § 5.7.2.2 and DEIS Appendix D. In summary, the DEIS transportation analysis is based on the use of PFS-specific considerations and computer analyses, and does not rely on Table S-4.

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

/RA/

Robert J. Lewis

Sworn to before me this
15th day of May 2001

Elva Bowden Berry
Notary Public

My Commission expires: 12/01/03

Robert J. Lewis

Education

Master of Science in Nuclear Engineering. University of Arizona, Tucson, AZ, December 1992.

Bachelor of Science in Physics, *Magna Cum Laude*. State University of New York at Fredonia, May 1990. Co-Recipient of Ruth Tice Callahan Award for most outstanding freshman, 1987.

Experience

Nuclear Engineer/Nuclear Process Engineer

December 1992-present

OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
U.S. NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C.

Spent Fuel Project Office (11/95-03/97; 05/99-present) - Project lead for major study of spent fuel transportation package performance in severe accidents, including lead for several public meetings and stakeholder workshops. Staff lead for transportation aspects of several environmental impact statements, including Private Fuel Storage ISFSI license application, proposed Yucca Mountain repository, and operating reactor license renewal. Point of interface with U.S. Department of Transportation, International Atomic Energy Agency, and NRC regional Offices, for development of transport regulations and regulatory guidance, incident response, and enforcement. Lead for development of several storage or transportation rulemakings, public outreach activities, guidance documents, and inspection manual chapters.

Division of Fuel Cycle Safety and Safeguards (03/97-05/99) - Member of a task force that, using an enhanced participatory process, developed revisions to 10 CFR Part 70 to add integrated safety analysis (ISA) and accident performance requirements. Task force lead for developing performance requirements, ISA requirements, management measures, and the relationships between these criteria. Also worked on the potential NRC regulation of the U.S. Department of Energy's (DOE's) Hanford Tank Waste Remediation Systems (TWRS) high-level radioactive waste processing facilities. Duties involved advising DOE on development of a TWRS regulatory program consistent with NRC regulation, identifying and defining issues related to regulatory transition, and technical reviews of DOE contractor submittals. Staff lead for radiation safety and criticality safety design reviews and for regulatory transition issues, and author of two Commission papers on policy issues related to TWRS.

Division of Waste Management (12/92-11/95) - Worked on low-level waste (LLW) and high-level waste (HLW) processing and disposal issues. Staff lead for HLW radiation repository safety and criticality reviews, and for design basis events rulemaking for above-ground geologic repository operations area. Staff lead for several LLW processing/solidification technology reviews. Contributed to several regulatory guidance documents, including staff technical positions on LLW performance assessment and disposition of baghouse dust.

Other assignments - Completed rotational details as an NRC resident inspector at Ginna power plant (6 weeks) and as an inspector of industrial, medical, and fuel cycle licensees out of NRC's Region II office in Atlanta, GA (6 months).

Graduate Research Assistant and Teaching Assistant

August 1990 - December 1992

NUCLEAR AND ENERGY ENGINEERING DEPARTMENT
UNIVERSITY OF ARIZONA
TUCSON, AZ

Performed research into the effects of chelates on leaching of radionuclides from cement waste forms.
Publication (Master's Thesis): *Equilibrium Leach Testing and On-Line, Nondestructive Strength Prediction Methods As Cemented Radioactive Waste Form Qualification Procedures*, University of Arizona Press, 1992.

Teaching Assistant for courses in Engineering Thermodynamics and Radiation Detection & Measurements.

Research Laboratory Technician

Summer 1992

N.V. KEMA LABORATORIES
ARNHEM, NETHERLANDS

Helped develop process/quality control techniques for radioactive waste solidification technologies.
Publication (as principal author): *On-line, Nondestructive Methods for Compressive Strength Prediction in Waste Cementation*, KEMA report No. 20251-CBP-92-812.

Other Qualifications and Awards

Registered **Engineer in Training (EIT)**, State of Maryland, August 1, 1994.

NRC Performance Awards in 1996, 1998, 1999, and 2000; **NRC Special Act Award** 1999

Institute of Nuclear Power Operations (INPO) Fellowship, 1990-91 academic year.

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(Independent Spent)
Fuel Storage Installation))

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S RESPONSE TO APPLICANT'S MOTION FOR SUMMARY DISPOSITION OF UTAH CONTENTION V -- INADEQUATE CONSIDERATION OF TRANSPORTATION-RELATED RADIOLOGICAL ENVIRONMENTAL IMPACTS" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the United States mail, first class, as indicated by an asterisk, with copies by electronic mail as indicated, this 15th day of May 2001.

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