

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of:	)	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, LLC	)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel	)	
Storage Installation)	)	May 25, 2001

**STATE OF UTAH'S REPLY TO STAFF'S RESPONSE TO  
APPLICANT'S MOTION FOR SUMMARY DISPOSITION  
OF UTAH CONTENTION V**

Pursuant to the Board's Order of April 23, 1999 and 10 CFR § 2.749, the State files this Reply to the Staff's Response to the Applicant's Motion for Summary Disposition of Utah Contention V (May 15, 2001) ("Staff Response").

The Staff raises no new or novel arguments in its Response, which is basically in harmony with PFS summary disposition argument. See Applicant's Motion for Summary Disposition of Utah Contention V-- Inadequate Consideration of Transportation-Related Radiological Environmental Impacts ("Motion"). The Staff, like PFS, refuses to read the plain language of Contention V in its entirety. Instead, the Staff takes the narrow view that any case-specific analysis not relying on Table S-4 is adequate to satisfy Contention V. Staff Response at 5.

The Staff's argument that the scope of Contention V is limited to whether a case-specific analysis was performed that did not rely on Table S-4 is without merit. The language of Contention V states:

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. s 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. s 51.52(b).

LBP-98-7, 47 NRC 142, 201, 256, *aff'd on other grounds*, CLI-98-13, 48 NRC 26 (1998).

Section 51.52(b) mandates that an environmental report "contain a statement concerning transportation of fuel and radioactive waste to and from the reactor."<sup>1</sup> Furthermore,

the statement shall contain a full description and detailed analysis of the environmental effects of transportation of fuel and wastes to and from the reactor,<sup>2</sup> including values for the environmental impact under normal conditions of transport and for the environmental risk from accidents in transport. The statement shall indicate that the values determined by the analysis represent the contribution of such effects to the environmental costs of licensing the reactor.

10 CFR § 51.52(b).

While the Staff has done more in its analysis than did PFS in its Environmental Report, the Staff's analysis in the DEIS does not satisfy section 51.52(b) or NEPA. In its analysis the Staff has not accounted for the "normal conditions of transport" at reactor sites, especially with respect to the loading constraints and additional occupational exposure posed at many sites in readying a HI-STAR 100 cask for transportation. Nor has the Staff considered or analyzed the environmental risks from accidents in transport posed by the specific railcars PFS intends to use for its rail shipments.

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<sup>1</sup> In this instance, transportation would be from the reactor to the PFS ISFSI.

<sup>2</sup> See note 1.

In his affidavit supporting the Staff's response, Robert Lewis summarizes the DEIS's analysis of transportation impacts and cites to various descriptions in the DEIS. Mr. Lewis maintains that the DEIS is based on the "use of PFS-specific considerations and computer analyses" which do not rely on Table S-4. Staff Response, Lewis Aff. at ¶ 8.

Notwithstanding Mr. Lewis' claims, the DEIS does not analyze increased occupational and public exposures from the inability of the specific reactor sites to handle the HI-STAR 100 shipping cask or its rail car. See State of Utah Response to Applicant's Motion for Summary Disposition of Utah Contention V ("State Response") at 5-7. This is relevant and material because many reactor sites, including PFS member reactor sites, are currently incapable of directly loading a HI-STAR 100 shipping cask. *Id.* Nor is there any analysis of the increased occupational exposure that may occur in the transfer of spent nuclear fuel from the HI-STORM or other dry cask storage system to the HI-STAR 100 or other transportation cask. *Id.*

Other PFS-specific considerations the DEIS fails to analyze relate to the type of railcar PFS intends to use. For example, there is no analysis of the increased occupational and public exposures that result from using steerable rail car trolleys which must negotiate turns and cross bridges at slow speeds. *Id.* at 7. Nor is there an analysis of the increased accident rate due to the instability of the heavy railcars with high centers of gravity. *Id.*

The Staff makes no claim that it attempted to address any of the PFS-specific considerations enumerated by the State in its Response to PFS's Motion. See Staff Response, Lewis Dec. at ¶ 8. As the Staff admits, its "primary duty' under NEPA is to take a 'hard look' at environmental impacts." Staff Response at 4 (*citing* Louisiana Energy Services, L.P.

(Claiborne Enrichment Center), CLI-98-03, 47 NRC 77, 88 (1998) (*citations omitted*). The Staff has neither taken a “hard look” at the transportation impacts nor has it completed a detailed analysis. Thus, the failure of the Staff in the DEIS to consider the additional exposures and increased accident rates raise disputed and relevant material facts and does not favor a grant of summary disposition.

The Staff laments that after the issuance of the DEIS the State should have amended Utah V. Staff Response at 5. As described above, the essence of Utah V is that there must be a full description and detailed analysis that is adequate and accurate for the case-specific analysis of transportation by rail of HI-STAR 100 casks from the reactor site to the PFS ISFSI site. The State in its Response and in its Disputed and Relevant Material Facts raised numerous genuine and material disputed issues of fact concerning the adequacy of the DEIS analysis of transportation impacts. The Staff’s proclamation that it prepared a full description and detailed analysis specific to PFS transportation impacts in the DEIS does not overcome the State’s genuine and disputed material facts. Accordingly, summary disposition should be denied and the matter set for hearing.

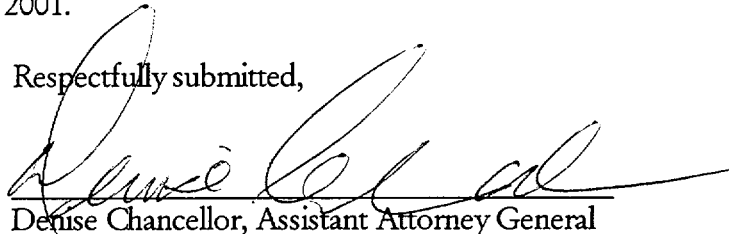
## CONCLUSION

The scope of Contention V concerns the merits of the transportation impact analysis in the ER and the DEIS. The State has raised numerous relevant and disputed material facts that the Staff did not address in its PFS-specific considerations the DEIS. Hence,

PFS is not entitled to summary disposition as a matter of law and the matter should be set for hearing.

DATED this May 25, 2001.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Denise Chancellor", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S REPLY TO STAFF'S RESPONSE TO APPLICANT'S MOTION FOR SUMMARY DISPOSITION OF UTAH CONTENTION V was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 15th day of May, 2001:

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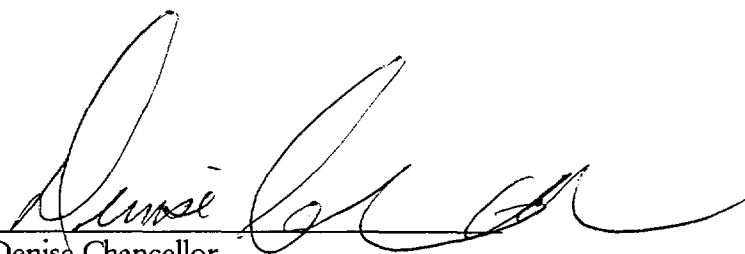
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