

RAS 3615

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

LBP-01-34

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 11/30/01

Before Administrative Judges:

SERVED 11/30/01

G. Paul Bollwerk, III, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

In the Matter of

PRIVATE FUEL STORAGE, L.L.C.

(Independent Spent Fuel Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

November 30, 2001

MEMORANDUM AND ORDER
(Denying Motion for Summary Disposition
Regarding Contention SUWA B)

Pursuant to 10 C.F.R. § 2.749, applicant Private Fuel Storage, L.L.C., (PFS) has requested that summary disposition be entered in its favor regarding intervenor Southern Utah Wilderness Alliance's (SUWA) contention SUWA B, Railroad Alignment Alternatives. As admitted, contention SUWA B asserts that PFS, in its application for authorization to construct and operate a 10 C.F.R. Part 72 independent spent fuel storage installation (ISFSI) in Skull Valley, Utah, has failed adequately to develop and analyze a meaningful range of alternatives to the proposed Low Corridor rail spur as is required under the National Environmental Policy Act of 1969 (NEPA). The NRC staff supports the PFS summary disposition request, while SUWA opposes the request.

For the reasons set forth below, the Board denies the PFS request for summary disposition relative to contention SUWA B.

I. BACKGROUND

As the Licensing Board outlined in LBP-98-29, 48 NRC 286, 289 (1998), in its initial June 1997 license application for its proposed ISFSI, PFS put forward two methods -- truck and rail -- for transporting shipping casks containing nuclear reactor spent fuel to the Skull Valley area from the Union Pacific mainline that runs along the southern shore of the Great Salt Lake. Relative to the latter option, in that application PFS proposed construction of a rail spur from near the Rowley Junction Interstate 80 (I-80) interchange that would run south, parallel to the existing Skull Valley Road that roughly bisects the Skull Valley, and then west onto the reservation of intervenor Skull Valley Band of Goshute Indians (Skull Valley Band) where the facility would be located. In August 1998, however, PFS filed a licensing amendment application requesting to make what has been labeled the Low Junction or Low Corridor rail spur the preferred rail transportation route. That route would run from Skunk Ridge, near the Low, Utah I-80 interchange, south along the western side of Skull Valley, and finally onto the Skull Valley Band reservation.

In response to this development, intervenor SUWA sought to enter this proceeding and filed two contentions challenging the proposed licensing amendment. The Licensing Board granted SUWA party status and admitted one of SUWA's two proffered contentions, contention SUWA B. See LBP-99-3, 49 NRC 40, aff'd, CLI-99-10, 49 NRC 318 (1999). Contention SUWA B, which was admitted by the Board relative to the issue of the alignment alternatives for the proposed railroad spur, states:

The License Amendment fails to develop and analyze a meaningful range of alternatives to the Low Corridor Rail Spur and the associated fire buffer zone that will preserve the wilderness character and the potential wilderness designation of a

tract of roadless Bureau of Land Management (BLM) land - the North Cedar Mountains - which it crosses.

Id. at 53.

In June 2000, the staff issued its draft environmental impact statement (DEIS) regarding the proposed PFS facility. See 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 (June 200) [hereinafter DEIS]. In its DEIS, the staff discussed the use of the railroad spur to transport spent fuel to the storage facility and the proposed location of the rail line. See id. at 2-12 to -14.

Based upon the DEIS, PFS filed the instant motion, supported by a statement of material facts not in dispute, claiming there is no genuine issue of material fact in dispute with respect to the concerns raised in contention SUWA B and that a decision on the merits should be entered in favor of PFS on that contention. [PFS] Motion for Summary Disposition of Contention SUWA B - Railroad Alignment Alternatives (June 29, 2001) [hereinafter PFS Motion]. In its motion, PFS alleges that the United States Department of the Interior's Bureau of Land Management (BLM) considered and rejected the nearby North Cedar Mountain Area (NCMA) for designation as a protected wilderness area under the Wilderness Act of 1964, 16 U.S.C. §§ 1131-1136, and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1784; therefore, the purported impact of the Low Corridor rail spur alignment on the NCMA's wilderness designation is moot. See PFS Motion at 8. In addition, PFS claims to have considered a number of "reasonable alternative" alignments for the rail line, but determined that the Low Corridor rail spur was the preferable alternative. See PFS Motion at 9.

On July 19, 2001, in its response to the PFS summary disposition motion, the staff declared its support for the PFS request. See NRC Staff's Response to [PFS] Motion for

Summary Disposition of Contention SUWA B -- Railroad Alignment Alternatives (July 19, 2001) [Staff Response]. In its response, the staff agrees that the potential for designation of the NCMA as a wilderness area is speculative and so does not warrant consideration of additional alternatives. See Staff Response at 11. In addition, the staff contends that alternative alignments were adequately considered in the DEIS. See id. at 8.

In its July 23, 2001 response, SUWA opposes the PFS dispositive motion regarding contention SUWA B, asserting it is premature and not based on undisputed material facts. See [SUWA] Response (and Objection) to [PFS's] Motion for Summary Disposition of SUWA's Contention B (July 23, 2001) at 4, 8 [hereinafter SUWA Response]. In addition, SUWA argues that both PFS and the NRC have failed to consider a reasonable range of alternatives for the Low Corridor rail spur. See id. at 7.

II. ANALYSIS

A. Standard for Summary Disposition Review

The standard governing motions for summary disposition is well established and has been used repeatedly by this Licensing Board in ruling on previous PFS Motions, and we again will rely upon that standard in this matter:

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).

LBP-99-23, 49 NRC 485, 491 (1999).

With this precedent in mind, the Board addresses the PFS summary disposition motion regarding contention SUWA B.

B. Contention SUWA B

1. PFS Position

In response to SUWA's contention that PFS has failed to develop a meaningful range of alternatives to the Low Corridor rail spur, PFS submits twenty-six purported undisputed material facts to demonstrate that there has been an adequate consideration of rail spur alternatives so as to merit the entry of summary disposition in its favor. See PFS Motion, Statement of Material Facts on Which No Genuine Dispute Exists. In support of this result, PFS first argues that in 1980 the BLM considered and rejected the NCMA for designation as a wilderness area on the basis that human imprints and developments had hampered the opportunity for solitude and recreational activity in the NCMA. See PFS Motion at 7. Thereafter, in 1999 the BLM reassessed Utah lands for possible wilderness area designation, but again did not include the NCMA. See id. at 8. Given this clear BLM rejection of the NCMA as a wilderness area, PFS asserts, SUWA's concern that the proposed rail line would hamper any future potential for wilderness designation is moot.

In addition, PFS contends that a decision regarding contention SUWA B should be entered in its favor because PFS has adequately considered and rejected all reasonable alternatives to the proposed rail line. See id. at 9. According to PFS, the alternatives it has considered are the proposed Low Corridor spur line; a different alignment slightly to the east of the proposed Low Corridor rail spur; an alignment that would run through the middle of Skull Valley; and four alignments that would run through the eastern portion of Skull Valley.

As was noted earlier, the Low Corridor alignment, which PFS proposes to implement, connects the planned ISFSI facility with the Union Pacific railroad mainline at Low Junction, Utah.¹ As advanced by PFS, this alignment would isolate the far easternmost portion of the NCMA, with the result that the area thereafter would be legally precluded from consideration as a statutorily-protected wilderness area.² Relative to the alternative central alignment that would run from the existing Union Pacific mainline through the center of the Skull Valley, according to PFS this alignment would require construction of a bridge to cross I-80 and acquisition of a permit from the United States Army Corps of Engineers to cross an area of wetlands, which PFS maintains the Corps of Engineers will be reluctant to grant. See PFS Motion at 12 (citing 40 C.F.R. § 230.10(a)). Further, in connection with the four eastern alignments that would begin at various points along the Union Pacific mainline north of Skull Valley and run south along the east side of the Skull Valley road, PFS declares these alignments were rejected because they also would require crossing I-80 and would adversely affect wetlands at Horseshoe Springs as well as neighboring homes and ranches.

In addition to these rail spur siting alternatives, PFS claims to have considered another alternative alignment, which it labels the West Skull Valley Alternative. Although the West Skull Valley Alternative is similar to the Low Corridor alignment, to avoid the NCMA it runs 2,000 to 3,000 feet to the east of the proposed Low Corridor rail spur for roughly 6.5 miles. See PFS Motion, attach. at 5 (Declaration of Douglas Hayes) [hereinafter Hayes Declaration]. According to PFS, pushing the alignment east requires careful routing to avoid a parcel of State-owned

¹ The proposed Low Corridor alignment is described in DEIS § 2.1.1.3.

² According to PFS, the Wilderness Act of 1963 requires all wilderness areas to be roadless areas of 5000 acres or more. As a consequence, the proposed alignment that would “cut off” the easternmost section of NCMA would preclude that section from being considered as a wilderness area, although the remainder of the NCMA could still be designated because it would exceed the 5000 acres requirement. See PFS Motion at 6.

land near the northern section of the NCMA, which PFS indicates it would not utilize because of the State's opposition to its proposed ISFSI, and a large section of wetlands (i.e., mudflats) near the southern portion of the NCMA, which it would avoid to avert the potential environmental impacts that could occur.³ PFS also claims that, in contrast to the proposed Low Corridor alignment in which the material needed to be "cut" to level portions of the rail bed is approximately equal to the material needed to "fill" other bed portions to make them level, the West Skull Valley Alternative would require PFS to bring from offsite an additional 260,000 cubic yards of "fill" earth to level the rail corridor, raising the cost of construction fifteen to twenty-five percent. See PFS Motion at 11; Hayes Declaration at 6-7. Also, according to PFS, although a number of the environmental impacts (e.g., noise, flora and fauna, air pollution, resources consumption) involved in the West Skull Valley Alternative are similar to the Low Corridor alignment, the additional fill would adversely affect the surrounding environment to a greater degree. This is so, PFS claims, because construction of that alignment would result in berms up to twenty feet high that would increase the visual impact of the rail line as well as block access to surrounding land and roads to the west, thereby potentially interfering with wildlife and cattle grazing and wildfire fighting. As a result, PFS concludes this alignment should be rejected in favor of the Low Corridor alignment. See PFS Motion at 11-12.

2. Staff Position

The staff indicates that after reviewing the PFS statement of material facts it agrees with Material Fact Nos. 6-9 and 17-26, but does not express a position on Material Fact Nos. 10-16, which concern the PFS analysis of the proposed West Skull Valley Alternative. See Staff Response at 8. Specifically, in support of the PFS assertions that reasonable alternatives to

³ PFS contends that it is not credible to plan a rail line alternative through State-owned lands because of the "State's vehement opposition to this project." PFS Motion at 11.

the Low Corridor alignment have received sufficient consideration, the staff declares that the DEIS “explicitly” considered two alternatives to the proposed alignment. Id. at 9. According to the staff, the DEIS considered one new rail corridor that would run along the eastern side of Skull Valley (along Skull Valley Road) and another that would use an existing rail line east of the Stansbury Mountains, which are on the eastern side of Skull Valley, and a newly constructed rail corridor between 1-80 and the north end of the mountains that would continue south along the eastern side of the Skull Valley Road. The staff claims that neither the eastern nor the northern alternative was considered acceptable due to their likely impact upon the Horseshoe Springs wetlands and the surrounding homes and ranches near the Skull Valley Road, while the northern line, the staff declares, would require substantial excavation at the north end of the Stansbury mountains. According to the staff, when compared to the proposed Low Corridor alignment, both alternatives would involve greater environmental impacts. See id. at 10.

The staff also notes that while it did not afford DEIS consideration to the West Skull Valley Alternative outlined by PFS in its summary disposition motion, staff expert Gregory P. Zimmerman is satisfied with the conclusions drawn by PFS concerning this alternative. See Staff Response at 3 n.3. For his part, Mr. Zimmerman indicates that the staff was not given specific design details for this additional western alignment and hence is unable to fully evaluate the proposed alternative. See Staff Response, unnumbered attach. at 5 (Affidavit of Gregory P. Zimmerman Concerning Contention SUWA B) [hereinafter Zimmerman Affidavit]. Moreover, because the staff did not fully evaluate the proposed alternative, Mr. Zimmerman declares the staff cannot express an opinion on Material Fact Nos. 10-16. Nonetheless, he declares he agrees with the PFS conclusion that the West Skull Valley Alternative would result in similar or greater impacts to the environment than the Low Corridor alignment. See id.

Also in support of the PFS motion, the staff maintains that, given the previous BLM review and rejection of the NCMA for designation as a wilderness area, consideration of additional alternatives is unwarranted as “entirely speculative.” Staff Response at 11. According to the staff, a possible change in legislation or policy that would compel consideration of an additional alternative does not require consideration in the DEIS under the well-established NEPA “rule of reason” analysis. See id. at 14 (citing Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 145-46 (1993)). The staff thus concludes that this speculative possibility of wilderness designation does not require consideration in the DEIS. See id.

3. SUWA Position

In its response in opposition to the PFS motion, SUWA claims initially that the PFS motion is premature. SUWA contends that in affirming the Licensing Board’s admission of contention SUWA B in CLI-99-10, the Commission acknowledged that NEPA requires PFS and the staff to perform an analysis of reasonable alternatives, which SUWA asserts must be done in the context of the final environmental impact statement (FEIS) for the proposed PFS facility. Because the staff has not yet completed the FEIS, SUWA claims that at this point in the proceeding its contention is not ripe for a decision on the merits. See id. at 4.

SUWA also argues that the PFS presentation of the West Skull Valley Alternative, which was put forth for the first time in the PFS dispositive motion, cannot be incorporated into the DEIS. See id. at 5. SUWA contends that the PFS presentation was not “an objective presentation of the pros and cons” for that alternative, but instead is “a justification of the Low Corridor alignment and a vigorous argument as to why that new alternative is not worthy of further consideration.” Id. at 5-6. The PFS presentation, SUWA declares, is not sufficiently objective or informative to serve the NEPA purpose of instructing the public and the eventual

decision maker regarding the available reasonable alternatives to the PFS proposal. SUWA thus asserts this evaluation should not be incorporated into the DEIS and so cannot be the basis for summary disposition.

In addition, SUWA complains that PFS and the staff have not adequately considered other reasonable alternatives to the proposed Low Corridor rail spur. See id. at 6. SUWA states that the DEIS “consider[ed]” and dismissed two alternatives by only giving them “short shrift shows” of consideration. Id. And in doing so, SUWA claims the staff failed to formulate an alignment that would minimize the rail line right of way or fire buffer zones to reduce the impact these areas would have upon the “wilderness character” of the NCMA. See id. at 7. SUWA also argues that the agency did not formulate an alternative that, like the Low Corridor alignment, would originate at Skunk Ridge but not cross the NCMA. See id.

SUWA’s response further alleges that many of the material facts put forth by PFS are in dispute. In particular, SUWA contends that the PFS rejection of any alternative rail spur that would cross State-owned land is based upon an “incorrect assumption.” Id. at 8. Focusing on the Western Skull Valley Alternative, SUWA states that the parcel of land PFS asserts constrains that alignment is “State school trust land” that the State by law must manage in a manner that will “maximize[] monetary return.” Id. at 9 (citing National Parks and Conservation Assoc. v. Board of State Lands, 869 P.2d 909, 920 (Utah 1993)). According to SUWA, because of the land’s status, the State cannot consider its own opposition to the PFS project when evaluating a PFS request to use the land, but must act in a manner that will maximize the benefits for the State’s school system. SUWA thus concludes that, contrary to the stated PFS assumption, the use of the State-owned land is not per se unreasonable so as to excuse the need for any further consideration of alignments crossing such land.

SUWA's final argument in opposition to the PFS dispositive motion responds to the applicant's position that BLM and congressional refusal to designate NCMA as a wilderness area renders contention SUWA B moot. This assertion, SUWA contends, was previously addressed in LBP-99-3 in which the Board indicated that because the NCMA displays wilderness characteristics, the staff must consider alternatives that would minimize impacts upon these characteristics, regardless of whether the BLM or the Congress plans to approve SUWA's petition for wilderness designation. See id. at 11. Furthermore, SUWA argues, considerable congressional support does exist for protecting the NCMA with a wilderness designation, thus establishing that contention SUWA B is not moot.

C. Board Ruling

Addressing first the PFS and the staff claims that in previous evaluations the BLM and the Congress have failed to acknowledge NCMA as a wilderness area, thereby rendering contention SUWA B moot, we note that, as SUWA indicates, this issue previously was raised by both PFS and the staff and addressed by the Board in admitting contention SUWA B. As we stated in LBP-99-3, 49 NRC at 51 n.6 (citation omitted):

Both PFS and the Staff maintain that the fact BLM previously declined to designate the area in question as potential 'wilderness' area for further consideration by Congress renders speculative any SUWA injury in losing the opportunity to have the land designated for protection. As we have noted, however, in the context of NEPA, even absent the FLPMA statutory scheme, there would be a need to consider the natural state of the land and alternatives, if any, that would be available to preserve that status.

Having already ruled on this issue, the Board sees no reason to reconsider its determination at this time.⁴

⁴ Given that there has been no statutory wilderness designation regarding the NCMA, in any further litigation concerning this contention the question of the "natural state" of the area at issue will be a matter for party presentations via direct and/or cross-examination testimony.

While SUWA thus has the better of this argument, its approach to the merits of the balance of the PFS claims in support of its motion leaves much to be desired. The Commission's rules of practice make it clear that in opposing a motion for summary disposition, a party must annex a short and concise statement of material facts upon which it contends that there is a genuine issue to be heard. See 10 C.F.R. § 2.749(a). Moreover, under these regulations, all material facts set forth in the moving party's statement will be deemed admitted unless controverted in a statement of disputed material facts submitted by the opposing party. See id. In this instance, although PFS submitted twenty-six material facts about which PFS claims no genuine dispute exists, in responding to the PFS motion SUWA provided only a legal brief without the required statement of material facts in dispute. Thus, on the basis of the SUWA submission, in accord with section 2.749(a) the Board would be justified in finding all twenty-six material facts submitted by PFS as not in dispute. Nonetheless, this SUWA pleading defect turns out not to be controlling because another deficiency pertaining to the staff's evaluation of the alternative routes to the Low Corridor alignment, in particular the recently proposed West Skull Valley Alternative, makes the entry of summary disposition inappropriate in this instance.

In the context of the environmental impact statement drafting process, when a reasonable alternative has been identified it must be objectively considered by the evaluating agency so as not to fall victim to "the sort of tendentious decisionmaking that NEPA seeks to avoid." I-291 Why? Ass'n v. Burns, 372 F. Supp. 223, 253 (D. Conn. 1974), aff'd, 517 F.2d 1077 (2d Cir. 1975). In this vein, 10 C.F.R. § 51.70(b) requires that for a DEIS, the NRC staff must independently evaluate, and is responsible for the reliability of, all the

information used in the DEIS.⁵ As was noted above, in the DEIS for the proposed PFS facility, the staff considered two alternatives to the Low Corridor alignment: a corridor originating in the northern portion of Skull Valley and a corridor that would run through the eastern section of Skull Valley. See DEIS at 2-42 to -43. In support of its motion for summary disposition relative to contention SUWA B, however, PFS presented a new western alternative bypassing the NCMA area in controversy that PFS asserts definitively establishes all reasonable alternatives have been given consideration. This alternative was not analyzed by the staff in the DEIS.⁶ Indeed, in responding to the PFS dispositive motion, although the staff's supporting witness indicated satisfaction with the PFS evaluation of this alignment, he also acknowledged that the staff has not fully evaluated this proposed western alternative. See Zimmerman Affidavit at 5. The staff echoed this characterization, indicating that this shortcoming precluded it from

⁵ 10 C.F.R. § 51.70(b) provides:

The draft environmental impact statement will be concise, clear and analytic, will be written in plain language with appropriate graphics, will state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of NEPA and of any other relevant and applicable environmental laws and policies, will identify any methodologies used and sources relied upon, and will be supported by evidence that the necessary environmental analyses have been made. The format provided in section 1(a) of appendix A of this subpart should be used. The NRC staff will independently evaluate and be responsible for the reliability of all information used in the draft environmental impact statement.

⁶ In this regard, we note that the total number of alternatives to the Low Corridor alignment considered by PFS, at least as characterized in its summary disposition motion, apparently does not coincide with the number discussed by the staff in its DEIS. Compare PFS Motion at 9 (six rail alignment alternatives) with Staff Response at 9 (two rail alignment alternatives).

expressing an opinion on the validity of the PFS material factual statements regarding this alternative alignment.⁷ See Staff Response at 8.

There thus remains a deficiency relative to the agency's NEPA process that precludes the Board from making a merits determination that all reasonable alternatives to the proposed Low Corridor alignment have been adequately developed and analyzed as is required by NEPA.⁸ Accordingly, summary disposition of contention SUWA B is inappropriate at this juncture.⁹

III. CONCLUSION

Relative to the June 2000 DEIS, because there is a deficiency in connection with the sufficiency of the staff analysis of at least one Low Corridor rail spur alignment alternative

⁷ To whatever degree the Licensing Board may be able to revise/supplement the agency's environmental impact analysis pro tanto in rendering a summary disposition ruling, that authority does not extend to the particular shortcoming associated with staff compliance with section 51.70(b) that is extant in this proceeding.

⁸ Although the focus of our ruling here is the sufficiency of the discussion of rail spur alternatives in light of the West Skull Valley Alternative proposed by PFS in its dispositive motion, nothing in this ruling precludes further litigation regarding the expressed SUWA concern about the sufficiency of the environmental impact analysis of fire buffer zone alignment alternatives or the validity of the PFS premise that State lands are unavailable for rail spur use. See SUWA Response at 7, 8-10.

⁹ Given our ruling in this regard, we need not reach the question of whether, as SUWA suggests, in the NEPA context we are precluded from granting the PFS summary disposition request because an FEIS has not yet been issued. We note, however, that to the degree the SUWA objection regarding the appropriateness of summary disposition at this juncture is based on a concern about the ability of a party to contest subsequent changes in the FEIS, it does not account for the availability of a late-filed contention as a means to challenge any significant change that occurs between the DEIS and the FEIS. See 10 C.F.R. § 2.714(b)(2)(iii).

proffered in support of the PFS request for summary disposition regarding contention SUWA B, Railroad Alignment Alternatives, we deny the PFS dispositive motion.

For the foregoing reasons, it is this thirtieth day of November 2001, ORDERED, that the June 29, 2001 motion of PFS for summary disposition of contention SUWA B is denied.

THE ATOMIC SAFETY
AND LICENSING BOARD¹⁰

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

/RA/

Jerry R. Kline
ADMINISTRATIVE JUDGE

/RA/

Peter S. Lam
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Rockville, Maryland

November 30, 2001

¹⁰ Copies of this memorandum and order were sent this date by Internet e-mail and/or facsimile transmission to (1) applicant PFS; (2) intervenors Skull Valley Band, Ohngo Gaudadeh Devia, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State; and (3) the staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (DENYING MOTION FOR SUMMARY DISPOSITION REGARDING CONTENTION SUWA B) (LBP-01-34) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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Docket No. 72-22-ISFSI
LB MEMORANDUM AND ORDER
(DENYING MOTION FOR SUMMARY
DISPOSITION REGARDING
CONTENTION SUWA B) (LBP-01-34)

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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

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