RAS 3660

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

LBP-01-37

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, L.L.C.	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel Storage Installation)	December 13, 2001

MEMORANDUM AND ORDER
(Denying Motion for Admission of Late-Filed Contention Utah RR
and Referring Ruling to the Commission)

In this proceeding regarding the pending application of Private Fuel Storage, L.L.C., (PFS) for permission to construct and operate a 10 C.F.R. Part 72 independent spent fuel storage installation (ISFSI) in Skull Valley, Utah, before the Licensing Board is a request by intervenor State of Utah (State) to admit late-filed contention Utah RR, Suicide Mission Terrorism and Sabotage. With this contention, the State seeks to litigate safety and environmental challenges relating to the September 11, 2001 attacks by foreign terrorists upon the World Trade Center buildings in New York, New York, and the Pentagon building in the Washington, D.C. metropolitan area. In response to this State request, intervenor Ohngo Gaudadeh Devia (OGD) supports admission of the contention, while both PFS and the NRC staff oppose its acceptance based upon either a balancing of the five late-filing factors in 10 C.F.R. § 2.714(a)(1) or the purported State failure to submit a properly framed and supported issue statement.

For the reasons set forth below, we deny admission of this contention but, in accordance with 10 C.F.R. § 2.730(f), refer this ruling to the Commission for its further consideration.

I. BACKGROUND

We will not recount in any detail the horrific yet well-known events of September 11, 2001, that clearly are the genesis of the State's October 10, 2001 motion to admit late-filed contention Utah RR. Nor will we recount in detail the various prior Board rulings on contentions relating to terrorism or sabotage filed by the State and other intervening parties, except to note that heretofore we have found those contentions, as framed, generally inadmissible. See LBP-99-43, 50 NRC 306, 316 n.3 (1999); LBP-98-13, 47 NRC 360, 372 (1998); LBP-98-10, 47 NRC 288, 296 (1998); LBP-98-7, 47 NRC 142, 186, 199, 216, 226, 233-34, aff'd on other grounds, CLI-98-13, 48 NRC 26 (1998). With its late contention Utah RR, Suicide Mission Terrorism or Sabotage, the State now seeks the admission of the following issue statement:

> The Applicant, in its Safety Analysis Report [(SAR)], and the Staff, in its Safety Evaluation Report [(SER)], have failed to identify and adequately evaluate design basis external man-induced events such as suicide mission terrorism and sabotage, "based on the current state of knowledge about such events" as required by 10 CFR § 72.94 (emphasis added). In addition, the scope of the Applicant's Environmental Report and the Staff's Draft Environmental Impact Statement is too limited to comply with the National Environmental Policy Act [(NEPA)] and 10 CFR §§ 72.34, 51.45, 51.61 and 51.71 because they do not adequately identify and evaluate any adverse environmental effects which cannot be avoided from attacks by suicide mission terrorism or sabotage.

[State] Request for Admission of Late-Filed Contention Utah RR (Suicide Mission Terrorism and Sabotage) (Oct. 10, 2001) at 3 [hereinafter State Motion].

Relative to the five section 2.714(a)(1) late-filing factors, the State asserts that the events of September 11, 2001, establish that a new level of terrorism and sabotage are now

reasonably foreseeable so as to provide an appropriate trigger for its contention and that its submission of the contention within thirty days of that date meets the "good cause" standard, thereby making this first factor one that weighs in its favor. With respect to factor two, although recognizing that it has also submitted to the Commission a separate, pending petition to suspend this proceeding based on the same terrorism/sabotage concerns, the State contends that Commission denial of the petition would leave it with only this contention as a means for gaining consideration of its concerns in this proceeding, thus putting this factor on the admissibility side of the late-filing balance as well. The same is true with respect to factor three, according to the State, because its contention is supported by Radioactive Waste Management Associates Senior Associate Dr. Marvin Resnikoff who has extensive experience in radiological risk assessment and in analyzing the PFS storage and transportation systems, which would provide the basis for his testimony addressing how PFS current designs would fail if subjected to a September 11, 2001-type attack. The State places late-filing factor four on its side of the balance too, declaring that no other party will represent its interests since no other party has a terrorism contention. Finally, as to factor five, the State acknowledges that admission of contention Utah RR would broaden and delay this proceeding, but declares that this factor should not be weighed against admission because the issues raised are critical to ensuring protection of the public health and safety and compliance with NEPA. See id. at 14-15.

In support of the contention itself, the State asserts that the events of September 11, 2001, establish that "a suicide mission to crash a hijacked commercial airliner loaded with jet fuel into a nuclear facility is a reasonably foreseeable event." Id. at 3. Noting various nuclear facility-related federal government and international organization reactions to those events, including the NRC's commitment to review and make appropriate changes to its security regulations and procedures, the State asserts the need for "a new evaluation of the design

basis external man-induced events [(DBEMIE)] from suicidal terrorism and sabotage, as required by 10 CFR §§ 72.34, 72.94, 51.45(b)(1) & (2)." Id. at 4. In this regard, although asserting that it is not challenging existing agency regulations, the State nonetheless maintains that, given the events of September 11, 2001, the Commission's Atomic Energy Act and NEPA mandates to protect the public health and safety and consider adverse environmental effects would be abrogated by continued agency review of the PFS application without new DBEMIE-related siting criteria and NEPA analyses that focus on suicide terrorist activities. This is particularly so, according to the State, because (1) the PFS facility, which could eventually be the storage place for the current United States inventory of commercial spent nuclear fuel, is to be in the middle of Skull Valley, surrounded by vital national security facilities such as the Utah Test and Training Range, Dugway Proving Ground, Deseret Chemical Depot, and the Tooele Army Depot, and is near commercial jetways, thus presenting an opportune suicide mission target; see id. at 9-10; (2) the transportation routes to the facility, whether by rail or highway, would present an ideal terrorist target, see id. at 10; and (3) the casks in which the spent nuclear fuel (SNF) is to be shipped and stored, and the canister transfer building and the intermodal transfer point in which these casks would be housed during portions of the shipping and storage process, are not designed to withstand a direct commercial airliner impact or any resulting fuel fire, which would result in a release of radioactive material that would exceed the five-rem standard established in 10 C.F.R. § 72.106, see id. at 11-13. Finally, according to the State, in light of the agency's determination to review security measures across the board, impacts of terrorist threats to the PFS facility and transportation routes from such items as truck bombs, anti-tank and armor piercing weapons, and multi-member, inter-coordinated attacks should be identified and adequately evaluated in the context of the agency's safety and environmental reviews. See id. at 13-14.

Subsequently, in a short response intervenor OGD supports the State's request and seeks to join in the State's contention. See OGD Response to [State] Request for Admission of Late-Filed Contention Utah RR (Suicide Mission Terrorism and Sabotage) (Oct. 24, 2001) at 1.

Applicant PFS, on the other hand, opposes admission. Albeit not addressing the late-filing factors, PFS nonetheless declares that the proposed contention is inadmissible for a number of reasons, including (1) being an impermissible challenge to the agency's security regulations, including 10 C.F.R. § 73.51, see Applicant's Response to [State] Request for Admission of Late-Filed Contention Utah RR (Oct. 24, 2001) at 4-8; (2) being based on a misreading of section 72.94, which concerns evaluation of potential accidents associated with normal human activity near a proposed facility site, not deliberate attacks upon the facility, see id. at 8-9; (3) being an impermissible challenge to the agency's NEPA regulations and outside the scope of NEPA in that NEPA does not require the assessment of remote and speculative impacts such as would arise relative to terrorism and sabotage; see id. at 9-10; (4) being an impermissible challenge to the staff's license application evaluation process as embodied in its SER, see id. at 11; (5) being an improper attempt to raise transportation issues that are outside the scope of the proceeding, see id. at 11; (6) lacking the requisite factual basis in that it (a) fails to establish any likelihood that the PFS facility is more apt to be subject to attack as compared to other nuclear facilities, (b) fails to account for the remote location of the facility or the angle at which a crashing airliner is likely to strike, (c) is based on erroneous information about the ability of storage casks to withstand fires, (d) improperly assumes that an aircraft impact would have the same effects as a 2000-pound bomb, and (e) provides no factual support for its assertion that other types of terrorist activities, e.g., truck bombs, are reasonably foreseeable in light of the activities of September 11, 2001, see id. at 12-13; and (7) seeking to

litigate a matter currently under Commission review that may be the subject of a general rulemaking, see id. at 13-14.

The staff likewise asserts that the State's request should be rejected for failing both to meet the section 2.714(a)(1) late-filing standards and to proffer an admissible issue statement. See NRC Staff's Response to [State] Request for Admission of Late-Filed Contention Utah RR (Suicide Mission Terrorism and Sabotage) (Oct. 26, 2001) at 15. In connection with the late-filing standards, the staff asserts that while the first and fourth factors -- good cause and representation by other interests -- favor permitting late-filing, the other three factors do not and, in fact, tilt the overall balance in favor of not admitting contention Utah RR. Further, regarding the contention itself, the staff contends it is inadmissible as a challenge to the agency's physical security regulations, which the staff declares do not require PFS to address terrorist attacks like the events of September 11, and contravenes 10 C.F.R. § 2.758(a) as it governs the consideration of Commission rules in adjudicatory proceedings. See id. at 7-9. Also mistaken, the staff asserts, is the State's reliance on 10 C.F.R. § 72.94 as a basis for its contention, which the staff maintains requires consideration of past or present man-made facilities and activities in the context of a facility siting determination and thus has no applicability here given that no terrorist events have occurred in the region of the PFS facility. See id. at 9-10. So too, the staff asserts, it is not apparent that the events of September 11, 2001, must be considered for the Commission to make the requisite public health and safety reasonable assurance finding under 10 C.F.R. § 72.40(a)(13) if PFS can demonstrate it has satisfied existing regulations and applicable law. See id. at 10. And as for the State's concerns about the shipping casks, the staff declares that these matters are covered by 10 C.F.R. Part 71 and United States Department of Transportation regulations so as to be outside the scope of this proceeding. See id. at 11.

Additionally, according to the staff, the State's claims regarding the NEPA aspects of its contention are misplaced given its failure to make any showing, other than unsupported speculation, that an actual, September 11-type terrorist attack directed against the PFS facility is a "reasonably foreseeable event." Indeed, the staff asserts, "there is no rational means by which a decision-maker can reasonably predict or foresee that such an attack will be targeted against any particular (nuclear or other) facility" and, as such, the potential for terrorist attack need not be addressed under NEPA. Id. at 12. Moreover, the staff contends that the State has provided no support for its view that additional types of terrorist attacks, such as truck bombs, are required to be included in the facility design basis or as reasonably foreseeable events subject to NEPA analysis. See id. at 13. Finally, the staff maintains that the issues framed by contention Utah RR are best considered in the context of a rulemaking or some other generic Commission review, any resulting requirements from which would be applicable to PFS and other applicants or licensees as appropriate. See id. at 13-14.

II. ANALYSIS

A. Section 2.714(a)(1) Late-Filing Factors

Previously, in considering the admissibility of a late-filed issue statement such as this one, we described the applicable late-filing standards as follows:

> To justify a presiding officer's consideration of the "merits" of a late-filed contention, i.e., whether the contention fulfills the admissibility standards specified in 10 C.F.R. § 2.714, a party must demonstrate that a balancing of the five factors set forth in section 2.714(a)(1)(i)-(v) supports acceptance of the petition. The first and foremost factor in this appraisal is whether good cause exists that will excuse the late-filing of the contention. See Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 244 (1986). And relevant to our evaluation of that factor here, as we have noted previously (albeit in a somewhat different context), the good cause element has two components that impact on our assessment of the

> timeliness of a contention's filing: (1) when was sufficient information reasonably available to support the submission of the late-filed contention; and (2) once the information was available, how long did it take for the contention admission request to be prepared and filed. See LBP-99-3, 49 NRC 40, 46-48 (assessing late-filing factors relative to petition to intervene), aff'd, CLI-99-10, 49 NRC 361 (1999). Moreover, relative to the other four factors, in the absence of good cause there must be a compelling showing on the four remaining elements, of which factors two and four -- availability of other means to protect the petitioner's interest and extent of representation of petitioner's interest by other parties -- are to be given less weight than factors three and five -- assistance in developing a strong record and broadening the issues/delaying the proceeding. See Braidwood, CLI-86-8, 23 NRC at 244-45.

LBP-00-27, 52 NRC 216, 220-21 (2000).

In this instance, concerning the first and most significant section 2.714(a)(1) factor -- good cause for late-filing -- the State has established that this element rests on the admissibility side of the balance, at least with respect to the State's concerns regarding a September 11-type terrorist airliner attack. Good cause exists for such a filing, both as to the "trigger" and "timing" portions of this factor.

As to the four remaining factors, we agree with the staff that factor four -- extent of representation of petitioner's interests by other parties -- weighs in the State's favor. We disagree with the staff, however, in connection with the other three factors. With respect to factor two -- availability of other means to protect the State's interests -- although its pending Commission petition has the potential to afford the State some relief, given the general reluctance of the Commission to intervene in ongoing adjudicatory proceedings, see Connecticut Yankee Atomic Power Co. (Haddam Neck Plant License Termination Plan), CLI-01-25, 54 NRC __, __ (slip op. at 6-7) (Dec. 5, 2001), we see this as providing little, if any, support for denying admissibility at this juncture. The same is true with regard to factor three -- contribution to development of a sound record. In his presentation in support of contention

Utah RR, Dr. Resnikoff provides an analysis of the asserted vulnerability of the PFS storage casks and cask handling facilities to a September 11-type attack and the radiological consequences that purportedly would result. See State Motion exh. 2 (Declaration of Dr. Marvin Resnikoff in Support of Utah RR). If the events of September 11, 2001, are considered sufficient to establish the reasonable foreseeability of such an incident at the PFS facility, then the information he apparently would intend to provide regarding the physical consequences for the PFS facility and the ensuing radiological impacts could make a record development contribution. Finally, regarding factor five -- broadening the issues and delaying the proceeding -- as the staff notes, admission of this contention would have a substantial impact upon the existing scope of, and schedule for, this proceeding. It also is apparent, however, that the issue proffered, if admissible, is a matter of sufficiently serious moment so as to temper this factor as a significant ingredient against late admission of this contention.

Accordingly, we conclude that a balancing of the five late-filing factors in section 2.714(a)(1) supports admission of contention Utah RR as it relates to a September 11-type terrorist attack.[1]

B. Contention Admissibility Standards

Of course, establishing that a balancing of the section 2.714(a)(1) late-filing factors supports admission is only part of the burden faced by an intervenor seeking to gain entry of a late-filed contention. There is also the matter of the admissibility of the contention itself under the standards established in section 2.714(b)(2), (d)(2) and the Commission's caselaw interpreting those requirements. Although PFS and the staff provide a variety of arguments in

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[1] On the other hand, relative to the State's additional concerns about other purported terrorist activities such as truck bombs, good cause is lacking for the admission of these items. With this most prominent factor weighing against admission, an assessment and balancing of the other late-filing factors would not result in the type of compelling showing that is necessary to gain entry into this proceeding.

this instance as to why both the safety and environmental aspects of contention Utah RR are not admissible, for the reasons set forth below we find one to be dispositive, i.e, that the contention constitutes an impermissible challenge to existing agency regulatory requirements. See Dominion Nuclear Connecticut Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC __, __ (slip op. at 21) (Dec. 5, 2001) (contention that amounts to general attack on regulations is impermissible).

As we noted previously, we have sustained this particular objection relative to number of other contentions submitted by the State and other intervenors seeking to litigate safety and environmental issues relating to sabotage and terrorism. The question squarely posed by the contention Utah RR, however, is whether the events of September 11, 2001, provide a basis for now permitting litigation on sabotage/terrorism-related safety and/or environmental matters. Given existing Commission regulations, we conclude they do not.

Parts 72 and 73 of title 10 of the Code of Federal Regulations set forth the physical security protection requirements for SNF storage at facilities like that proposed by PFS. Specifically, 10 C.F.R. §§ 72.180, 72.184 provide that an applicant such as PFS must "establish, maintain and follow a detailed plan for physical protection as described in § 73.51" and a "safeguards contingency plan for responding to threats and radiological sabotage" as described in Appendix C to Part 73. With regard to the physical protection plan, section 73.51(b)(1) states that an applicant for an away-from-reactor ISFSI (such as that proposed by PFS) must "establish and maintain a physical protection system with the objective of providing high assurance that activities involving spent nuclear fuel and high-level radioactive waste do not constitute an unreasonable risk to public health and safety." Moreover, under section 73.51(b)(2)(i)-(iv), to satisfy this general objective an applicant must meet certain specified performance capabilities, including SNF storage within a protected area (PA); PA

restricted access; detection and assessment of an unauthorized penetration of, or activities within, the PA; as necessary, timely communication with a designated response force; and effective physical protection organization management. Further, under section 73.51(b)(3), the facility physical protection system "must be designed to protect against loss of control of the facility that could be sufficient to cause a radiation exposure exceeding the dose as described in § 72.106." Finally, section 73.51(d) sets forth specific methods for meeting the section 73.51(b)(2) performance capabilities, with the caveat that other alternative measures may be authorized by the Commission. For the safeguard contingency plan, Appendix C to Part 73 outlines specific requirements, including describing a set of predetermined decisions and actions for responding to threats, thefts, and sabotage.

These standards in large measure come from a May 1998 final rule, 63 Fed. Reg. 26,955 (1998), that was intended to clarify requirements for protecting spent fuel at the various types of SNF and high-level radioactive waste storage sites licensed by the agency, including stand-alone ISFSIs like that proposed by PFS. Among other things, that rule added section 73.51 and its specific physical protection requirements. In doing so, however, in the statement of considerations regarding the rule, responding to a comment asking that the protection goal for these types of waste storage facilities should include countering the malevolent use of an airborne vehicle, the Commission declared:

> Inclusion of an airborne vehicle was assessed for possible inclusion into the protection goal for this rule. However, protection against this type of threat has not yet been determined appropriate at sites with greater potential consequences than spent fuel storage installations. Therefore, this type of requirement is not included within the protection goal for this final rule.

63 Fed. Reg. at 26,956. Thus, Commission seems clearly to have excluded the malevolent use of an airborne vehicle as part of any sabotage/terrorist threat that must be evaluated for these facilities, making admission of contention Utah RR as a safety issue problematic.

That this is an appropriate result under the agency's current regulatory regime is underscored by a comparison with the overall Commission approach regarding sabotage/terrorism events relating to power reactors, i.e., "sites with greater potential consequences than spent fuel storage installations." In this regard, 10 C.F.R. § 50.13 declares:

> An applicant for a license to construct and operate a production or utilization facility, or for an amendment to such license, is not required to provide for design features or other measures for the specific purpose of protection against the effects of (a) attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person, or (b) use or deployment of weapons incident to U.S. defense activities.

This provision, in turn, reflects the Commission's determination in the late 1960's to exclude from licensing consideration the need for an applicant to provide special design features or other measures to protect against enemy attacks and destructive acts. The basis for this exclusion, according to the Commission, was that

> the protection of the United States against hostile enemy acts is a responsibility of the nation's defense establishment and the various agencies of our Government having internal security functions. . . . One factor underlying our practice in this connection has been a recognition that reactor design features to protect against the full range of the modern arsenal of weapons are simply not practicable and that the defense and internal security capabilities of this country constitute, of necessity, the basic "safeguards" as respects possible hostile acts by an enemy of the United States.

Florida Power & Light Co. (Turkey Point Nuclear Generating Units No. 3 and No. 4), 4 AEC 9, 13 (1967), aff'd sub. nom, Siegel v. AEC, 400 F.2d 778 (D.C. Cir. 1968). There seems little doubt that the terrorist attacks of September 11, 2001, constituted acts by an

enemy or enemies of the United States, see Pub. L. No. 107-40, 115 Stat. 224 (Sept. 20, 2001), as would any similar acts directed against American nuclear facilities. As such, the existing Commission policy of excluding such acts from licensing determinations, except to the extent they fall within the already defined threat protection goals for the facility, see Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-27, 22 NRC 126, 137-38 (1985), appears applicable and controlling relative to any safety-related considerations.[2]

As we noted earlier, contention Utah RR also seeks to gain consideration of a September 11, 2001-type event in the context of the agency's NEPA responsibilities. Although this question is a close one and another Licensing Board has recently reached a somewhat different conclusion, see Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC __, __ (slip op. at 50-55) (Dec. 6, 2001), at this juncture we are persuaded, as the Appeal Board observed a number of years ago, that "the rationale for 10 CFR § 50.13 [is] as applicable to the Commission's NEPA responsibilities as it is to its health and safety responsibilities." Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 851 (1973); see also Limerick Ecology Action v. NRC, 869 F.2d 719, 743-44 (3d Cir. 1989) (sabotage risk need not be considered in environmental impact statement because uncertainty in current risk assessment techniques would not allow meaningful risk assessment). As such, we find contention Utah RR inadmissible in this respect as well.[3]

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[2] In this regard, we note that the State has not made any attempt to gain the admission of late-filed contention Utah RR under 10 C.F.R. § 2.758 or to otherwise address the applicability of that provision to its contention admission request.

[3] Although our determination that the contention constitutes an impermissible attack on the agency's regulations is dispositive of this issue statement, we also note that the State's attempt to expand the consideration of sabotage/terrorism beyond September 11-type events to

C. Referral to the Commission

Although we thus conclude that late-filed contention Utah RR should not be admitted, as we have recognized, this ruling is based on existing agency regulations that were adopted prior to September 11, 2001. As is often observed since September 11, things are not -- and may never be -- the same in the wake of the catastrophic events of that day. Moreover, as all the parties have noted, the Commission currently is considering whether, and to what degree, the agency's regulatory regime, including facility physical security requirements, should be changed to reflect what transpired on that fateful day. See also Statement of Dr. Richard A. Meserve, Chairman, Submitted by the United States Nuclear Regulatory Comm'n to the Subcomm. on Oversight and Investigations of the House Comm. on Energy and Commerce Concerning Nuclear Power Plant Security at 2-5 (Dec. 5, 2001) (ADAMS Access. No. ML013390509) (as part of top-to-bottom physical security review in wake of September 11, 2001 events, Commission is reexamining design basis threat and will modify it, as appropriate). In this light, this ruling seems to be one particularly suited for early review by the Commission and, accordingly, we take the step of referring this decision regarding the admissibility of late-filed contention Utah RR for its consideration. See Haddam Neck, CLI-01-25, 54 NRC at __ (slip op. at 6-7).

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(1) other sabotage/terrorism scenarios, such as truck bombs, and (2) transportation issues, would be inadmissible as lacking a factual basis and outside the scope of this proceeding, respectively. So too, we note that the State's reliance on the siting provisions of section 72.94 regarding regional DBEMIEs as a basis for this contention is misplaced. Moreover, to the degree OGD seeks to adopt contention Utah RR in its October 24, 2001 pleading, we deny that request as seeking to add a late-filed contention without addressing the section 2.714(a)(1) late-filing factors. See LBP-98-7, 47 NRC at 182-83.

III. CONCLUSION

Although we conclude that a balancing of the five 10 C.F.R. § 2.714(a)(1) late-filing factors supports admission of contention Utah RR, Suicide Mission Terrorism and Sabotage, relative to September 11, 2001-type events, we deny admission of this contention as an impermissible challenge to existing agency regulatory requirements regarding ISFSI physical security requirements. Nonetheless, given the nature of the happenings of September 11, 2001, that are the genesis of this contention, as well as the Commission's stated intent to review the agency's regulatory regimen in light of those events, we refer our rulings to the Commission for its further consideration.

For the foregoing reasons, it is this thirteenth day of December 2001, ORDERED, that:

1. The October 10, 2001 State motion for admission of late-filed contention Utah RR is denied.

2. In accordance with 10 C.F.R. § 2.730(f), the Licensing Board's rulings in section II.A.-B. above are referred to the Commission for its further consideration and action, as appropriate.

THE ATOMIC SAFETY
AND LICENSING BOARD[4]

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

/RA/

Jerry R. Kline
ADMINISTRATIVE JUDGE

Rockville, Maryland

December 13, 2001

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[4] Judge Lam was not available to review this decision, although he was aware of and had no objection to the Board majority's action in issuing this ruling in his absence. The Board majority notes that Judge Lam is a member of the Licensing Board in the ongoing proceeding concerning the licensing of a proposed mixed oxide fuel fabrication facility that recently issued a unanimous decision admitting a contention relating to the events of September 11, 2001. See Savannah River, LBP-01-35, 54 NRC at __ (slip op. at 50-55).

Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant PFS; (2) intervenors Skull Valley Band of Goshute Indians, OGD, 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 ADMISSION OF LATE-FILED CONTENTION UTAH RR AND REFERRING RULING TO THE COMMISSION) (LBP-01-37) 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
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 13th day of December 2001