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OFFICE OF SECRETARY
RULEMAKINGS AND
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	Docket No. 72-22-ISFSI
	)	
PRIVATE FUEL STORAGE, LLC	)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel	)	
Storage Installation)	)	April 21, 2003

STATE OF UTAH'S RESPONSE TO APPLICANT'S MOTION FOR RECONSIDERATION

[*Non-proprietary Version*]

On March 31, 2003 PFS filed a document styled "Applicant's Motion for Reconsideration of Partial Initial Decision Regarding Credible Accidents." The March 31 Motion is not a motion for "reconsideration." Rather, it is a license request by PFS for a brand new, never contemplated, 336 cask capacity storage facility that bears little relationship to PFS's license application. It is a request that seeks to make an illegal end run on Commission regulations by avoiding the application and review process. It is a request that has not even been presented to the Staff for review. These are reasons enough to reject PFS's Motion.

PFS's Motion should also be rejected because back calculation of the NUREG 0800 formula to yield a 336 cask facility was never presented to the Board in the Contention Utah K hearing and is not supported by expert testimony. Further, PFS's Motion would require the Board to act beyond its authority; it also vitiates other licensing requirements.

LEGAL STANDARD

The legal standard according to PFS is that the Board "overlooked critical factual information in the record"[1] and that the Board "could have and should have ruled" that a

[1] *Citing* Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), LBP-00-31, 52 NRC 340, 342 (2000).

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downsized facility be licensed. Motion at 1 and 3. PFS's selective quotation from PFS omits:

> A properly supported reconsideration motion is one that does not rely upon (1) entirely new theses or arguments, except to the extent it attempts to address a presiding officer's ruling that could not reasonably have been anticipated, . . . or (2) previously presented arguments that have been rejected. . . . Reconsideration also may be appropriately sought to have the presiding officer correct what appear to be inharmonious rulings in the same decision.

PFS, 52 NRC at 342 (*internal citations omitted*).[2]

Motions for reconsideration may be denied where they improperly raise an argument based on evidence that "could have been - but [was] not - timely put before the Licensing Board." Puerto Rico Electric Power Auth.(North Coast Nuclear Plant, Unit 1), ALAB-648, 14 NRC 34, 37-38 (1981).[3] A motion to reconsider may be based on new facts not available at the time of the decision and relevant to the particular issue under consideration, which clarify information previously relied on and sufficient to challenge the result reached.[4]

ARGUMENT

A. PFS's Motion Rests upon a New Theory it has Never Previously Raised.

PFS postulates that the Board "overlooked critical factual information in the record" because the Board did not, on its own volition, make complex technical judgments and computations on a storage configuration that would yield the maximum number of casks that could be stored in the smallest possible area. *See* PFS Motion at 3-4. PFS's theory is not

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[2] *See also* Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-418, 6 NRC 1, 2 (1977)

[3] *See also* Central Electric Power Cooperative, Inc. (Virgil C. Summer Nuclear Station, Unit No. 1), CLI-81-26, 14 NRC 787, 790 (1981) (motions to reconsider "are not the occasion for an entirely new thesis."); Pacific Gas and Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-25, 56 NRC __, 2002 WL 31927752 (NRC) at 3 (2002).

[4] Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), LBP-01-17, 53 NRC 398, 403-404 (2001), *aff'd* CLI-02-22, 56 NRC _ (2002); PFS, LBP-98-17, 48 NRC 69 (1998)

based on new facts that were not available to it at the time of the hearing. Millstone, 53 NRC at 403-04. PFS made no request for a downsized facility during multiple weeks of hearings on Utah K; in thousands of pages of documents filed with the Farrar and Bollwerk Boards; or in its license application, revisions thereto or documents in support thereof, submitted to the Staff.[5] PFS's current request for storage capacity nearly ninety two percent smaller than PFS's longstanding and unwavering 40,000 MTU capacity license request is a mere artifice to obtain a license without adherence to well-established NRC regulations and procedures.[6] It is a request that would have required the Board to divine PFS's desire to have any license rather than no license in spite of the evidentiary record. It is a request that the Board could not have conceived of or acceded to in its partial initial decision.

B. PFS's Motion Does Not Meet the Criteria for Reconsideration.

Under the procedural guise that the Board should reconsider its decision denying PFS's application to license storage of 4,000 spent nuclear fuel casks, PFS has filed a license request with the Board for a 336 cask facility masked as a "license condition." PFS is not proposing a license condition – what it is a condition to? Nor is this new license capacity request a motion for reconsideration. It is a request to license a 3360 MTU facility. The "condition" PFS seeks to impose on the 3360 MTU facility is that storage of 336 casks must conform to certain dimensions. That is the license PFS now seeks.

There is no presumption PFS will obtain a license for a 4,000 cask facility; the Board

[5]In an attempt to secure any license, only now does PFS claim the Board should have strictly applied the formula to calculate an acceptable probability – a strict application PFS shunned throughout the hearing and in its petition (arguing the Board erred by not using PFS's modified formula).

[6]The downsized license request was conceived through a mathematical manipulation of the size of the area, "A," in the formula $P = N \times C \times A/W$, to yield a probability, P, of one in a million.

has already determined that such a license request "cannot be granted at this juncture." LBP-03-04, slip op. at 218. Applicant PFS bears the burden of proving that it meets all licensing requirements for a 3360 MTU licensed capacity facility, before the grant of a license. 10 CFR § 2.732.[7] This it cannot do (and has not done so) in the instant Motion.

PFS's Motion spurns existing NRC regulations by not submitting a license amendment to the Staff or making a financial assurance showing for a license to store 336 casks. *See* 10 CFR §§ 72.11; 72.16; 72.22. In LBP-03-04 the Board referred to "NRC's basic rule" in which a matter is not ripe for actual hearing until the Staff is ready to present its complete final analysis, such as in a final Safety Evaluation Report (SER) and final Environmental Impact Statement (EIS).[8] LBP-03-04, slip op. at n. 123. During the hearings, Staff described the applicable NRC regulatory scheme to address consequences[9] but nowhere did the Staff suggest that if the Board found PFS had exceeded the threshold probability the Board would have the option of downsizing the facility until the aircraft crash probability is at the 1 x 10^{-6} established threshold. PFS's Motion mounts a direct challenge to NRC regulations and procedure and as such its Motion should be denied. 10 CFR § 2.758; Pacific Gas and Elec. Co.

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[7] *See also* Consumers Power Co. (Big Rock Point Plant), LBP-82-77, 16 NRC 1096, 1099 (1982) *citing* 10 CFR § 2.732; Duke Power Co. (Catawaba Nuclear station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983), *citing* Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-283, 2 NRC 11, 17 (1975) (applicant carries the burden of proof on safety issues), *clarified and reaff'd*, ALAB-315, 3 NRC 101 (1976).

[8] Under this theory, the Board excluded consequence evidence because of "the absence of staff review of, or a position on," consequences and the questionable nature of "whether a comprehensive record on consequences could have been developed." LBP-03-04, slip op. at 85 and 87. Here, too, the Staff has not reviewed PFS's new license request or documented the effect a 336 cask facility would have on other licensing requirement, or on the Staff's final SER or EIS.

[9] "If the [aircraft crash] probability exceeds the threshold, then either the consequences would have to be determined to see if there was no regulation limit, or . . . the Applicant would be required to harden its facility to be able to withstand the event." Tr. (Marco) at 2983-8; *see also* id. at 2996-97, Tr. (Turk) at 3000.

(Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-02-16, 55 NRC 317, 341-42 (2002).

Finally, the Commission's "Policy on Conduct of Adjudicatory Proceedings" makes it clear that the scope of a proceeding "is limited by the nature of the application and pertinent Commission regulations." CLI-98-12, 48 NRC 18, 1988 WL 518232 (NRC) at *4 (1998). The contention admitted for hearing challenged PFS's license application to store 40,000 MTU of spent fuel. Further, an "intervenor is not free to change the focus of its admitted contention, at will, as the litigation progresses." Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97, n. 11 (1988). Similarly, the Applicant PFS should not be free to change the focus of contention Utah K as part of its Motion for Reconsideration of the Board's decision that PFS's requested 40,000 MTU capacity application cannot meet the credible accident licensing requirements.

C. **There is No Evidence to Support PFS's Motion.**

Six of the ten pages of "discussion" in PFS's Motion are devoted to describing how to back-calculate the formula in NUREG-0800 to yield a facility sized to store 336 casks in a 420 feet by 427 feet area. Motion at 4-9. The entire discussion has been submitted by counsel for PFS; there is no sponsoring witness. Counsel's discussion is no substitute for introduction of evidence by a qualified witness and adherence to other evidentiary rules.[10]

Evidence is not available for the Board to simply "recalculate" the crash probability for a facility not previously put at issue in this proceeding. The probability calculation which PFS now urges upon the Board requires input values unsupported by the record. PFS

[10] *See* Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 191 (1978) *quoting* U.S. v. Abilene & S. Ry., 265 U.S. 274, 288 (1924) ("Nothing can be treated as evidence which is not introduced as such.").

does not attempt to identify where these suggested values are found in the record, but sidesteps the issue with the non-specific assertion: "All of the inputs to this equation are set forth in the evidentiary record." Motion at 7. A review of the record shows otherwise.

PFS claims the Board should have calculated the F-16 crash hazard for a 336 cask facility using the values and methodology suggested in its Motion at 6, 7. This would require the Board to use an input value of "78" for *WS*, as directed in the methodology in the record. Appl. Exh. O, tab G, B-27, 28.[11] Using 78 as the input value for WS in calculating the cask area alone, and assuming all other values shown in PFS's motion are correct and supportable (which they are not), yield an area of 0.01808 square miles.[12] PFS obtained the lower area, 0.01644 square miles, by using a value of 32.7 for *WS*. The methodology advanced by PFS, and shown in the record, requires input values be drawn from the supplied tables for wingspan, cotangent of impact angle, and for skid distance. Id. at B27-29. Counsel for PFS used the tables for cotangent of impact angle and skid distance, but without explanation omitted the value given in the table for wingspan.[13] Using the input value of 78 for *WS* to calculate only the cask area and only for the F-16 hazard, results in a

[11]"WS = aircraft wingspan, provided in Table B-16." Appl. Exh. O, tab G at B-27. Table B-16 shows a value of 78 for military small aircraft, high performance, "includes fighters, attackers, and trainers." Id. at B-28.

[12]As noted in the Board's April 4, 2003 Order, the cask layout and calculation of the area for a 4,000 cask facility were not contested at hearing. Decisions regarding the presentation of the State's case were made based on the relative importance of issues then before the Board. The dominance of PFS's claim that the "R" factor would virtually eliminate the crash hazard overshadowed many issues which, as a result, were intentionally not addressed. In contrast, PFS has now presented by motion a request to license a 336 cask facility based solely on the calculation of the CTB and cask storage area. The area computation for this facility must be addressed on the merits – not by reference to the State's case presentation on a facility where area calculations were not germane to the hearing issues.

[13]As noted by PFS, the tables provide the values for small military aircraft "which include the F-16." Appl. Exh. "O" at 15. Counsel's error in not using the table value for wingspan illustrates the need for evidence supported by a qualified expert.

cumulative probability for a 336 cask facility in excess of 1.00 E-6. *See* Table, Motion at 9.

Further, PFS assumes that the Board should have chosen the 42 pad configuration arranged as seven columns and six rows, because the pad configuration that produces the smallest effective area is "approximately a square." Motion at 7, n. 14. However, no basis in the record or otherwise is given to support the claim. To the contrary, the current layout for the 4,000 cask facility consists of two rectangles, each with a length over twice the width.[14] SAR Fig. 1.2-1. Perhaps the greatest uncertainly is that PFS has not suggested a location within the facility for the placement of the 42 pads on which 336 casks would sit. The calculation of area for aircraft crash purposes requires an analysis of the "critical" areas within the facility including their relative locations. Appl. Exh. O, tab R at 3, 4. To illustrate, PFS determined for the 4000 cask facility:

> By reference to the attached site diagrams (Attachment 2) it may be seen that the effective areas are separate and independent for all approach directions with the exception of an approach for the southeast. Only in this case do the effective areas of the CTB and SA overlap, and then only in a small segment of the southeast corner of the SA.

Appl. Exh. "O," tab R at 4. Simply put, the record does not contain information sufficient to perform an analysis of the area of a 336 cask facility as required by the methodology PFS itself acknowledges is applicable. Even if the Board were to re-calculate the probability using the methodology in PFS's Motion, it would still exceed the ISFSI threshold standard.

D. Action on PFS's Motion Would Require the Board to Act Beyond its Authority

PFS is challenging the Board's decision, LBP-03-04, because the Board did not adduce the quantity of fuel and arrangement of casks that will theoretically come within the

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[14]The evidentiary record shows the pads are 64 feet in length, not 67 feet, and the spacing between pads is 30 feet, not 35, as used for the calculation in the Motion. Appl. Exh. "O," tab R.

formula, P = C x N x A/W. PFS could have, but did not, timely put before the Board a new 336 cask facility. These facts are not new and were available if PFS had chosen to meet the probability standard by presenting an area, A, measuring 420 feet by 427 feet. But these facts do not undergird Utah K as presently constituted – the contention at issue in the hearing. Seabrook, ALAB-899, 28 NRC at 97, n. 11. For the Board to act in accord with PFS's desires, it would need to exercise sua sponte authority.

NRC regulations limit presiding officers' sua sponte authority to examining issues not put into controversy by the parties only where they determine that a serious safety, environmental, or common defense and security matter exists. 10 CFR § 2.760a.[15] The Commission in its "Policy on Conduct of Adjudicatory Proceedings" makes clear that a licensing board is constrained by 10 CFR § 2.760a and that a board "may not proceed further with sua sponte issues absent the Commission's approval." CLI-98-12, 48 NRC 18, 1998 WL 518232 (NRC) at *5 (1998).[16]

The presiding officer in this proceeding has also recognized such limitations on the Board's authority.[17] In fact, PFS has had specific notice that this Board's role "is to decide

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[15] *See* Houston Lighting and Power Co (South Texas Project, Units 1 and 2), LBP-85-8, 21 NRC 516, 519 (1985). Incompleteness of staff review will not necessarily provoke sua sponte review. Id. Also, a board must notify the Commission, in more than a conclusory statement, of its intent to consider an issue sua sponte. Id.

[16] In the PFS proceeding, the Commission "advised the Board and the parties to pay heed to CLI-98-12." Board's Memorandum and Order at 1 (July 31, 1998). PFS and the Staff are well aware of these constraints on the Board's authority; in 2000 they both argued that only in "extraordinary circumstances" should the presiding officer on its own initiative engage in the consideration of health, safety, environmental or common defense and security matters, and only then in accordance with proper procedures, including Commission referral to look into such matters. PFS, LBP-00-05, 51 NRC 64, 68 (2000).

[17] "[I]n the old days many years ago the Board had the right to look into things on its own motion. These days we look at things only that the parties bring to us. So rather than frame it in

on the validity of the proposal that's in front of us, not whether some other proposal might be better." Tr. (Farrar 7446).[18] PFS brought to the Board a 40,000 MTU capacity facility; there are no extraordinary circumstances that entitle the Board to investigate a 3360 MTU capacity license request. Accordingly, the Board should summarily dismiss PFS's Motion.

E. PFS's Motion Vitiates Licensing Requirements Collateral to Utah K.

PFS's Motion is not one in which it seeks to have the Board correct what appear to be inharmonious rulings in the PFS proceeding. Instead, PFS's Motion creates chaos in matters that are, in most cases, nearing some finality in the PFS licensing proceeding (e.g. evidence presented to and relied upon by the Board in adjudicating other Utah contentions, and the final EIS and SER). The new 3360 MTU sized facility has its own attributes and constraints that must be evaluated on its own merits in terms of meeting financial assurance, NEPA, and other licensing requirement – not as an adjunct to a Motion for Reconsideration.

1. Financial Assurance and Safety Evaluation Report.

PFS's Motion summarily concludes, without an iota of support, that a 336 cask capacity facility ([REDACTED]), would not

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terms of what do we want to look at, the question is, what did you bring." Tr. (Farrar) at 2992.

[18]The presiding officer prefaced the foregoing remarks as follows:

> . . . I think we have to say what's on our mind because it governs how you're going to proceed in the future. . .
>
> It seems to us here on a safety issue our job is to decide whether the Applicant's proposal is sufficient in light of the standards in Part 72. If we were to find it insufficient, it would not be our job – even if there were something in the evidence to say your design is insufficient but we'll approve your proposal if you'll add piles, anchors, whatever. In other words, our role stops with saying what you presented is insufficient. It's then up to the Applicant to come back with another proposal, give it to the staff, come to another hearing, if necessary.

Tr. 7445 (Farrar).

adversely affect PFS's financial assurance. Motion at 10. The State begs to differ. There are serious ramifications that this Board cannot possibly evaluate based on PFS's Motion.

Implicit in PFS's Motion is the assumption that PFS will ultimately prevail in the capacity PFS originally requested. Otherwise, there are material inconsistencies and detrimental consequences that flow from PFS's new request. One cardinal example is the feasibility of the PFS project. If it is PFS's new position that a 3360 MTU capacity facility is economically feasible, it is antipodal to the express statement PFS made in this proceeding:

[REDACTED]

A thorough analysis of PFS's proposed change cannot occur in the context of this motion but the following discussion briefly highlights how a change to a 3360 MTU facility will vitiate financial assurance.[19]

[REDACTED]

[19]Relative to PFS's 40,000 MTU license application, the Bollwerk Board is evaluating material changes in commitments and testimony PFS presented during Utah E summary disposition and hearing (held in 2000) testimony and on issues remanded by the Commission.

[REDACTED]

[20] Even under PFS's estimates, there are large, fixed start-up costs.

PFS suggests that the terms of the model service agreement (MSA) will not change and that "PFS's decision to store few casks on site would not affect the level of funding commitment PFS would have to obtain before beginning construction." Motion at nn. 21 and 22.[21] Because the dollars provided in the current MSA will not cover start-up costs given the much smaller storage capacity available, there is only one conclusion that can be drawn from these two assertions: PFS is proposing to contract for space it does not have authority to build.

PFS has not filed a motion to reopen the record or proceeding on Utah E; it relies entirely on brash statements that a downsized facility would not affect the level of funding commitment needed to begin construction or the terms of the MSA. In sum, the entire underpinning of PFS's financial assurance has collapsed and must be evaluated anew.

The Staff's SER with respect to financial assurance is not valid for a 336 cask facility. Staff relies on two license conditions, LC17-1 and 17-2, to find PFS meets 10 CFR §72.22(e),

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[REDACTED]

21

[REDACTED]

financial assurance. The Staff's position is based on its review of PFS's license application for a 40,000 MTU maximum capacity facility, with an initial capacity of [REDACTED] MTU. SER (March 2002) at 17-1 and 17-4 (Staff Exh. C). The Staff finds acceptable the [REDACTED] MTU initial capacity figure in LC17-1, for which PFS must obtaining committed funds before it begins construction. SER at 17-4. Relying on PFS's plan to fund operations through customer agreements with provisions for payment of "an annual fee sufficient to fund operational expenses," the SER concludes at 17-4:

> The PFS forecast that its own members will store fuel at a significant level over the life of the Facility,[22] approximating the reference case level of usage, provides a considerable degree of assurance that a base level of revenue to meet operating and maintenance (O&M) costs is likely to be available from the members themselves.

For the Staff to now find PFS's new proposal acceptable in meeting financial assurance, without further analysis at this time, would required the Staff to engage in difficult discretionary judgments post license – an activity prohibited by the Commission.[23] PFS's MSA presentation to the Bollwerk Board is not bottomed on a 3360 MTU facility. As such, numerous factors, not encompassed in the remand before the Bollwerk Board, need to be evaluated. For example, since the funds PFS will raise through its MSAs cannot be sufficient to meet start-up costs, how will the Staff evaluate new funding proposals that PFS will

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[22]

[REDACTED]

[23]On remanding part of Utah E back to the Board, the Commission stated: "To reconcile post-hearing verification of a license condition by the NRC staff with cases like Union of Concerned Scientists, Shoreham and Indian Point Station, we must insist that the condition be precisely drawn so that the verification of compliance becomes a largely ministerial rather than an adjudicatory act -- that is, the Staff verification efforts should be able to verify compliance without having to make overly complex judgments on whether a particular contract provision conforms, as a legal and factual matter, to the promises PFS has made." CLI-00-13, 52 NRC 23, 34 (2000).

necessarily need to obtain in order to show it has sufficient funding to meet LC 17-1? Will the substantive terms of the MSA need to be redrafted (yet again) if PFS's offer is for more storage space than PFS has a license to build or operate? How will the Staff judge the legal sufficiency of a new MSA? Is it acceptable if debt repayment is contingent on licensing a larger facility? Will Staff accept additional debt not contemplated in the financing plan before the Bollwerk Board? What debt to equity ratio is acceptable? Simply put, if the Staff does not analyze and document PFS's financial assurance for a 336 cask facility now, it will need to make prohibited and complicated factual and legal judgments post license.

2. NEPA and FEIS.

PFS is requesting a license capacity about 92% smaller than its longstanding 40,000 MTU license request. Yet, PFS expects the Board to find no substantive changes in PFS's or the Staff's NEPA analysis, arguing that the present EIS "bounds" the new 336 cask license request. Motion at 11. PFS's Motion attempts to direct the Board to ask the wrong question. It is not the direct environmental impacts under NEPA that come into question with PFS's new proposal. It is the need for, and costs and benefits of, PFS's new facility that will change; all of the analyses in the EIS relating to those matters are now called into question.

PFS mischaracterizes the cases it has cited in support of its argument that no further environmental analysis would be necessary. Id. at 11-12. The Appeals Board in Diablo Canyon[24] did determine that no separate EIS was required for low power testing, but it did so because "[l]ow power testing is a normal, necessary and expected step in the life of every nuclear plant," and "not an alternative to full power operation." Diablo Canyon, 17 NRC at

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[24]Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 3), ALAB-728, 17 NRC 777 (1983), *review denied* CLI-83-32, 18 NRC 1309 (1983).

794. This expectation stands in stark contrast to PFS's situation where it has failed to carry its burden of proof that a larger facility will be safe, and is desperately seeking approval for any license it can get. While we can expect PFS to continue to press for approval of a 40,000 MTU the facility, at this stage there is no presumption of licensing success. For that reason, PFS's new proposed 3360 MTU facility must stand on its own – and must be subject to environmental analysis on the merits of that capacity request.[25]

Even a cursory review of the currently documented NEPA analysis shows the fallacy in PFS's position and the inadequacies in the FEIS. A 3360 MTU ISFSI affects the claimed economies of scale that the ER and FEIS rely upon for the benefits of a 40,000 MTU ISFSI. ER (Rev. 12) at 1.2-4; FEIS at 1-8, 1-12. It also vitiates the EIS's positive net benefit break even scenario. The FEIS states: "The quantity of SNF accepted at the proposed PFSF is critical to the calculation of net economic benefits." FEIS at 8-10. In its break even cost-benefit throughput analysis, if a repository opens in 2015 the no action break even throughput is about 15,500 MTU with a capacity of 10,000 MTU. Id. If the repository opened in 2010, the breakeven capacity is 8,200 MTU. Id. The FEIS's conclusion that "[t]he scenarios evaluated by the staff indicate the potential for a net positive benefit past the break-even throughput volume of SNF" (id. at 8-11) no longer stands. Significantly, the

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[25]Long Island Lighting Co. (Shoreham Nuclear Power Station), CLI-85-12, 21 NRC 1587 (1985) does not change this conclusion. The Commission did not find that uncertainty was irrelevant to whether a separate environmental analysis was required. It found instead that, if the findings of the Board were upheld, there would not be significant uncertainty about the likelihood of the facility's future operation ("In short, we shall not take as an element of uncertainty in the eventual full-power operation of Shoreham the possibility that either the State or the County will refuse to cooperate with LILCO on the basis of their own conception of what radiological public health and safety requires...). Id. at 1589-90. In making its decision, the Commission relied in part on 10 CFR § 50.57(c), a rule that authorizes early low power testing. There is no comparable rule upon which PFS can rely.

FEIS says: "If an NRC license is issued, the small throughput scenario would be barred by this license condition." Id. at 8-2.[26]

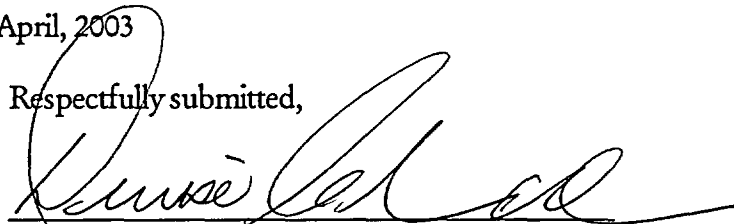
These are but a few examples to demonstrate that costs greatly outweigh any benefits under NEPA for the 3360 MTU facility. A thorough review – the review that would be performed if PFS requested this facility through a license application, as the rules contemplate – would reveal many more.

CONCLUSION

Reacting to the Board's rejection of its license application in LBP-03-04, PFS has strained credulity by submitting a new license request to the Board in the guise of a Motion for Reconsideration. The Board should summarily deny PFS's Motion; it has no merit.

Dated this 21st day of April, 2003

Respectfully submitted,



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[26]Furthermore, because the Staff proposes a license condition that would "require PFS to have service agreements providing for long-term storage of SNF in excess of the 9,600 MTU capacity [cost benefit] scenario (which bounds the small thoroughput scenarios)," the Staff did not analyze PFS's smaller cost benefit scenarios for 8,200 or 9,600 MTUs. Id. The minimum capacity the Staff cites is a 19,400 MTU facility. Id. at 8-7.

CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S RESPONSE TO APPLICANT'S MOTION FOR RECONSIDERATION [*Non-proprietary Version*] was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 21st day of April, 2003:

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