

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

December 9, 2003 (1:25PM)

BEFORE THE COMMISSIONERS

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:

PRIVATE FUEL STORAGE, LLC
(Independent Spent Fuel
Storage Installation)

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Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

December 4, 2003

STATE OF UTAH'S PETITION FOR REVIEW OF NON-HEARING ISSUES IN
THE PRIVATE FUEL STORAGE, LLC LICENSING PROCEEDING

In accordance with 10 C.F.R. § 2.786, as modified by CLI-03-16, the State of Utah petitions for review of the following issues which did not proceed to hearing (or do not relate to those issues that did) or are not currently before the Board. Below, the State has grouped related issues and has addressed the four requirements in 10 C.F.R. § 2.786(b)(2), namely (i) summary of decision or action; (ii) where issues were previously raised;¹ (iii) why the decision or action is erroneous; and (iv) why the Commission should accept review. While there have been a host of significant rulings against the State over the course of six and half years of litigation with which the State takes issue, *only the most erroneous rulings are raised in this petition for review.*

A. Safety, Security,² and Associated Contentions

1. Contentions Utah Security-A (Security Force Staffing), Utah Security-G and Utah U, Basis 4 (Terrorism and Sabotage), and Security-J (Law Enforcement).

In its initial safeguards contentions, Utah challenged the PFS Security Plan as failing to meet

¹For each contention, complete record citations are appended hereto (cited as "Ref."). See Commission Order dated November 19, 2003, allowing a reference appendix.

²Utah Security-A through Security-I were filed as safeguards contentions pursuant to Board Order dated December 17, 1997. After briefing by the parties, the Board publicly released its safeguards decision. Order (July 7, 1998). This petition relies on public information.

current Part 73 provisions for onsite security and offsite transportation. In ruling on these contentions, the Board applied not yet effective regulations and held those regulations limit an ISFSI applicant's security measures to "onsite transportation." Ref. A.1.a.¶1, 47 NRC at 368 n.7, 373. PFS, however, must still comply with 10 C.F.R. §§ 72.180, 73.51 and Pt.73 App C. Unless otherwise noted and as applicable, petition of security issues relates to onsite security.

(i) Summary: PFS plans to supplement minimal security staffing with off-duty security personnel during exigent circumstances. Security-A submits that lack of public housing near the Skull Valley Reservation makes timely response from off-duty security personnel improbable, resulting in PFS having inadequate staffing capability to cope with or timely respond to safeguards contingent events. Security-G challenges PFS's security plan as not adequately protecting spent fuel from unauthorized access or activities, such as terrorism and sabotage, while Utah U Basis 4 (incorporating Utah V Basis 3, sabotage) argues that PFS's Environmental Report ("ER") neglects to analyze sabotage risks if one or more storage casks are breached. Security-J argues that PFS's Security Plan fails to comply with Part 73 because PFS does not have valid documented liaison with a designated local law enforcement authority ("LLEA") or redundant communications between onsite security members and the LLEA, to provide timely response to unauthorized penetrations at the PFS facility. Utah Security-A and Security-J were dismissed at summary disposition; Security-G and Utah U basis 4 were not admitted.

(ii) Issue Previously Raised: Ref. A.1.

(iii) Erroneous Action: The Board erroneously ruled that the availability of housing (and thus response time) for off-duty security personnel impermissibly challenged agency rules and failed to challenge PFS's application, as did the State's challenge to PFS's contingency procedures to respond to threats and adversary action, including terrorism and sabotage. See

Ref.A.1.a.1. 47 NRC at 368, 372. First, PFS must comply with Part 73 App C.4, Responsibility Matrix,³ and Contingency Plan goals,⁴ and second, the State specifically challenged PFS's Responsibility Matrix and other inadequate contingency measures described in PFS's security plan. Ref. A.1.a.i at 2, 14-15. Further, the Board denied (Ref.A.1.a.3) the State's motion to amend security contentions (Ref. A.1.a.iv), which was based on a letter from the Tooele County Attorney that stated: "I do not believe Tooele County is obligated to provide law enforcement protection to Private Fuel Storage and their proposed storage site." *Id.*, Exh. 3. As to Security J, the Board erred in granting PFS summary disposition before the issues presented to the Board had been definitively resolved. In rendering its decision, the Board relied almost entirely on a U.S. District Court's opinion, which, as Utah notified the Board (Ref.A.1.d.iv), is currently on appeal to the 10th Circuit Court of Appeals and could be overruled in whole or in part.

(iv) Commission Review: Review is warranted of these important legal, policy, and discretionary questions. The Board's rulings, and its rebuff of the State's claims arising out of the letter from the Tooele County Attorney, add up to a lack of timely response and a lack of adequate security staffing for PFS to cope with or timely respond to onsite safeguards contingencies at the ISFSI. NRC and the Applicant have often referenced or relied on the Skull Valley Indian Reservation ISFSI location as being "remote."⁵ NRC and PFS cannot have it

³App. C.4 requires, in part, "[f]or each initiating event, a tabulation shall be made for each response entity depicting the assignment of responsibilities for all decisions and actions to be taken in response to the initiating event. . . . The tabulations in the Responsibility Matrix shall provide an overall picture of the response actions and their interrelationships."

⁴One goal is "to provide predetermined, structured responses by licensees to safeguards contingencies"; the responses should be timely. *See* Pt. 73, App. C (Introduction).

⁵*E.g.*, "The Reservation is located in a remote area approximately 56 km (35 miles) south of the Great Salt Lake." Ref. E.2, FEIS at 3-38. *See also* fn. 14 *infra* (indirect costs minimal due to

both ways. In this case the “remote” location makes timely back-up and response to unauthorized penetrations problematic. Moreover the Board’s reliance on a federal case to decide Security-J is on unsteady footing because that case is under review and the challenged Utah statutes contain a severability clause. Regardless of the federal court litigation, PFS could comply with NRC regulations (eg, 10 C.F.R. § 73.51(d)(6), (8), and (12)) by having its own designated response force in place. Given the uncertainty surrounding the agreement with Tooele County and the “remote” location of the Reservation, the Commission should accept review and require PFS to maintain its own designated response force.

2. Contentions Utah B (B-1), Security-F, Security-H & Security-I (Intermodal Transfer Facility: License Needed and Lack of Security or Central Communications).

(i) Summary: Contention Utah B presents several bases on which PFS’s application violated 10 C.F.R. § 72.6(c)(1) by not seeking approval for the receipt, transfer, or possession of spent nuclear fuel at the Rowley Junction Intermodal Transfer Facility (“ITF”). Bases 2 (volume unlike other ITFs) and 3 (volume results in temporary storage) were rejected at the contention filing stage as impermissible challenges to agency rules. Bases 1 (de facto ISFSI) and 4 (compliance with 10 C.F.R. Part 72) were admitted⁶ but later dismissed on PFS’s motion for summary disposition. Security-F challenges PFS’s failure to comply at the ITF with required ISFSI security and safeguard procedures; Security-H challenges PFS’s failure to have adequate security measures for transporting SNF between the ITF and the ISFSI; and Security-I claims

remote location of ISFSI).

⁶When PFS moved the ITF location 1.8 miles westward, the State in Utah B-1 reasserted its claim that the ITF was defacto interim storage subject to Part 72. The Board rejected Utah B-1 but considered Utah B amended as to the new ITF location, etc. Ref. A.2.b.‡, 48 NRC at 297.

that PFS lacks a communications center to meet 10 C.F.R. § 73.37(b)(4). None of these security contentions were admitted.

(ii) Issue Previously Raised: Ref. A.2.

(iii) Erroneous Action: The Board incorrectly dismissed Utah B as a challenge to NRC and DOT regulations, Ref. A.2.a.¶1 (47 NRC at 184) & 4 (50 NRC at 176-77), which it is not. The nature of operations proposed for the ITF – where PFS will receive and handle thousands of tons of spent fuel, using fixed equipment (e.g., gantry crane) owned and operated by PFS, for the purpose of facilitating later storage at the Skull Valley site (or outbound shipments from PFS) – have all the hallmarks of storage of highly irradiated fuel. Considerable queuing and storage of casks in a location directly off Interstate-80 also pose a potential sabotage target. The Board erroneously ruled these activities fit within DOT’s definition of “transportation” and that the spent fuel will remain in the possession and control of PFS (or some other unnamed entity) as a Part 71 “carrier” subject to DOT regulations and 10 C.F.R. § 71.12 and 73.37. 50 NRC at 175-76. The Board relied on PFS’s commitments to comply with these provisions, which PFS qualified by its declaration that the shipper (i.e., the utility located thousands of miles from the ITF) is responsible for § 73.37 safeguards protections.⁷ *Id.* at n.7. The Director’s Decision in Shoreham, DD-93-22, 38 NRC 365, 372-73 acknowledges that DOT has primary responsibility for safety requirements in shipping SNF, except for those requirements specifically assigned to NRC. Here the specific requirement NRC must answer is: at what point does PFS as a Part 72 licensee take possession of highly irradiated fuel? The only answer to satisfy safety and security

⁷This begs the question: how will each fuel owner continuously monitor cross country SNF shipments to PFS? As raised in Security-I, PFS does not have a system to comply with § 73.37.

is: possession under Part 72 occurs when PFS receives fuel at the ITF. The Board exacerbated lack of security at the ITF in rejecting Security-H by finding then recently revised 10 C.F.R. § 72.180, “limits stand-alone ISFSI security measures to onsite transportation.” In the situation here, transportation between the two inter-connected storage facilities (*i.e.*, ISFSI and ITF) should be considered onsite transportation. Ref. A.2.d.†, 47 NRC at 373.

(iv) Commission Review: The rulings below present substantial questions of law,⁸ policy, safety, and public interest. Regulation under Part 72 of the receipt, handling, storage, and exposure to sabotage of an enormous volume of SNF at a location inextricably tied to the proposed ISFSI is the logical way to avoid obvious lack of regulatory controls at this fixed storage site. The Commission should exercise review to ensure that assessment of the operations at the Rowley Junction facility are part of PFS’s license application so that emergency planning, terrorism, dose exposure, communications, safety of structures and equipment, decommissioning, and the like, may be fully evaluated for this *de facto* ISFSI.

3. Contentions Utah J and Utah U Basis 2 (Inspection and Maintenance of Safety Components, Including Canisters and Cladding – Lack of a Hot Cell).

(i) Summary: Utah J challenges the adequacy of the ISFSI design because it lacks a hot cell or other facility capable of opening casks and inspecting the condition of spent fuel. As such, it poses an undue risk to public health and safety and fails to satisfy 10 C.F.R. §§ 72.122(f) and 72.128(a). Incorporating Utah J, Utah U Basis 2’s claim is that PFS’s ER does not comply with NEPA because the ER does not consider the risks and costs of not providing a means to inspect, detect, or remove defective or contaminated canisters. These contentions were rejected.

⁸The low irradiated fuel shipments in Shoreham, 38 NRC 365, and the New Jersey decision relating thereto, 38 NRC 298, are not relevant to the highly irradiated shipments to PFS.

(ii) Issue Previously Raised: Ref. A.3.

(iii) Erroneous Action: The Board erroneously concluded the contentions lacked adequate factual or expert support and challenged agency rules. Ref. A.3.a.‡ & A.3.b.‡. Both contentions contain specific allegations supported by an expert with a Ph.D. in physics and extensive experience in technical nuclear issues. Since there is no rule specifically on point, Utah J does not challenge NRC's regulations, but instead comes under the NRC's grant of broad authority to require applicants to meet health and safety standards and is consistent with NRC practice.⁹

(iv) Commission Review: PFS has not presented and the Staff has not evaluated any viable contingency measures for dealing with potentially leaking or breached SNF canisters at the Skull Valley site. Given that the ISFSI is located in Utah, hundreds (if not thousands) of miles from a location at which a canister could be opened and inspected (e.g., a PFS eastern utility customer's spent fuel pool), the Commission should exercise review under its broad authority to ensure that applicants can meet health and safety standards, and that under NEPA, the risks and costs of these reasonably foreseeable potentially adverse environmental impacts are analyzed. On review, the Commission should evaluate compliance with Part 72 based on the failure of the SAR, ER, and EIS to address the public health and safety implications of actions, such as shipping a leaking or breached canister through interstate commerce to a reactor site or leaving it at the PFS site, against the need for a hot cell at PFS.

B. NEPA Contentions

⁹This issue is consistent with NRC's Environmental Assessment and Finding of No Significant Impact in Virgil C. Summer Nuclear Station, 67 Fed. Reg. 55436, 55439 (2002) ("the cask park must have facilities to vacuum dry the cask, backfill it with helium, make leak checks, remachine the gasket surfaces if leaks persist, and assemble the cask on-site.").

1. Contentions Utah X (Need for the Facility) and Utah Z (No Action)

(i) Summary: Contentions Utah X and Utah Z are flip sides of the same coin. Utah X contends that PFS's ER maintains there is a need for the 4,000 cask ISFSI by *ipse dixit* statements that reactor sites are physically or economically unable to meet anticipated SNF storage needs, while Utah Z asserts that the ER has focused exclusively on the perceived disadvantages of the no build alternative. PFS's attempt to provide a NEPA analysis in these two matters suffers from a lack of substantiation, specificity, and objectivity. PFS, primarily by omission, failed to address the requirements of NEPA, yet the Board dismissed Utah X at the contention filing stage for, *inter alia*, failing to establish with specificity any genuine dispute. Ref. B.1.a.¶1, 47 NRC at 202. Utah Z was admitted, but when Utah filed a Motion to Compel the Staff to respond to discovery, the Board undermined Utah Z by limiting it solely to environmental issues and banned any further litigation of economic impacts. Ref. B.1.b.¶3, Order at 4. Summary disposition was later decided against the State for not amending its contention after the DEIS allegedly addressed Utah Z. Ref. B.1.b.¶4, 54 NRC 171-172.

(ii) Issue Previously Raised: Ref. B.1.

(iii) Erroneous Action: The Board found Utah Z "moot" based on this DEIS statement:

Under the no-action alternative, no PFS [facility] and no transportation facilities would be constructed in Skull Valley. The impacts described in Chapters 4 and 5 of the DEIS would not occur, and Skull Valley would remain as it is today (see Chapter 3).

54 NRC at 168 (*quoting* DEIS at 6-43), 172 & n.4. NEPA is meant to inform the agency and the public about potential adverse environmental effects and the availability, if any, of less harmful alternatives. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 351-353 (1989).

Neither PFS's ER nor the DEIS (or FEIS) satisfies this mandate, and the Board erred in

denying the State the opportunity to pursue Utah X and Utah Z to hearing. Moreover, the Board erred in not allowing the State the opportunity to challenge that the overall benefits of onsite storage obviate the need for the PFS ISFSI and outweigh any overall benefits from building the PFS ISFSI. *See Dairyland Power Cooperative* (LaCrosse Boiling Water Reactor), LBP-88-15, 27 NRC 576, 580 (1988) (no significant environmental impacts will result in storage of SNF at reactor storage pools for at least 30 years beyond reactor license expiration).

(iv) Commission Review: Rather than the “hard look” required by NEPA, PFS’s ER and NRC’s subsequent EIS provide a myopic view of both the no action alternative (*i.e.*, at-reactor fuel storage) and the need for a 4,000 cask centralized ISFSI located hundreds of miles from reactor sites. The Commission should exercise review to evaluate whether the record contains an evenhanded discussion of the actual need for the proposed facility.¹⁰ PFS merely recited a variety of unsubstantiated isolated costs to a particular group instead of demonstrating any need for the ISFSI.¹¹ The agency’s reliance on this inadequate, one-sided discussion to satisfy NEPA is a departure from and contrary to established law. Review is appropriate to determine whether NRC has satisfied its NEPA obligations to address all aspects of the need for, and no action alternative to, building the PFS ISFSI.¹²

¹⁰*See Louisiana Energy Services* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 98 (1998) (“Lacking balance and analysis, [the ‘no-action’ discussion] merely lists various benefits of the project without delineating the principal reasons why the ‘no-action’ option was eliminated from consideration.”).

¹¹*Boston Edison Co.* (Pilgrim Nuclear Generating Station, Unit 2), ALAB-479, 7 NRC 774, 783 (1978) (NEPA’s call for a “detailed statement” means more than a conclusionary and unsupported statement). *See also Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 391 (1978).

¹²*City of Tenakee Springs v. Clough*, 915 F.2d 1308 (9th Cir. 1990) (failure to consider alternatives is contrary to law); *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228 (9th Cir.

2. Contention Utah Y (Connected Actions)

(i) Summary: Contention Utah Y submits that PFS has failed to adequately discuss the link between its proposed ISFSI and the national high level waste program (a connected action), as required by NEPA. Utah Y was rejected at the contention filing stage.

(ii) Issue Previously Raised: Ref. B.2.

(iii) Erroneous Action: The Board's action is contrary to NEPA's mandate to analyze connected actions. *Sæ* 40 C.F.R. §§ 1502.4 and 1508.25. Clearly, the PFS proposal to store 40,000 MTU of fuel in Skull Valley is a significant part of the national high level waste program. After all, if licensed, PFS could store up to two-thirds of the commercial SNF currently proposed for permanent disposal at Yucca Mountain. Once again, the ER presents a one-sided discussion limited to PFS's linkage of the perceived need for the PFS facility to DOE's inability to accept spent fuel deliveries by January 1998. Contrary to the Board's ruling (Ref. B.2.¶1), Utah Y does not challenge any NRC regulation and it raises a genuine dispute.

(iv) Commission Review: Review is warranted to address a substantial question of law and policy. In the Nuclear Waste Policy Act, Congress enacted a comprehensive scheme for the storage and disposal of SNF. *Sæ e.g.*, H.R. Rep. No. 97-491, pt. 1 at 29 (1982); 97 Cong. Rec. 322548, 32556 (1982). A concern expressed in the NWPA legislative history was that taking the focus off permanent storage by creating interim storage relieves the pressure to establish a permanent repository. *Sæ e.g.*, H.R. Rep. No. 97-491, pt. 1 at 41-42. One implication of licensing the PFS facility is to practically foreclose DOE and congressional decisions on future SNF storage; yet on this and other implications to the national program, the

1988) (failure to discuss no-action alternative improper), *cert. denied*, 489 U.S. 1066 (1989).

scope of PFS's ER (and later the NRC EIS) is mute. The Commission's Waste Confidence Rule relies on the national program to make its generic determination that a permanent repository will be available within the next two decades to accommodate SNF generated by commercial reactors. 10 C.F.R. § 51.23. Yet, the actions described in the ER and EIS are incapable of informing the agency of "the interdependent parts [licensing a 40,000 MTU ISFSI] of a larger action [national program] and depend on the larger action [permanent disposal] for their justification [waste confidence rule]." 40 C.F.R. § 1508.25. Further, licensing action by NRC will commit the federal government to one of many courses of action for dealing with the disposal of SNF and it will also involve two massive shipping campaigns – one to Utah and another from Utah to a permanent repository.

Review is warranted. NRC's actions are contrary to law, Thomas v. Peterson, 753 F.2d 754 (9th Cir. 1985) (the effects of related future actions that were sufficiently certain should be analyzed with the proposed project), and also raise important policy concerns. The PFS ISFSI has some of the same hallmarks as a congressionally authorized MRS. The NWPA creates significant public and host State involvement and benefits in the MRS process. See 42 U.S.C. §§ 10161-69. Before the NRC, however, Utah's ability to challenge the scope of the ER (and EIS) for not analyzing the national implications of licensing a 4,000 cask facility is given short shrift.

3. **Contentions Utah CC (One-Sided Costs-Benefit Analysis) and Utah SS (Final EIS revised cost benefit analysis)**

(i) Summary: Both Utah CC and Utah SS claim that the cost-benefit analysis for the PFS project is biased and inadequate. Utah CC, part of the State's initial contentions, claims PFS's

ER is inadequate on its face to satisfy 10 C.F.R. § 51.45(c)¹³ because it does not balance costs and benefits, or otherwise quantify costs, of the proposed action.¹⁴ Failing to recognize the State's point that there was no analysis at all in the ER, the Board dismissed Utah CC for lack of specificity and failure to properly challenge the PFS application. Ref.B.3.a.¶1. Contention Utah SS challenges the revised economic cost-benefit analysis presented for the first time in the FEIS, § 8.1 (Ref. E.2). By using a 20 year license term for fuel receipt, a 40 year period for storage, and unrealistic start of operations date (2003) to shore up a break-even cost benefit analysis, the Staff completely biases the analysis in favor of the PFS project. The Board heard oral argument on Utah SS during the 2002 Salt Lake City hearings, at which the Board crafted its own explanation for the benefits of the PFS project as an "insurance policy" against a delay in the opening of a permanent repository. Tr. at 39 (May 10, 2002). Handing down its oral decision on May 17, the Board relied on "the real benefit that's put forward for this project is the sort of insurance policy against late creation of a permanent facility" for finding that economics is not central here. Tr. at 9214. The Board added that if NRC does an economic analysis, it is supposed to be accurate enough to inform the public, but concluded the entire record will inform the public about the 20-year receipt, 40-year storage argument. Id.

(ii) Issue Previously Raised: Ref. B.3.

(iii) Erroneous Action: It is not the State's burden to quantify or otherwise qualitatively

¹³Under 10 C.F.R. § 51.45(c), *Analysis*, an ER must "include consideration of the economic, technical, and other benefits and costs of the proposed action and of alternatives."

¹⁴The ER's mention of costs is relegated to one sentence: "The indirect costs, which are derived from the socioeconomic and environmental impacts of the facility, are minimal due to the remote location and small size of the actual storage area." ER at 7.3-1.

discuss the various environmental costs of the PFS project. That is what is required of the Applicant. 10 C.F.R. § 51.45(c). Yet the Board's ruling on Utah CC appears to make that shift.¹⁵ Dismissal of Utah SS on the premise that the cost-benefit analysis contained in the FEIS was not central here and that permission by the Band for PFS to use its land somehow substitutes for a NEPA analysis (Tr. at 9213-14) is contrary to law. When viewed together, Utah CC and Utah SS show that Utah has been denied, at the contention filing stage, the opportunity to raise a genuine disputable issue relating to the biased and wholly inadequate NEPA cost-benefit analysis. Also, the Board's dismissal of Utah SS allows misleading analyses to inform the decision makers and the public. Such an inadequate and misleading record could potentially result in approval of a project that may not otherwise be approved. As stated in Claiborne, 47 NRC at 89 (*internal citation omitted*):

NEPA generally calls for at least a broad and informal balancing of the environmental costs of a project against its technical, economic, or other public benefits. Misleading information on the economic benefits of a project, therefore, could skew an agency's overall assessment of a project's costs and benefits, and potentially 'result in approval of a project that otherwise would not have been approved because of its adverse environmental effects.'

(iv) Commission Review: The Commission should exercise review to ensure there is a record to satisfy NEPA consisting of an adequate and unbiased analysis of the costs and adverse environmental impacts of the proposed action weighed against the alleged benefits,

¹⁵For each contention ruling in its decision on the State's initial contentions, the Board cross referenced some general legal concepts (47 NRC at 178-82), thereby making the explicit basis for each ruling impenetrable. There is no exposition of its rulings; instead the Board relies on boilerplate language (e.g., impermissibly challenges Commission regulations; and/or lacks adequate factual and expert opinion support) which does nothing to elucidate how it applied its general legal concepts to the specific bases of each contention. Cf 47 NRC at 178-82 *with id.* at 204. The use of "and/or" further evades apprehension of the foundation of the ruling. Utah's motion (Ref. B.3.a.iii) that the Board articulate the bases for its rulings was denied. Ref. B.3.a.¶2.

including information adverse to the licensing action (such as the lower environmental impacts and economic cost of the no build alternative). *Sæ* 10 C.F.R. § 51.45(e). While NRC's NEPA regulations speak of the analysis of the economic and other benefits and costs in an ER, DEIS and FEIS in terms of the "proposed action"¹⁶ (*i.e.*, a 20 year license term), the Staff's analysis in the FEIS presents misleading scenarios in FEIS Table 8.2 – none of those scenarios is feasible in a single 20 year license term. *Sæ* Ref. B.3.b.i, Exh. 1. In sum, the Staff has introduced bias into the process because the net benefits relative to a true 20 year license period are grossly exaggerated. The decisions by the Bollwerk and Farrar Boards are contrary to established law, create prejudicial procedural error, and raise substantial questions of law and policy.

4. Contentions Utah HH and II (Low Rail Corridor and Fire Hazards)

(i) Summary: More than a year after submitting its application, PFS made a major change and decided it would build a rail spur (on public lands) generally running 26 miles north to south along the western edge of Skull Valley then turning east 3 miles to the ISFSI. This is PFS's "preferred option" for SNF transportation to the ISFSI.¹⁷ Previously, PFS proposed to align the rail line next to Skull Valley Road. As described in Utah HH, there is a history of wildland fires moving south to north along the eastern edge of the Cedar Mountains in Skull Valley but PFS's ER ignores this fact and fails to analyze the effect the rail spur will have as a new ignition source in this fire-prone area. Nor does the ER address how the rail spur will hang up and be a barrier to four wheel drive vehicles carrying water tanks when firefighters

¹⁶*Sæ* 10 C.F.R. §§ 51.45, 51.71, 51.97(a). Section 51.97(a) explicitly states: the FEIS "will address environmental impacts of spent fuel storage only for the term of the license."

¹⁷To this day, PFS still retains the intermodal option, transferring casks from rail to heavy haul truck at Rowley Junctions. *Sæ* Utah B, *supra*. This too would be built on public lands.

travel cross country to fight wildland fires. The rail spur has no independent utility other than to serve the PFS ISFSI from the mainline. Utah II challenges the ER as being without analysis of the cumulative impacts of constructing and operating the rail spur, including the effects on species and their habitat, visibility impacts to wilderness study areas, disturbance to historic trails, and impacts to recreational users and ranchers. Utah HH and II were not admitted; the Board ruled the State had not demonstrated good cause, even though it filed the contentions within 30 days of PFS's license amendment.

(ii) Issue Previously Raised: Ref. B.4.

(iii) Erroneous Action: Failure to admit these contentions because the Board decided that the State did not distinguish the situation when PFS first filed its application, where the proposed rail spur was next to a paved highway, from one where the rail spur would be in open rangeland, is one of the most egregious rulings the Board has handed down. By its action the Board elevated form over substance and placed an unreasonable charge on the State to second guess that the Board expected the State to distinguish between PFS's defunct plan and the new one. In this proceeding the State has raised issues of genuine concern and has not "thrown the book" at any and all conceivable issues that could be raised. In this vein, the State did not and could not have earlier filed contentions similar to Utah HH and II because the concerns raised with wildland fires on open rangeland in Skull Valley were not at issue with the initial rail alignment next to the paved highway, Skull Valley Road. The State did not compare and contrast the two plans and instead filed contentions within 30 days of PFS's significant license amendment; the contentions focused on the environmental and health consequences of PFS's new alignment. This approach fits squarely within 10 C.F.R. § 2.714, as opposed to the Board's

strained application of NRC case law that “in judging the contention’s timeliness is the extent to which the new contention could have been put forward with any degree of specificity in advance of the document’s release.” Ref. B.4.a.‡, 48 NRC at 292. Utah HH and II spell out, with support from an on the ground expert knowledgeable and skilled in managing wildland fire suppression, why PFS’s Low rail alignment presents a new and unanalyzed threat in Skull Valley.

(iv) Commission Review: The standard the Board used in rejecting Utah HH and II does not conform to existing NRC case law. The Commission should accept review and reverse the decision below which is based on contrived reasoning and one that elevates form over substance. Moreover, nowhere in the record can NRC show where it has complied with NEPA in evaluating the health and environmental impacts, or the costs and benefits, associated with a rail spur located on public lands in open rangelands that are prone to wildland fires.

5. Contention Utah KK (UTTR and economic costs)

(i) Summary: Utah KK challenges the DEIS’s failure to address the impacts of the proposed facility to military training, testing, overall military readiness, and subsequent economic impacts on the State of Utah from locating a 40,000 MTU spent fuel storage facility under the Sevier B Military Operating Area and proximate to the Utah Test and Training Range (UTTR). The Board rejected Utah KK as not meeting the section 2.714 late-filed factors but noted that it otherwise would have admitted the contention. Ref. B.5.‡, 52 NRC at 224 n.4.

(ii) Issue Previously Raised: Ref. B.5.

(iii) Erroneous Action: Once again the Board has elevated form over substance. The State made known to the Staff in scoping comments that SNF transportation down Skull Valley and storage at PFS directly impacts the mission of the UTTR and the viability of Hill Air Force

Base, which is a major employer and is a significant part of Utah's economy. Ref. B.5. at 3. The State reasonably relied on the Staff's pronouncement that the scope of the EIS would include any cumulative impacts the PFS facility would have on "other existing and proposed facilities and activities in the area" as well as "direct and indirect economic effects (both beneficial and adverse) on employment, taxes, [etc.]." *Id.* Even though the Board's ruling was pre-September 11, 2001, at that time the prominence of Hill AFB as a significant military asset in training, testing and military readiness should have been apparent.¹⁸ The Board's citation to South Carolina Electric & Gas Co. (Virgil C. Summer Nuclear Station), ALAB-642, 13 NRC 881, 887 n.5 (1981) as support that it did not find the State's "national significance" argument a contributor to good cause is a *non sequitur*.¹⁹ Ref. B.5.¶, 52 NRC at 223.

(iv) Commission Review: The Board's ruling is contrary to law; it also raises an important question of policy and national security. The State filed Utah KK one year prior to scheduled hearings on NEPA issues (*see* Revised Schedule 9/5/00), described with specificity and documentation the military significance of the UTTR and the economic significance of Hill AFB, yet the Board weighed these factors against the State. *Id.* at 223-224.²⁰ The Commission has oft-stated that it is interested in efficient and expeditious proceedings but that interest cannot be subordinated to the public's interest in health, safety and the environment. *See eg.*,

¹⁸If not then, it certainly is now and there is nothing in the record that addresses such a significant and obvious impact to national security and military readiness as placing a 40,000 MTU high level waste storage facility in an area that averages 7,040 military sorties annually. LBP-03-04, 57 NRC 69, 118 (2003).

¹⁹Summer, n. 5, is specific to the facts in that case; it references parties aggrieved by late filing, delay in the proceeding, and the substantiality of reasons for not having filed earlier.

²⁰The Board found late-filed factors two and four favored the State. *Id.* at 224.

Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), CLI-83-19, 17 NRC 1041, 1048 (1983). The State, by reasonably relying on the traditional NEPA scoping process to address these concerns and then filing a contention when it did not, is in fact promoting efficiency in NRC proceedings as well as putting the Staff on notice of specific NEPA shortcomings. Such an approach avoids unnecessary litigation and does not swamp the Board with contentions which require predictive rulings as to the future scope of the DEIS. In the instant case, the Commission should reverse the Board's ruling and find the State has good cause to raise the unanalyzed significance of siting a nuclear facility located under a military operating area, where the U.S. military and its allies access the nation's largest bombing, testing and training range.

C. Transportation Contentions

1. Contentions Utah V, as amended, and Utah LL through OO

The State filed Contention Utah V, which challenged PFS's reliance on Table S-4, as part of its original contentions. The State also filed comments to the Commission's proposed rule change to Part 51 and Draft Addendum 1 to the GEIS for license renewal, NUREG-1437, which accompanied the rule change. The Commission specifically noted in the generic proceeding that *Utah's concerns about the impacts of spent fuel transportation through Salt Lake City are to be considered in the environmental review for the PFS facility.* NUREG-1437 at A1-8. Within thirty days of the NUREG-1437 determination, the State filed an amendment to Utah V, but the Board ruled it late and later ruled Utah V "moot" because the DEIS does not rely on Table S-4. When the DEIS was issued, the State disputed the Staff's transportation risk analysis by filing Utah LL through OO. The State argued the DEIS 1) ignored the impacts of incident-free transportation resulting from fuel loading and the intermodal transfer from

trucks to railheads, and failed to describe the type of rail cars to be used or evaluate the accident risks posed by the extremely heavy loads (Utah LL); 2) improperly analyzed the risk of the most severe category of accidents by underestimating both the probability and the consequences of such accidents (Utah MM); 3) did not describe or analyze the environmental impacts of a maximum credible accident (Utah NN); and 4) did not address the economic risks or consequences of a transportation accident (Utah OO). Utah LL through OO were rejected at the contention filing stage as being filed a few days beyond a Board imposed 30 day deadline. The State filed a motion for reconsideration and sought partial interlocutory appeal, both of which were denied.

(ii) Issue Previously Raised: Ref. C.

(iii) Erroneous Action: The Board overstepped its discretionary bounds by rejecting these contentions as untimely. First, the State was bounced around from the Licensing Board forum to a generic proceeding then back to the Board again, only to be told it was too late and its original contention Utah V was moot. Ref. C.1.¶4, 54 NRC at 162. Then four significant NEPA contentions, Utah LL-OO, were completely dismissed as being a few days outside a Board-imposed thirty-day deadline (Ref. C.2.¶2, 52 NRC at 235-37), which deadline was 15 days earlier than NRC's 45-day DEIS NEPA comment period. 10 CFR § 51.73. Instead of affording the State the opportunity to file contentions within the regulatory NEPA review and comment period, the Board committed prejudicial procedural error by elevating a litigation schedule (NEPA hearings were scheduled for one year hence) over cognizable NEPA inadequacies.

(iv) Commission Review: If interlocutory orders CLI-01-01, 53 NRC 1, and CLI-00-24, 52 NRC 351 n. 3 do not constitute review, the Commission should exercise review of Utah LL through OO, as it should review Utah V, to determine whether the State was afforded due

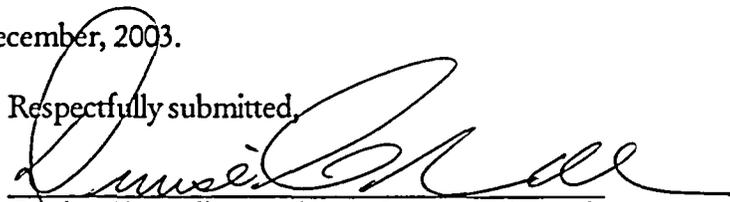
process. When an intervenor makes herculean efforts to comply with NRC's taxing procedures, it should not be rewarded with such arbitrarily imposed procedural rulings. The Commission should re-visit its no-merits finding "that application of the lateness criteria would allow applicants and the NRC staff to manipulate the availability of licensing-related documents to deprive intervenors of their rights to a hearing." Catawba, 17 NRC at 1047. The State was handed one copy of the Staff's 2-inch thick DEIS at the beginning of a week-long evidentiary hearing. Ref. B.5.‡, 52 NRC at 220. While the timing may have occurred by happenstance, it nonetheless occurred at a time when all parties were fully occupied with the first stage of a three stage complex hearing schedule. This timing, coupled with filing NEPA contentions before the State had timely crafted its DEIS comments, deprived the State of due process.

D. Exhaustion of Administrative Remedies

To the extent the Commission considers that the State has not specifically petitioned for interlocutory review of Utah A (Lack of Statutory Authority) or Utah RR (Suicide Mission Terrorism and Sabotage), the State now petitions for review. These issues were previously raised and briefed as described in Ref. D.1 and D.2; the Commission ruled on the merits of Utah A in CLI-02-29, 56 NRC 390 and Utah RR in CLI-02-25, 56 NRC 340.

DATED this 4th day of December, 2003.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S PETITION FOR REVIEW OF
NON-HEARING ISSUES IN THE PRIVATE FUEL STORAGE, LLC LICENSING
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REFERENCE APPENDIX

to

*State of Utah's Petition for Review of Non-hearing Issues
in the Private Fuel Storage, LLC Licensing Proceeding*

Docket No. 72-22-ISFSI

December 4, 2003

A. SAFETY, SECURITY AND ASSOCIATED CONTENTIONS

1. Contentions Utah Security-A (Security Force Staffing), Utah Security-G and Utah U, Basis 4 (Terrorism and Sabotage), and Security-J (Law Enforcement)

a. Contention Security-A

i *State of Utah's Contentions Security-A through Security-I Based on Applicant's Confidential Safeguards Security Plan* (January 3, 1998) ("*Utah's Security Contentions*") at 2-3.

ii *State of Utah's Reply to NRC Staff and Applicant's Responses to Utah's Security Plan Contentions Security-A Through Security-F* ("*Utah's Reply - Security Contentions*") (February 11, 1998) at 5-8.

iii *State of Utah's Motion for Reconsideration of the Board's Ruling on State of Utah Physical Security Plan Contentions* (July 10, 1998) ("*Utah's Motion for Reconsideration - Security Contentions*").

iv *State of Utah's Motion to Amend Security Contentions* (December 17, 1998) ("*Utah's Motion to Amend Security Contentions*") based on information obtained from Tooele County Attorney.

v *State's Response to Applicant's Motion for Summary Disposition of Contentions Utah Security-A and Security-B and Partial Summary Disposition of Contention Utah Security-C* (July 1, 1999) ("*Utah's Response to Summary Disposition - Security Contentions*").

‡ Board Rulings:

1. LBP-98-13, 47 NRC 360, 368 (1998) rejected Utah Security-A
2. LBP-98-17, 48 NRC 69, 75-76 (1998) granted *Utah's Motion for Reconsideration - Security Contentions*, and admitted Utah Security-A (whether cooperative law enforcement agreement ("CLEA") was properly adopted by Tooele County).
3. LBP-99-7, 49 NRC 124 (1999) denied *Utah's Motion to Amend Security Contentions* (State untimely in obtaining information from Tooele County Attorney).
4. LBP-99-31, 50 NRC 147 (1999) granted summary disposition in favor of PFS (Tooele County properly adopted CLEA).

b. Contention Utah Security-G

i *Utah's Security Contentions* at 13-16.

ii *Utah's Reply - Security Contentions* at 20-21.

‡ Board Ruling:

LBP-98-13, 47 NRC 360, 372 (1998) rejected Utah Security-G.

c. Contention Utah U, Basis 4

i *State of Utah's Contentions on the Construction and Operating License Application by Private Fuel Storage, LLC for an Independent Spent Fuel Storage Facility* (November 23, 1997) ("*Utah's Contentions*") at 142.

ii *State of Utah's Reply to the NRC Staff's and Applicant's Response to State of Utah's Contentions A through DD* (January 16, 1998) ("*Utah's Reply*") at 83-84.

iii *State of Utah's Motion for Clarification and Reconsideration of LBP-98-7* (May 6, 1998) ("*Utah's Clarification and Reconsideration Motion*") at 1-5.

‡ **Board Rulings:**

1. LBP-98-7, 47 NRC 142, 199 (1998) rejected Utah U basis 4.

2. LBP-98-10, 47 NRC 288, 290 (1998) clarification denied.

d. **Contention Utah Security-J**

i *State of Utah's Request for Admission of Late-Filed Contention Utah Security J (Law Enforcement)* (April 13, 2001).

ii *Utah's Opposition to PFS'S Motion for Summary Disposition of Utah Contention Security J – Law Enforcement* (May 31, 2002).

iii *Utah's Reply to Staff's Response to PFS's Motion for Summary Disposition of Utah Contention Security J – Law Enforcement* (August 9, 2002).

iv *State of Utah's Response to PFS's Supplement to PFS's Motion for Summary Disposition of Utah Contention Security J – Law Enforcement* (August 27, 2002).

‡ **Board Rulings:**

1. Order, June 14, 2001, deferred admission of Utah Security-J pending resolution of federal lawsuit (*Skull Valley Band of Goshute Indians v. Leavitt*, before U.S. District Court for the District of Utah, Case No. 2:01CV00270C) or until Board takes further action.

2. LBP-02-07, 55 NRC 167 (2002) admitted Utah Security-J.

3. LBP-02-20, __ NRC __ (2002) granted summary disposition in favor of PFS (U.S. District Court's decision declared Utah statutes unconstitutional).

2. **Contentions Utah B (B-1), Security-F, Security-H & Security-I (Intermodal Transfer Facility: License Needed and Lack of Security)**

a. **Contention Utah B**

i *Utah's Contentions* at 10-15.

ii *Utah's Reply* at 15-19.

iii *State's Response to [PFS & NRC] Motions for Reconsideration* (May 13, 1998) at 2-8.

iv *State's Opposition to Applicant's Motion for Summary Disposition of Utah Contention B* (July 16,

1999).

v *State of Utah's Response to NRC Staff's Response to Applicant's Motion for Summary Disposition of Contention Utah B* (July 26, 1999).

‡ **Board Rulings:**

1. LBP-98-7, 47 NRC 142, 184 (1998) rejected Utah B bases 2 (volume unlike other intermodal transfer) and 3 (temporary storage).
2. LBP-98-7, 47 NRC 142, 184-185 (1998) admitted Utah B bases 1 (de facto interim spent fuel storage facility) and 4 (regulatory protections of Part 72 needed).
3. LBP-98-10, 47 NRC 288, 291 (1998) denied PFS's and Staff's motions for reconsideration of admission of bases 1 and 4.
4. LBP-98-34, 50 NRC 168 (1998) granted summary disposition in favor of PFS (activities governed by Part 71 and DOT regulations).

b. **Contention Utah B-1**

State of Utah's Contentions Relating to the LowRail Transportation License Amendment ("Utah's LowRail Contentions") (September 29, 1998).

‡ **Board Ruling:** LBP-98-29, 48 NRC 286 (1998) rejected Utah B-1 (but considered Utah B amended as to its new location, etc.)

c. **Contention Utah Security-F**

i *Utah's Security Contentions* at 10-12.

ii *Utah's Reply - Security Contentions* at 19-20.

‡ **Board Ruling:** LBP-98-13, 47 NRC 360, 372 (1998) rejected Utah Security-F.

d. **Contention Utah Security-H**

i *Utah's Security Contentions* at 16-18.

ii *Utah's Reply - Security Contentions* at 21-22.

‡ **Board Ruling:** LBP-98-13, 47 NRC 360, 373 (1998) rejected Utah Security-H.

e. **Contention Utah Security-I**

i *Utah's Security Contentions* at 19.

ii *Utah's Reply - Security Contentions* at 22-23.

‡ **Board Ruling:** LBP-98-13, 47 NRC 360, 373 (1998) rejected Utah Security-I.

3. Contentions Utah J and Utah U Basis 2 – Inspection and Maintenance of Safety Components, Including Canisters and Cladding (Lack of a Hot Cell)

a. Contention Utah J

i *Utah's Contentions* at 63-71.

ii *Utah's Reply* at 49-53.

iii *Utah's Clarification and Reconsideration Motion* (May 6, 1998) at 1-10.

‡ Board Rulings:

1. LBP-98-7, 47 NRC 142, 189-190 (1998) rejected Utah J.

2. LBP-98-10, 47 NRC 288, 290, 293 (1998) clarification and reconsideration denied.

b. Contention Utah U, Basis 2

i *Utah's Contentions* at 142.

ii *Utah's Reply* at 83-84.

iii *Utah's Clarification and Reconsideration Motion* (May 6, 1998) at 1-5.

‡ Board Rulings:

1. LBP-98-7, 47 NRC 142, 199 (1998) rejected Utah U basis 2.

2. LBP-98-10, 47 NRC 288, 290 (1998) clarification denied.

B. NEPA CONTENTIONS¹

1. Contentions Utah X (Need for the Facility) and Utah Z (No Action)

a. Contention Utah X

i *Utah's Contentions* at 165-166.

ii *Utah's Reply* at 89-90.

iii *Utah's Clarification and Reconsideration Motion* (May 6, 1998) at 1-5.

‡ Board Rulings:

1. LBP-98-7, 47 NRC 142, 202 (1998) rejected Utah X.

2. LBP-98-10, 47 NRC 288, 290 (1998) clarification denied.

¹See also Refs. 1.c, and 3.b.

b. Contention Utah Z

i *Utah's Contentions* at 169-170.

ii *Utah's Reply* at 95-96.

iii *State of Utah's Motion to Compel NRC Staff to Respond to State's Seventh Set of Discovery Requests* (September 20, 2000) (Utah Z).

iv *State of Utah's Motion to Compel NRC Staff to Respond to State's Eighth Set of Discovery Requests* (October 3, 2000) (Utah Z).

v *State of Utah's Motion to Compel Applicant to Respond to State's Tenth Set of Discovery Requests on Utah Contention Z* (March 19, 2001).

vi *State of Utah's Response to Applicant's Motion for Summary Disposition on Utah Contention Z* (March 6, 2001).

vii *State of Utah's Reply to Staff's Response to Applicant's Motion for Summary Disposition on Utah Contention Z* (March 16, 2001).

‡ **Board Rulings:**

1. LBP-98-7, 47 NRC 142, 203 (1998) admitted Utah Z.

2. LBP-98-10, 47 NRC 288, 296 (1998) Utah Z does not include sabotage-related impacts.

3. Order, November 9, 2000, denied State's motion to compel discovery against the Staff (excluded economic impacts from contention; limited scope to environmental impacts).

4. LBP-01-23, 54 NRC 163 (2001) granted summary disposition in favor of PFS.

2. **Contention Utah Y (Connected Actions: link between proposed ISFSI and national high level nuclear waste program)**

a. *Utah's Contentions* at 167-168.

b. *Utah's Reply* at 90-96.

c. *Utah's Clarification and Reconsideration Motion* (May 6, 1998) at 1-5.

‡ **Board Ruling:**

1. LBP-98-7, 47 NRC 142, 202 (1998) rejected Utah Y.

2. LBP-98-10, 47 NRC 288, 290 (1998) clarification denied.

3. Contentions Utah CC (One-Sided Costs-Benefit Analysis) and Utah SS (Final EIS revised cost benefit analysis)

a. Contention Utah CC

i *Utah's Contentions* at 178-179.

ii *Utah's Reply* at 99-101.

iii *Utah's Clarification and Reconsideration Motion* (May 6, 1998) at 16-20.

‡ Board Rulings:

1. LBP-98-7, 47 NRC 142, 204 (1998) rejected Utah CC.

2. LBP-98-10, 47 NRC 288, 290, 294 (1998) clarification and reconsideration denied.

b. Contention Utah SS

i *State of Utah's Request for Admission of Late-filed Contention Utah SS* (February 11, 2002).

ii Oral argument at 2002 evidentiary hearing Tr. 19-57; 108-119 (May 10, 2002).

‡ Board Ruling: Oral decision at 2002 evidentiary hearing Tr. 9210-9217 (May 17, 2002) rejected Utah SS (no written decision issued).

4. Contentions Utah HH and II – Low Rail Corridor and Fire Hazards

a. Contention Utah HH

i *State of Utah's Contentions Relating to the Low Rail Transportation License Amendment* (September 29, 1998).

ii *State of Utah's Reply to Applicant's and Staff's Responses to Low Rail Contentions* (October 26, 1998).

‡ Board Ruling: LBP-98-29, 48 NRC 286, 292-294 (1998) rejected Utah HH.

b. Contention Utah II

i *State of Utah's Contentions Relating to the Low Rail Transportation License Amendment* (September 29, 1998).

ii *State of Utah's Reply to Applicant's and Staff's Responses to Low Rail Contentions* (October 26, 1998).

‡ Board Ruling: LBP-98-29, 48 NRC 286, 295-296 (1998) rejected Utah II.

5. Contention Utah KK (Potential Impacts to Military Training and Testing and State Economy)

State of Utah's Request for Admission of Late-filed Utah Contention KK (Potential Impacts to Military Training and Testing and State Economy) (July 27, 2000).

‡ Board Ruling: LBP-00-27, 52 NRC 216 (2000) rejected Utah KK.

C. TRANSPORTATION CONTENTIONS

1. Contention Utah V, as amended (Transportation)

- a. *Utah Contentions* at 144-161.
- b. *Utah Reply* at 84-88.
- c. *Utah's Clarification and Reconsideration Motion* (May 6, 1998) at 1-5.
- d. *State's Response to [PFS & NRC] Motions for Reconsideration* (May 13, 1998) at 15-18.
- e. *Comments by the State of Utah on Proposed Rulemaking: Changes to Requirements for Environmental Review for Renewal of Nuclear Power Plant Operating Licenses* (April 27, 1999).
- f. *State of Utah's Request for Admission of Late-Filed Amended Utah Contention V* (October 4, 1999) (in light of final NUREG-1437, Vol. 1, Add. 1, *Generic Environmental Impact Statement for License Renewal of Nuclear Plants*).
- g. *State of Utah's Reply to Applicant and Staff Oppositions to Late-filed Amended Utah Contention V* (October 28, 1999).
- h. *State of Utah's Response to Applicant's Motion for Summary Disposition of Utah Contention V* (May 15, 2001).

‡ Board Rulings:

1. LBP-98-8, 47 NRC 142, 199-201 (1998) admitted part of basis 2; rejected basis 1, remainder of basis 2, bases 3 and 4.
2. LBP-98-10, 47 NRC 288, 290 (1998) clarification denied.
3. LBP-00-14, 51 NRC 301 (2000) rejected Amended Utah V.
4. LBP-01-22, 54 NRC 155 (2001) granted summary disposition in favor of PFS.

2. Contentions Utah LL (DEIS ignores transportation risks), Utah MM (DEIS underestimates risks of most severe accident category), Utah NN (DEIS fails to address environmental impacts of a maximum credible accident), and Utah OO (DEIS fails to address economic risks or consequences of transportation accident).

a. *State of Utah's Request for Admission of Late-filed Contentions Utah LL Through OO (Relating to the DEIS's Analysis of Spent Fuel Transportation Risks)* (August 2, 2000).

b. *Notification of Errata to State of Utah's Request for Admission of Late-filed Contentions Utah LL Through OO (Relating to the DEIS's Analysis of Spent Fuel Transportation Risks)* (August 8, 2000).

c. *State of Utah's Reply to Applicant's and Staff's Responses to Late-filed Contentions Utah LL Through OO and Motion to Amend Contention LL* (September 7, 2000).

d. *State of Utah's Motion to Strike Part of the Staff's Response to State of Utah's Motion to Amend Late-Filed Contention Utah LL* (September, 18, 2000).

e. *State of Utah's Motion For Partial Recoreideration of LBP-00-28* (November 10, 2000).

f. *State of Utah's Partial Interlocutory Appeal of LBP-00-28 ("Utah's Partial Interlocutory Appeal")* (November 10, 2000).

‡ **Board and Commission Rulings:**

1. LBP-00-28, 52 NRC 226 (2000) rejected Utah LL, Utah MM, Utah NN and Utah OO.

2. LBP-00-31, 52 NRC 340 (2000) denied *Utah's Partial Recoreideration Motion*.

3. CLI-01-01, 53 NRC 1, 6-7 (2001) denied *Utah's Partial Interlocutory Appeal*.

D. EXHAUSTION OF ADMINISTRATIVE REMEDIES

1. Contention Utah A (Statutory Authority).

a. *Utah's Contentions* at 3-9.

b. *Utah's Reply* at 9-15.

c. *Utah's Suggestion of Lack of Jurisdiction* (February 11, 2002).

d. *Petition to Institute Rulemaking and To Stay Licensing Proceeding ("Utah's Rulemaking Petition")* (February 11, 2002).

e. *Utah's Supplemental Brief Regarding Utah's Suggestion of Lack of Jurisdiction* (May 15, 2002).

f. *Utah's Reply Brief Regarding Utah's Suggestion of Lack of Jurisdiction* (June 17, 2002).

‡ Board and Commission Rulings:

1. LBP-98-7, 47 NRC 142, 183-184 (1998) rejected Utah A.
2. CLI-02-11, 55 NRC 260 (2002) denied Utah's request to stay licensing proceedings, set a briefing schedule, and deferred decision of *Utah's Rulemaking Petition*.
3. CLI-02-29, 56 NRC 390 (2002) rejected Utah's claim that the Commission lacks authority to license the proposed PFS facility.

2. Contention Utah RR (Suicide Mission Terrorism and Sabotage).

- a. *State of Utah's Request for Admission of Late-Filed Contention Utah RR (Suicide Mission Terrorism and Sabotage)*, with *Declaration of Dr. Marin Resnikoff* (October 10, 2001).
- b. *State of Utah's Petition for Immediate Relief Suspending Licensing Proceedings* (October 10, 2001).
- c. *State of Utah's Brief in Response to CLI-02-03 and in Support of Utah's Request for Admission of Late-filed Contention Utah RR (Suicide Mission Terrorism and Sabotage)* (February 27, 2002).

‡ Board and Commission Rulings:

1. LBP-01-37, 54 NRC 476 (2001) rejected Utah RR and referred decision to Commission.
2. CLI-02-3, 55 NRC 155 (2002) Commission accepted review.
3. CLI-02-25, 56 NRC 340 (2002) (December 18, 2002) held NEPA does not require the NRC, in rendering licensing decisions, to consider the impacts of terrorism.

E. MISCELLANEOUS

1. NUREG-1714, *Draft Environmental Impact Statement for the Construction and Operation of the 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*, June 2000 ("DEIS").

2. NUREG-1714, *Final Environmental Impact Statement for the Construction and Operation of the 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*, December 2001 ("FEIS").