

December 18, 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Commission

December 24, 2003 (9:50AM)

In the Matter of)	
)	
PRIVATE FUEL STORAGE L.L.C.)	Docket No. 72-22
)	
(Private Fuel Storage Facility))	ASLBP No. 97-732-02-ISFSI

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

APPLICANT'S RESPONSE TO STATE OF UTAH'S
PETITION FOR REVIEW OF NON-HEARING ISSUES

Pursuant to 10 C.F.R. § 2.786(b)(3), Applicant Private Fuel Storage, L.L.C. ("Applicant" or "PFS") opposes the "State of Utah's Petition for Review of Non-Hearing Issues in the Private Fuel Storage, LLC Licensing Proceeding" filed December 4, 2003 ("Pet.") concerning certain safety, security and environmental contentions rejected by the Atomic Safety and Licensing Board ("Board"). The State has utterly failed to show that the Board's decisions contain "clearly erroneous" fact findings, "necessary" legal conclusion that are "without precedent" or "depart from established law, or "prejudicial procedural error" and has failed to raise "substantial and important" questions of law, fact or policy, or "any other consideration" that the Commission might deem in the public interest.¹

At the outset, claims of error aside, the Commission should reject the State's assertions that it has submitted "substantial and important question[s] of law, policy or discretion." 10 C.F.R. § 2.786(b)(4)(iii). As the Commission has rejected such claims elsewhere, here,

the Board fully considered [the petitioner's] claims on the basis of extensive submissions, including [the petitioner's], and resolved all issues reasonably. The Board's decisions . . . rest on its own carefully rendered fact findings, an area where we repeatedly have declined to second-guess plausible Board decisions.

¹ 10 C.F.R. § 2.786(b)(4); Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC ___, slip op. at 4 (Dec. 9, 2003); see discussion of legal principles set forth in Applicant's Response to OGD Petition for Review (Dec. 18, 2003) at 1-2.

See Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370, 382 (2001). Further, the Board's decisions were based on longstanding rules which in conjunction with well-established facts do not give rise to substantial policy questions.

I. DISCUSSION

A. The Commission Should Deny the State's Petition for Review of Safety, Security, and Associated Contentions Dismissed by the Board

1. Contentions Utah Security-A, Security-G, U Basis 4, and Security-J

Lapse of Time for Appeal. At the outset, the time for State to seek review of the dismissal of its security contentions has long expired. Upon resolution of a "major segment" of a case, rulings and decisions concerning that segment are final for purposes of appeal.² In this respect "all contentions concerning the issues of physical security" comprise "a major segment of [a] license proceeding." Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP 83-20, 17 NRC 580, 583 (1983). The last contention challenging PFS's Physical Security Plan ("PSP") was dismissed by the Board on February 29, 2000 upon being informed that the State was abandoning litigation of Security-C. The Board noted that, "with [its] ruling, all party issues regarding the adequacy of the proposed PFS facility PSP have been resolved." Ref. 36 ("LBP-00-05"), 51 NRC at 69 (emphasis added).³ Thus, the time to seek review of the State's security contentions (including those discussed in Section I.B.2, infra) has long since lapsed.⁴

² See, e.g., Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-941, 32 NRC 333, 344 (1990) (dismissed contentions appealable when initial decision on related contentions is issued); see also other cases cited in PFS's Response to State of Utah's Motion for Clarification (Dec. 8, 2000) ("PFS Resp.")

³ See discussion in PFS Resp. at 2-4 for background leading up to the Board's dismissal. In the conference call preceding its Memorandum and Order on this matter (Tr. at 1299-1300), the Board Chairman specifically noted that "[i]f this issue had gone to hearing, we would have issued an initial decision which in that case probably would have basically wrapped up this segment of the case, and there is case authority that indicates that appeal rights then do come from that initial decision."

⁴ PFS had previously requested the Commission to so rule on this issue in its response to the State's Motion for Clarification, but the Commission declined at the time because the issue was not ripe. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-00-24, 52 NRC 351, 354, n. 5 (2000).

Utah Security-A. Utah Security-A claimed that PFS had failed to establish adequate staffing to cope with or timely respond to safeguards contingency events because inadequate housing near the Skull Valley Reservation would make timely response improbable. Pet. at 2. The Board correctly rejected the contention because it impermissibly challenged agency regulations or rulemaking related generic determinations, lacked adequate factual support, and failed to properly challenge the PFS license application. Ref. 30 (“LBP-98-13”), 47 NRC at 368. The contention pointed to no regulatory or factual basis to support its assertions, which were premised on a misreading of the PFS’s Safeguards Contingency Plan. Ref. 3 (“PFS Sec. Ans.”) at 12-13. That misreading cannot serve as the basis for an admissible contention. *Id.* The State’s Petition establishes no Board error. It neither addresses the State’s misreading of the application nor the lack of factual basis for the State’s asserted deficiencies. *See* Pet. at 2-3.

Likewise, the State provides no basis to challenge the Board’s denial of the State’s request to amend its security contentions based on a December 1998 Tooele County letter. The Board denied the request for lack of good cause for late filing of the contention, Ref. 33 (“LBP-99-7”), 49 NRC at 128-29, a deficiency the State does not address.

Utah Security-G. In Security-G, the State claimed that PFS had failed “to adequately assess and describe procedures” to protect spent fuel from terrorism and sabotage. As presented by the State, the fundamental premise of Security-G was PFS’s failure to “provide contingency plan procedures as required by 10 CFR 73 Appendix C.” Ref. 20 (“State Sec. Cont.”) at 13. The Board properly rejected this claim as an impermissible challenge to NRC regulations which expressly provide that safeguards procedures need not be submitted to the NRC, and need not be included in a Part 72 license application. LBP-98-13, 47 NRC at 372; PFS Sec. Ans. at 61-63. Security-G also challenged the Responsibility Matrix in PFS’s Safeguards Contingency Plan which the Board rejected for lack of material support, failure to properly challenge the Application, and as an impermissible challenge to NRC regulations. Other than to note its challenges in Security-G to the Responsibility Matrix (Pet. at 3), the

State makes no attempt to show that the Board's dismissal was erroneous. As set forth in PFS's response, the State (1) misread and ignored relevant information in the Application in claiming that the Plan was inadequate (PFS Sec. Ans. at 65-71), (2) failed to provide any factual basis for its claims of inadequacy (*id.*), and (3) improperly advocated stricter requirements than imposed by Commission regulation (*id.* at 69-72). The Petition ignores these deficiencies.

Utah U Basis 4. Basis 4 of Utah U claimed that PFS's Environmental Report ("ER") improperly failed to analyze environmental effects of a saboteur breaching one or more casks. However, as recently reaffirmed by the Commission in this proceeding, it is well established that terrorism and sabotage are not proper subjects for consideration under NEPA.⁵

Utah Security-J. Utah Security J claimed that PFS did not have a valid documented liaison with a designated Local Law Enforcement Agency because a Utah statute prohibited Tooele County from providing police support and other municipal services to PFS. Subsequently, a federal district court struck down the statute as being preempted by the Atomic Energy Act. Based on the court's decision, the Board dismissed Utah Security-J on grounds of estoppel. Ref. 44 ("LBP-02-20"), 56 NRC at 183-84. The State claims that the Board erred because the court's decision is being appealed, and hence is not final. Pet. 7. It is, however, well established that estoppel may be applied pending appeal of the underlying decision.⁶ Further, Utah's argument is little more than an attack on the correctness of court's decision. It is a long-standing principle that issue preclusion does not depend on the correctness of the underlying decision.⁷ Thus, the Commission should reject review of Utah Security-J.

⁵ Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340 (2000).

⁶ Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), ALAB-378, 5 NRC 557, 562-563 (1977); Safety Light Corp. (Bloomsberg Site Decommissioning and License Renewal Denials), LBP-95-9, 41 NRC 412, 442 (1995).

⁷ Southern Pac. R.R. v. United States, 168 U.S. 1, 48-49 (1897); U.S. v. Moser, 266 U.S. 236, 242 (1942); McLaughlin v Bradlee, 803 F.2d 1197, 1204 (D.C. Cir. 1986); Safety Light Corp., LBP-95-9, 41 NRC at 447.

2. **Contentions Utah B (B-1), Security-F, Security-H, and Security-I (ITP)**

This group of contentions primarily concerns the proposed Intermodal Transfer Point ("ITP"), which would be located on a rail siding off the Union Pacific main rail line approximately 25 miles north of the Private Fuel Storage Facility ("PFSF"), and related transportation of the spent nuclear fuel to the PFSF. Under this transportation alternative, the spent fuel would be shipped by rail carrier to the ITP where it would be transferred to a heavy haul truck and transported the remaining distance to the site.

Utah B. In Utah B, the State asserted that the proposed ITP must be licensed as a spent fuel storage facility under 10 CFR Part 72 because: (1) the ITP is a de facto interim spent fuel storage facility at which PFS would possess spent fuel for extended periods of time; (2) the anticipated large volumes of spent fuel that would pass through the ITP make it unlike previous intermodal transfer operations; (3) the large volume of shipments would necessitate some type of temporary storage at the ITP; and (4) the ITP is a stationary facility for which it is important to provide the public with the security, emergency planning and other protections of 10 C.F.R. Part 72. LBP-98-7, 47 NRC at 184. The Board dismissed Bases 2 and 3 as impermissible challenges to the NRC's Part 71 regulations governing transportation, but admitted Bases 1 and 4 because it was not clear at that point whether the spent fuel at the ITP would remain in the custody of an entity that would be subject to Part 71 or be handled in such a way as to require specific licensing under Part 72. *Id.* at 184-85.

PFS subsequently demonstrated in a motion for summary disposition that: (1) the spent fuel while at the ITP (and in transit to the PFSF) would at all times be in the custody of a carrier authorized to possess and transport spent nuclear fuel pursuant to 10 C.F.R. § 70.20a; (2) the spent fuel while at the ITP (and in transit to the PFSF) would at all times remain sealed in NRC-certified transportation casks in the horizontally configured shipment mode; (3) the sole operation performed at the ITP would be to transfer sealed transportation casks from one mode of transportation, rail, to another mode of transportation, heavy-haul truck trailer, to complete the shipment to the PFSF; and (4) all operations at the ITP would be

performed in compliance with applicable NRC and DOT regulations governing spent nuclear fuel transportation, including applicable security requirements under 10 C.F.R. § 73.37. Ref. 10 (“Donnell Dec.”); Ref. 9 (“Vincent Dec.”). Based on this uncontested factual showing, the Board granted PFS summary disposition on Bases 1 and 4 on the grounds that the regulatory scheme applicable to activities at the ITP was Part 71, and that the contention impermissibly sought to challenge that regulatory scheme. Ref 35 (“LBP-99-34”) 50 NRC at 175-77.

The State in its Petition (at 5) claims that the Board erroneously ruled that the activities conducted at the ITP constituted transportation and that the spent fuel remains in the possession and control of a carrier subject to Part 71 and Sec. 73.37. However, it points to nothing undermining the Board’s decision concerning the applicability of Part 71 to activities at the ITP. At bottom, the State baldly asserts that “to satisfy safety and security” concerns Part 72 possession must be deemed to occur when PFS receives the spent fuel at the ITP. This is a clear challenge to the NRC’s transportation regulations. Thus, as ruled by the Board, LBP-99-34, 50 NRC at 177, the State’s concerns are not subject to adjudication in this proceeding, and the Commission should deny review of Utah B.

Utah Security-F, Security-H, and Utah Security-I. Contention Security-F challenged PFS’s failure to employ ISFSI security and safeguard procedures at the ITP; Security-H claimed that PFS had “failed to demonstrate how it plans to comply with applicable physical protection requirements during transportation to and from” the PFSF; and Security-I claimed that PFS had failed to establish an “adequate communications center as required by 10 C.F.R. § 73.37(b)(4)” for the shipment of spent nuclear fuel LBP-98-13, 47 NRC at 373. As held by the Board, these contentions, like Utah B, concern physical security for off-site transportation – not on-site security at the PFSF. Id.; see also PFS Sec. Ans. at 50-59, 72-81. Therefore, they impermissibly challenge NRC regulations applicable to Part 72 ISFSIs and are not subject to litigation here. Id. Thus, Commission review should be denied.

3. Contentions Utah J and Utah U Basis 2 (Hot Cell)

In Utah J the State asserted that the PFS application was deficient for failing to include a "hot cell" for opening spent fuel casks and inspecting the spent fuel contained inside. Ref. 19 ("State Cont.") at 63. The State claimed that systems and components important to safety must be designed to permit inspection, maintenance and testing and that spent fuel storage systems must be designed with a capability to test and monitor components important to safety. *Id.* at 63-64. The State also claimed that PFS would not be able to verify the condition of the spent fuel without a hot cell, *id.* at 67-69; would not be able to detect contamination on spent fuel canisters, *id.* at 69-71; and would not be able to return casks to their originating reactors if necessary, *id.* at 71.⁸

The Board rejected Utah J because it and its bases "impermissibly challenge agency regulations or rulemaking-associated generic determinations, including those concerning canister inspection and repair; and/or lack adequate factual information or expert opinion support." and rejected Basis 2 of Utah U on similar grounds. Ref. 28 ("LBP-98-7"), 47 NRC at 190, 199. The State sought reconsideration arguing that Utah J did not impermissibly challenge NRC regulations. Ref. 21 ("State Mot. Recon.") at 6-10. The Board denied the motion, noting that both "PFS and the Staff have documented" that "the contention and its supporting bases impermissibly challenge agency regulations or associated rulemaking-associated generic determinations." Ref 29 ("LBP-98-10"), 47 NRC at 293.

In its Petition at 7, the State argues that "Utah J does not challenge NRC's regulations" because "there is no rule specifically on point;" rather, according to the State, it "comes under the NRC's grant of broad authority to require applicants to meet health and safety standards" and is "consistent with NRC practice." The State further claims that PFS

⁸ Basis 2 of Utah U, which incorporated Utah J by reference, asserted that the PFS Environmental Report failed to consider the safety risks and costs associated with the absence of a hot cell at the PFS Facility. *Id.* at 142. The State's Petition raises no issues concerning Basis 2 of Utah U independent of Utah J.

has no viable contingency plans for dealing with leaking or breached spent fuel canisters and it urges the Commission “under its broad authority” to exercise review to account for the potential shipping of leaking or breached canisters or leaving them at the PFS site. Id.

PFS documented why Utah J (and Utah U (Basis 2)) impermissibly challenged NRC regulations and were otherwise deficient. PFS Ans. at 133-46, 286-88; PFS Recon. Resp. at 9-15. In particular, PFS’s response to the State’s reconsideration motion set forth the numerous generic rulemaking determinations challenged by Utah J, PFS Recon. Resp. at 9-10, which, other than its bald assertions, the State completely ignores. Nor has State the shown any other error of fact or law or raised any substantial questions.

Specifically, NRC regulations concerning inspection (10 C.F.R. § 72.122(f)) and testing and monitoring (10 C.F.R. § 72.128(a)(1)) do not require the opening of a spent fuel canister once it is filled with spent fuel and welded shut. PFS Ans. at 133-36. Furthermore, helium-filled spent fuel canisters, double-seal welded shut (like PFS’s) need not be inspected for leaks or corrosion. See id. at 121-25 (responding to Contention Utah I); PFS Recon. Resp. at 9-10.⁹ In addition, the Commission has generically determined that canister breach events are not credible at ISFSIs. Id. at 11-14. The State’s claims that defective canisters could somehow be “discovered” at PFS and hence require a hot cell for handling were speculative, PFS Ans. at 139; see LBP-98-7, 47 NRC at 181, and they constituted impermissible attacks on the quality assurance (QA) regulations for reactors and factually baseless attacks on reactor QA programs, PFS Ans. at 136-39.

The State’s claim regarding PFS’s detection of contamination on canisters improperly ignored the application’s discussion of preventive measures to be employed at reactors before

⁹ The environmental assessment for the Summer ISFSI cited by the State (67 Fed. Reg. at 55,439 (Petition at 7)) is irrelevant to PFS. First, unlike PFS, the casks at Summer do not use seal-welded canisters to contain the spent fuel. There, the cask (with lid and gasket), not a welded canister, is the barrier between the fuel cladding and the outside environment. Second, PFS will not be loading or unloading canisters, so it has no need for equipment for vacuum drying, helium filling, leak checking, and machining of canister components.

shipping. PFS Ans. at 139-41. Its claims regarding contamination en route to PFS were baseless and ignored PFS's procedures for inspecting for contamination. *Id.* at 141. Moreover, contamination would not require a hot cell because any possible resulting releases of radioactive material would fall well below applicable NRC safety limits, *id.* at 141-42, and the canisters could be safely handled at the PFS site, PFS Recon. Resp at 14.

The State's claim that the return of contaminated casks to reactors would be unsafe misinterpreted PFS's application, challenged NRC rules allowing the shipment of radioactive material (canisters) in shipping casks, and ignored PFS provisions for decontamination and repair of shipping casks prior to their return. PFS Ans. at 142-44. The allegation that PFS would violate regulations by returning contaminated casks to reactors was groundless. *Id.* at 144. The claims about contaminated casks posing a hazard to reactor workers upon return were similarly speculative and baseless. *Id.* at 145-46.

Utah U (Basis 2) likewise impermissibly challenged Commission rules, implying that PFS must inspect and repair the contents of its canisters, and ignores material in PFS's ER and Safety Analysis Report that addressed the hypothetical release of contamination from the surface of a canister, including possible worker exposure to radiation. *Id.* at 286-88.

In sum, the State's assertion that PFS requires a hot cell is based on speculation and is not supported by the regulations. It is a broad attack on rulemaking-associated generic determinations which the Board rejected in denying the State's motion for reconsideration. LBP-98-10, 47 NRC at 293; *see* PFS Recon. Resp. at 9-10. Arguing that the Commission should use its "broad authority" to protect public health and safety by requiring PFS to have a hot cell is simply impermissibly advocating stricter requirements than the rules require. *E.g.*, Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001) (citing cases). Therefore, the Commission should deny the State's petition regarding Utah J and Utah U (Basis 2).

B. The Commission Should Deny the State's Petition to Review Environmental Contentions Dismissed by the Board

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

Utah X. Utah X claimed that PFS failed to demonstrate "a need for the facility" which the Board dismissed for failing to "establish with specificity any genuine dispute; impermissibly challeng[ing]" agency regulations . . . and "lack[ing] adequate factual and expert opinion support." LBP-98-7, 47 NRC at 202. The State misstated and misinterpreted the documents referenced as the basis for the contention and provided no other independent factual basis for its assertions. PFS Ans. at 324-28. Further, the State erroneously claimed that detailed substantiation was required for each of the nation's reactor sites concerning their present and projected quantity of spent fuel, projected storage capacity, cost of on-site storage, etc. NEPA, however, employs a rule of reason and nothing in NRC or Council on Environmental Quality ("CEQ") regulations remotely suggest that such a far flung analysis of need be done to satisfy NEPA. PFS Ans. at 329-30.¹⁰ The State's petition (at 9) merely reiterates its unsupported call for a detailed evaluation of need for the facility with no attempt to establish that the Board committed reversible error in dismissing the contention.¹¹

Utah Z. Utah Z, admitted by the Board, asserted that the PFS's ER "does not comply with NEPA because it does not adequately discuss the 'no action' alternative." LBP-98-7, 47 NRC at 256. The State claimed that the ER "can not be used to meaningfully discuss the no build alternative, because the Applicant focuses solely on the perceived disadvantages of the no build alternative." State Cont. at 169 (emphasis in original). Specifically, according to

¹⁰ CEQ's regulations merely provide that the "purpose and need" section of an EIS "shall briefly specify the underlying purpose and need" for the project. 40 C.F.R. § 1502.13 (emphasis added).

¹¹ The State's citations to ALAB-479 and LBP-78-11 (Pet. at 9 n. 11) offer no legal support for the State's contention. ALAB-479 discussed alternatives pursuant to NEPA's express mandate, not need, and moreover, concerned resolution on the merits of an admitted contention. Here, the Board did not reach the merits of the PFS needs analysis because the State failed to satisfy NRC pleading requirements. Thus, ALAB-479 is inapplicable here. LBP-78-11 is completely inapplicable to the present proceeding and, if anything, undermines the State's Petition as it rejected several contentions for failing to satisfy Commission pleading requirements.

the State, “[t]he [ER] does not comply with NEPA” because it “does not consider the advantages of not transporting 4,000 casks of spent fuel rods thousands of miles across the country” and of “not increasing the risk of accidents from additional cask handling, etc.” Id. (emphasis added). The State also asserted that the ER “fails to discuss the considerable safety advantages of storing spent fuel near the reactors, whose spent fuel pools will be available for transfers or inspections of degraded fuel.” Id. at 170 (emphasis added).

Thus, the contention was expressly limited to challenging the omission of material which, as explained in PFS’s Motion for Summary Disposition, was plainly found in the NRC Staff’s Draft Environmental Impact Statement (“DEIS”) (Ref. 45). Ref. 15 (“PFS Utah Z Mot.”) at 8-18. The Board granted PFS’s motion and found that, “it is apparent that contention Utah Z, as framed by the State, was an ‘omission’ challenge to the no-action alternative aspect of the ER.” Ref. 43 (“LBP-01-23”), 54 NRC at 171. The Board found that the DEIS, which superseded the ER, “includes a no action alternative analysis that discusses both the advantages and disadvantages of the proposed course of action, including” each of the alleged deficiencies raised by the State.” Id. at 171-72. Therefore, the contention was rendered entirely moot by the DEIS and was dismissed by the Board for that reason. Id.

The Board was correct. Last year the Commission upheld precisely the same result for a similar “contention of omission,” *citing a decision of the PFS Licensing Board. Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002) (citing LBP-02-2). The State’s Petition ignores the Board’s straightforward resolution of the issues actually presented in Utah Z and attempts to transform them into substantive challenges to the DEIS. The State could have done so but, as noted by the Board, it failed to file a “new or amended contention outlining the State’s concerns about the DEIS discussion of the no-action alternative.” LBP-01-23, 54 NRC at 172.

The Petition establishes no Board error in dismissing Utah Z. Rather, it merely reiterates the claims of a contention never actually filed.¹² Therefore, it must be rejected.

2. Contention Utah Y (Connected Action)

Utah Y asserted that the ER was inadequate for failing to discuss a connected action, in that PFS is assertedly linked to the national high level nuclear waste disposal program, *i.e.*, the repository at Yucca Mountain. State Cont. at 167. Utah Y claimed that the PFS project will “commit the government to one of many alternative courses of action for dealing with high-level waste disposal in general, thus eliminating or discouraging other alternatives.” *Id.* at 167-68. The Board dismissed Utah Y for “fail[ing] to establish with specificity any genuine dispute; impermissibly challeng[ing] the Commission’s regulations or rulemaking-associated generic determinations, including 10 C.F.R. §§ 51.23, 51.61; and/or lack[ing] adequate factual or expert opinion support.” LBP-98-7, 47 NRC at 202.

The State asserts that the Board erred by failing to recognize that PFS “is a significant part of the national high level waste program.” Pet. at 10. It claims that review is necessary to address a significant question of law and policy, asserting that interim storage “relieves the pressure [on the government] to establish a permanent repository.” *Id.* It claims further that PFS will “practically foreclose DOE and congressional decisions on future SNF storage,” *id.* at 10, and will “commit the federal government to one of many courses of action for dealing with the disposal of [spent fuel],” *id.* at 11. Finally, it compares PFS to the federal monitored retrievable storage (MRS) initiative. *Id.*

However, PFS and the DOE repository are not “connected actions” as defined in CEQ regulations. PFS Ans. at 331-33 (citing South Carolina v. O’Leary, 64 F.3d 892, 898-99 (4th

¹² The State’s reliance on Louisiana Energy Services (Pet. at 9, n.10) is misplaced. In that case, the Commission analyzed “particular environmental issues” properly raised by an intervenor. CLI-98-3, 47 NRC at 89. Here, the State failed to raise any such issue, limiting itself only to whether or not the DEIS contained a discussion of the topics. Therefore, LES is inapposite. Compare McGuire, CLI-02-28, 56 NRC at 382-83.

Cir. 1995)). In addition, Utah Y provided no support for its claim that, and did not specify in any way how, the PFS project would “commit the federal government to one of many courses of action” regarding spent fuel disposal. PFS Ans. at 334. The State’s argument that PFS “relieves the pressure to establish a permanent repository” (Pet. at 10) should be disregarded, as it was not raised before the Board below.¹³ It is also unsupported and inconsistent with the current status of the Yucca Mountain project. The State’s arguments about the Waste Confidence Rule and PFS possessing some characteristics of an MRS facility (Pet. at 11) are irrelevant to the argument that PFS and the DOE repository are connected actions. Further, neither argument was made before the Board below. See State Cont. at 167-68. Thus, review of Utah Y should be declined.

3. Contentions Utah CC and SS (Cost-Benefit Analysis)

Utah CC. In Utah CC, the State made broad rhetorical attacks – lacking factual or expert opinion support – on the adequacy of the cost-benefit discussion in the ER, asserting in particular that the qualitative discussion of environmental and socio-economic costs in Section 7.3-1 of the ER was “completely inadequate” and that quantification of many of those costs was required. State Cont. at 178-79. The State, however, ignored the fact that the qualitative discussion in Section 7.3-1 was based on a detailed evaluation of socioeconomic and environment impacts in Chapters 4 and 5 of the ER showing such impacts to be minimal, an evaluation which the State did not challenge. Ref. 2 (“PFS Supp. Ans.”) at 34-35. Further, NEPA’s rule of reason does not require monetary quantification of impacts and benefits, but rather the furnishing of such information as may be necessary under the circumstances for evaluating the project. Id. at 40 (citing cases). The Board appropriately dismissed Utah CC for lack of specificity, inadequate factual support and failure to properly challenge the PFS

¹³ See, e.g., Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 221 (1997).

application. LBP-98-7, 47 NRC at 204; recons. denied, LBP 98-10, 47 NRC at 294; see also PFS Supp. Ans. at 32-43.¹⁴

In its petition, the State continues its broad and unsupported rhetorical attack, claiming for example that the Board - by “[f]ailing to recognize[] . . . that there was no analysis at all in the ER” of costs-benefits - improperly dismissed Utah CC. Pet. at 12 . To the contrary, both the ER and now the FEIS (e.g., Chap. 8) contain such analysis. Hence, review of Utah CC should be denied.

Utah SS. Utah SS alleged that the FEIS failed to properly analyze the PFSF’s costs and benefits based on “new assumptions” regarding the “20-year license period,” “breakeven analysis,” and “start of operations,” which the State claimed were purportedly “presented for the first time in Chapter 8 of the FEIS.” Ref. 27 (“Utah SS Pet.”) at 2. In its response, PFS showed to the contrary that the information needed to frame the contention was available well over a year before Utah SS was submitted. Thus, Utah SS was filed grossly out of time without good cause. Ref. 16 (“PFS SS Resp.”) at 6.

The Board properly rejected late-filed Utah SS.¹⁵ Contrary to the State’s assertion, Pet. at 13, the Board did not find the PFSF economic analyses “misleading.” Rather, the Board correctly found that “the entire record” was available and sufficient to “let the public draw its own conclusions.” Tr. at 9214. Mere disagreement with a Board conclusion does not raise “substantial questions of law and policy.” See Pet. at 14. Further, and in addition to the Board’s reasoning, see Tr. at 9211-16, admission of Utah SS would have been improper

¹⁴ The State claims that the basis of the Board’s rejection of this and other contentions is “impenetrable” because the Board only referenced the general legal concepts underlying its rulings. Pet. at 13 n.15. However, as the Board explained, “in the context of the record before [it], including the arguments of the participants, our reasons for rejecting the contentions ‘may be reasonably discerned’” in accordance with the applicable judicial precedent. LBP-98-10, 47 NRC at 290-91; see also PFS Resp. to Recon. Mot. at 5-7. In any event, the Commission should decline review because, as set forth in PFS’s and the Staff’s pleadings, the contentions were properly subject to rejection on a variety of grounds.

¹⁵ The Board’s decision was issued orally on May 17, 2002 and is reported in the hearing transcript at 9210-17. Although the Board stated that a written decision would be forthcoming, Tr. 9216-17, none was issued.

because the contention: (1) was inexcusably late; (2) was not needed to develop a sound record, and (3) would unnecessarily broaden the scope and delay the proceeding. See generally PFS SS Resp. The State's Petition offers no reason, much less good cause, for the grossly late filing of Utah SS and no legal basis for its conclusory statement that the Board's decision "is contrary to law." Pet. at 13. Thus, the State's claim that it has been denied an opportunity to "raise a genuine disputable issue" is without factual or legal basis, and must be rejected.

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

Utah HH and Utah II were filed in September 1998 after a PFS application amendment that moved its proposed rail line from the east side of Skull Valley to the Low Corridor. Ref. 22 ("Rail Cont."). The State's original 1997 hearing petition did not include any contentions regarding PFS's rail line. Ref. 32 ("LBP-98-29") 48 NRC at 289, 292-93. Utah HH alleged that the ER did not adequately consider the potential for wildfires associated with trains on the Low Corridor rail line and increased human activity. Rail Cont. at 2-3. It also claimed that the rail line would hinder the fighting of wildfires. Id. at 5-7. Utah II alleged that the ER was deficient because it failed to quantify costs and assess the cumulative impacts associated with building and operating the rail line (e.g., (1) fire hazards, (2) effects on species, (3) visual impacts, (4) noise, (5) clearing of vegetation, (6) crossing of historic trails, and (7) impediments to crossing Skull Valley (livestock and recreation)). Id. at 7-12.

The Board dismissed Utah HH because it was unjustifiably late because the State did not show good cause by identifying information regarding the rail line in its new location that was not available in 1997 (the other filing factors did not overcome the lateness). LBP-98-29, 48 NRC at 293-94. The Board dismissed Utah II on substantive grounds because: the quantification of environmental costs is not required by regulation, the contention lacked factual or expert opinion support (except as to visual impacts), and it failed to properly challenge the PFS application as amended (except as to fire hazards, impacts on species, and vegetation

clearing impacts). Id. at 296 & n.9. It also dismissed the aspect of Utah II concerning fire hazards because it, like Utah HH, was unjustifiably late. Id. at 295-96.

The State claims that the Board erred in requiring it to justifying its late filing by identifying new information related to the rail line's new location, asserting that the issues in the contentions only concerned the impacts arising from the rail line's new location. Pet. at 15. Therefore, at the outset, the Commission should decline review with respect to Utah II because the State does not challenge its dismissal, which was based on substantive grounds (in addition to lateness with respect to fires). Compare LBP-98-29, 48 NRC at 296 & n.9.

With respect to Utah HH (and also the aspect of Utah II concerning fires), the Commission should decline review because the Board was correct. As PFS pointed out and the Board recognized, none of the specific issues raised regarding wildfires were dependent upon the new location of the rail line.¹⁶ The Commission should also decline review of Utah HH regarding the impediment to firefighting, for the Board found that part of the contention also deficient for impermissibly challenging agency regulations, which the State does not dispute. See LBP-98-29, 48 NRC at 294 n.6. It should decline review with respect to the other aspects of Utah HH because they lacked a factual showing that the asserted impacts or risks were significant. See PFS Rail Ans. at 5-9. Finally, the Commission should decline review because Utah HH and Utah II are moot. The PFS FEIS discusses the State's issues in detail (see FEIS §§ 5.4 (vegetation and species), 5.5.1.1, 5.5.2.1, 5.5.4 (livestock), 5.6.1.1 (historic trails), 5.8.1 (noise), 5.8.2 (visual impacts), 5.8.3 (recreation), 5.8.4 (wildfires)) and the State never amended its contentions or filed new contentions to challenge those discussions. See McGuire, CLI-02-28, 56 NRC at 383.

¹⁶ Ref. 6 ("PFS Rail Ans.") at 3-4; LBP-98-29, 48 NRC at 293.

5. Contention Utah KK (UTTR and Economic Impacts)

Utah KK asserted that the NRC Staff's DEIS failed to assess the impacts on military training and testing, military readiness and national security, and subsequent impacts on the Utah economy, of building the PFSF under a "military operating area" that is part of the Utah Test and Training Range ("UTTR"). Ref. 25 ("Utah KK Pet.") at 3. Utah KK claimed that the PFSF would cause the military to restrict operations near the facility, impacting readiness and security, which ultimately could lead to the closure of Hill Air Force Base (a base for aircraft using the UTTR), which in turn would impact the Utah economy. Id. at 6-7.

The Board properly dismissed Utah KK on the grounds that it was unjustifiably late. Ref. 38 ("LBP-00-27"), 52 NRC at 225. While the contention was filed soon after the publication of the DEIS, the information on which it was based was available to the State – and hence the State should have filed Utah KK - at least a year before it was filed. Id. at 223 (citing cases). Commenting on the DEIS was no substitute for filing a contention. Moreover, the DEIS's treatment of the issue was identical to that of the ER. Id. Thus, the DEIS contained no new information and hence the State lacked good cause for lateness. Id.¹⁷

The State claims that the Board erred in its lateness ruling. Pet. at 16. It claims: (1) that the Board ignored that the State filed comments on the DEIS regarding Utah KK and relied on the Staff to consider its comments in the DEIS; (2) that the dismissal of Utah KK "raises an important question of policy and national security" because of the importance of the UTTR; and (3) that its approach of commenting on the DEIS is more efficient because it does not "swamp the Board with contentions." Id. at 17-18.

¹⁷ In addition, in proffering the contention, the State failed to satisfy two of the four other requirements for late-filing (which it does not now challenge): assistance in developing a strong record and broadening or delaying the proceeding. Id. at 224; see 10 C.F.R. § 2.714(a)(1). Therefore, dismissal for lateness was clearly warranted. LBP-00-27, 52 NRC at 224.

The Commission should decline review because the Board's ruling was correct¹⁸ and because Utah KK is now moot. The FEIS addresses alleged impacts on the UTTR (and Hill AFB) from the siting of the PFSF and, based on meetings with the Air Force and a letter from a Deputy Assistant Secretary of the Air Force, found that the Air Force would not need to restrict or change its operations because of the PFSF. FEIS §§ G.3.8.1.8, G.3.13.3.1. "Where a contention alleges the omission of particular information on an issue from an application [or DEIS], and the information is later . . . considered by the Staff in a [final] EIS, the contention is moot." McGuire, CLI-02-28, 56 NRC at 383. Furthermore, because this issue has been thoroughly addressed in the FEIS, the State's petition raises no significant issues and review is not warranted.

6. Transportation Contentions (Utah V and Utah LL through OO)

Utah V challenged PFS's reliance on Table S-4 in assessing the environmental impacts of spent fuel transportation. State Cont. at 144-61. The contention was admitted with respect to PFS's reliance on Table S-4 and its use of heavy shipping casks, but rejected on substantive grounds in all other respects. LBP-98-7, 47 NRC at 200-01.¹⁹ Following the publication of the DEIS and its transportation analysis that did not rely on Table S-4, PFS filed a motion for summary disposition of Utah V on the grounds of mootness, which the Board granted. Ref. 42 ("LBP-01-22"), 54 NRC 155.

In August 2000, the State filed Contentions Utah LL through Utah OO, which challenged the DEIS's transportation analysis. Ref. 26 ("Utah LL-OO Pet.") at 1. The Board re-

¹⁸ Contrary to the State's claim (Pet. at 17) the Board was correct in finding that the asserted national significance of the issue in Utah KK (see Utah KK Pet. at 8-9) does not bear on whether the State had good cause for its lateness. LBP-00-27, 52 NRC at 223 (citing South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 887 n.5 (1981)).

¹⁹ Two years later, the State filed an "amended" Utah V challenging PFS's reliance on Table S-4 because it did not adequately address the effects of spent fuel shipments "converging" on the PFS region. Ref. 24 ("Amend. Utah V Pet.") at 1-2. The State also asserted that PFS should assess the cumulative impacts of spent fuel transportation through "high population zones" in Utah and Nevada. Id. at 10. The Board rejected Amended Utah V as unjustifiably late and found it substantively deficient as well. Ref. 37 ("LBP-00-14") 51 NRC 301.

jected the contentions as unjustifiably late, in that the State missed the Board's deadline for filing contentions on the DEIS and the information necessary to assert Utah NN and the economic issues in Utah OO was available in 1997. Ref. 39 ("LBP-00-28"), 52 NRC at 235-38. The Board also would have denied all of Utah LL through Utah OO except for Utah MM, subpart 3, on substantive as well as lateness grounds. *Id.* at 239 n.3. The State moved for partial reconsideration, which the Board declined. Ref. 40 ("LBP-00-31"), 52 NRC 340. It petitioned the Commission for interlocutory review, which the Commission declined, finding that the Board's ruling did not have a pervasive or unusual effect on the proceeding. Ref. 41 ("CLI-01-01"), 53 NRC 1. The State asserts that the Board erred "by elevating a litigation schedule . . . over cognizable NEPA inadequacies." Pet. at 19. It requests review "to determine whether the State was afforded due process." *Id.* at 19-20. It clearly was.

At the outset, the Board's dismissals of Utah V and Amended Utah V do not implicate due process.²⁰ Nor did the Board's dismissal of Utah LL through OO constitute a denial of due process. First of all, the Board stated that it would have denied Utah LL through OO, except for Utah MM, subpart 3, on substantive as well as lateness grounds. LBP-00-28, 52 NRC at 239 n.3. The State does not challenge that ruling.²¹ The Board rejected Utah NN and the portion of Utah OO concerning economic issues for being three years late. *Id.* at 234-35. The remaining contentions, Utah LL through MM and part of OO, were denied because the State missed the Board's filing deadline with a lack of diligence (*i.e.*, without cause), by failing to bring its asserted filing difficulties to the Board's attention ahead of time and request

²⁰ Utah V was dismissed as moot, which is no denial of due process. *See, e.g., Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2)*, CLI-93-10, 37 NRC 192, 200 (1993) (mootness doctrine follows from constitutional "case or controversy" requirement). Amended Utah V was dismissed as unjustifiably late, but since it also challenged reliance on Table S-4, it also would have been rendered moot by the DEIS. In any event, the application of NRC late-filing rules to Amended Utah V does not constitute a denial of due process. *See Union of Concerned Scientists v. NRC*, 920 F.2d 50 (D.C. Cir. 1990) (rejecting facial challenge to contention and late-filing rules).

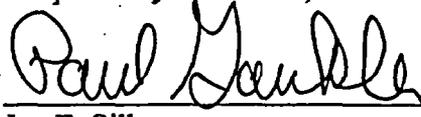
²¹ For reasons set forth in Ref. 14 ("PFS Resp. LL-OO"), the ruling would clearly have been correct.

an extension of time. LBP-00-31, 52 NRC at 343. The Commission has recognized that boards have “extensive authority . . . to schedule and regulate proceedings.” Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 342 n.2 (1998), aff’d sub nom. National Whistleblower Center v. NRC, 208 F.3d 256 (D.C. Cir. 2000). The Board’s enforcement of its filing deadline was simply an appropriate exercise of that authority. Indeed, the federal courts have held that intervenors are “bound to follow prescribed deadlines for the submission of required contentions” and that they have “no basis upon which to assume that those deadlines automatically would be waived” even upon request pursuant to the good cause standard. National Whistleblower Center, 208 F.3d at 264. Thus, the Board’s enforcement of its deadline was not a denial of due process and the State’s petition does not raise a substantial question that would warrant Commission review.

II. CONCLUSION

For the reasons stated above, the Commission should deny the State’s Petition.

Respectfully submitted,



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Dated: December 18, 2003

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REFERENCE APPENDIX

To

APPLICANT'S RESPONSE TO STATE OF UTAH'S PETITION FOR REVIEW OF NON-HEARING ISSUES

December 18, 2003

PFS Answers And Related Pleadings Responding To State Of Utah's Requests For Admission Of Contentions and Motions for Summary Disposition and Related Pleadings

1. Applicant's Answer to Petitioners' Contentions (Dec. 24, 1997) ("PFS Ans.")
2. Applicant's Supplemental Answer to the State of Utah's Contentions Z to DD (Jan. 6, 1997) ("PFS Supp. Ans.")
3. Applicant's Answer to the State of Utah's Contentions Security-A Through Security-I Based on Applicant's Confidential Safeguards Security Plan (Jan. 20, 1998) ("PFS Sec. Ans.")
4. Applicant's Motion for Reconsideration and Clarification (May 6, 1998) ("PFS Recon. Mot.")
5. Applicant's Response to NRC Staff, State of Utah and OGD Motions for Reconsideration & Clarification (May 13, 1998) ("PFS Mot. Recon. Resp.")
6. Applicant's Answer to State of Utah's Contentions Relating to the Low Rail Transportation License Amendment (Oct. 14, 1998) ("PFS Rail Ans.")
7. Applicant's Answer to State of Utah's Motion to Amend Security Contentions (Dec. 29, 1998)
8. Applicant's Motion for Summary Disposition of Contention Utah B (June 11, 1999)
9. Declaration of John A. Vincent in Support of Applicant's Motion for Summary Disposition of Contention Utah B (June 11, 1999) ("Vincent Dec.")

10. Declaration of John Donnell in Support of Applicant's Motion for Summary Disposition of Contention Utah B (June 11, 1999) ("Donnell Dec.")
11. Applicant's Motion for Summary Disposition of Contentions Utah Security-A and Security-B, and Partial Summary Disposition of Contention Utah Security-C (June 11, 1999)
12. Applicant's Response to State of Utah's Request for Admission of Late-Filed Amended Utah Contention V (Oct. 18, 1999)
13. Applicant's Response to State of Utah's Request for Admission of Late-Filed Utah Contention KK (Aug. 10, 2000)
14. Applicant's Response to State of Utah's Request for Admission of Late-Filed Contentions Utah LL-OO (Aug. 30, 2000)
15. Applicant's Motion for Summary Disposition of Utah Contention Z – No Action Alternative (Feb. 14, 2001)
16. Applicant's Response to State of Utah's Request for Admission of late-Filed Contention Utah SS – Revised Cost-Benefit Analysis (Feb. 21, 2002)
17. Applicant's Motion for Summary Disposition of Utah Contention Security-J (Law Enforcement) (April 30, 2002)
18. Applicant's Supplement to Motion for Summary Disposition of Utah Contention Security J – Law Enforcement (Aug. 19, 2002)

State Of Utah's Requests For Admission Of Contentions, Responses To Summary Disposition And Related Pleadings

19. State of Utah's Contentions on the Construction and Operating License Application by Private Fuel Storage, LLC for an Independent Spent Fuel Storage Facility (Nov. 23, 1997) ("State Cont.")
20. State of Utah's Contentions Security-A through Security-I Based on Applicant's Confidential Safeguards Security Plan (Jan. 3, 1998) ("State Sec. Cont.")
21. State of Utah's Motion for Clarification and Reconsideration of LBP-98-7 (May 6, 1998) ("State Recon. Mot.")
22. State of Utah's Contentions Relating to the Low Rail Transportation License Amendment (Sept. 29, 1998) ("Rail Cont.")
23. State of Utah's Motion to Amend Security Contentions (Dec. 17, 1998)

24. State of Utah's Request for Admission of Late-Filed Amended Utah Contention V (Oct. 4, 1999) ("Amend. Utah V Pet.")
25. 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) ("Utah KK Pet.")
26. State of Utah's Request for Admission of Late-Filed Contentions Utah LL-OO (Aug. 2, 2000) ("Utah LL-OO Pet.")
27. State of Utah's Request for Admission of Late-Filed Contention Utah SS (Feb. 11, 2002) ("Utah SS Pet.")

Board And Commission Decisions Relating To Admission Of Contentions

28. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142 (1998) [Board ruling on admission of contentions]
29. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-10, 47 NRC 288 (1998) [Board ruling on motions for reconsideration]
30. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-13, 47 NRC 360 (1998) [Board ruling on physical security plan contentions]
31. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-17, 48 NRC 69 (1998) [Board ruling granting motion for reconsideration on physical security plan contentions]
32. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-29, 48 NRC 286 (1998) [Board ruling rejecting low rail transportation contentions, Utah HH & II]
33. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-99-7, 49 NRC 124 (1999) [Board ruling denying motion to amend security contentions]
34. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-99-31, 50 NRC 147 (1999) [Board ruling granting motion for summary disposition regarding contentions Security-A and Security-B and partial summary disposition regarding contention Security-C]
35. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-99-34, 50 NRC 168 (1999) [Board ruling granting summary disposition of contention Utah B]

36. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-00-05, 51 NRC 64 (2000) [Board ruling dismissing contention Security-C]
37. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-00-14, 51 NRC 301 (2000) [Board ruling denying admission of late-filed amended contention Utah V]
38. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-00-27, 52 NRC 216 (2000) [Board ruling denying admission of late-filed contention Utah KK]
39. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-00-28, 52 NRC 226 (2000) [Board ruling denying admission of late-filed contentions Utah LL-OO]
40. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-00-31, 52 NRC 340 (2000) [Board ruling denying motion for partial reconsideration of LBP-00-28 denying admission of late-filed contentions Utah LL-OO]
41. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-01-1, 53 NRC 1 (2001) [Commission ruling denying interlocutory review of the Board's ruling refusing admission of contentions Utah LL-OO]
42. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-01-22, 54 NRC 155 (2001) [Board ruling granting summary disposition motion regarding contention Utah V]
43. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-01-23, 54 NRC 163 (2001) [Board ruling granting summary disposition motion regarding contention Utah Z]
44. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-02-20, 56 NRC 169 (2002) [Board ruling granting motion for summary disposition regarding contention Security-J]

Miscellaneous

45. NUREG-1714, Draft Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility on Tooele County, Utah (June 2000) ("DEIS")
46. NUREG-1714, Final Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage

**Installation on the Reservation of the Skull Valley Band of Goshute
Indians and the Related Transportation Facility on Tooele County, Utah
(Dec. 2001) ("FEIS")**

Document #: 1369836 v.1

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of)
)
PRIVATE FUEL STORAGE L.L.C.) Docket No. 72-22
)
(Private Fuel Storage Facility)) ASLBP No. 97-732-02-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the "Applicant's Response to State of Utah's Petition for Review of Non-Hearing Issues and Reference Appendix" were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 18th day of December 2003.

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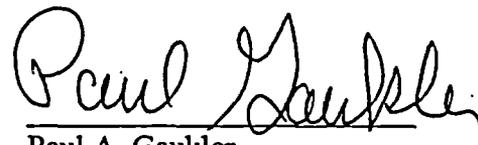
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