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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
PUBLIC AFFAIRS
ADJUTANT GENERAL

In the Matter of:)	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, LLC)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel)	
Storage Installation))	October 28, 1999

STATE OF UTAH'S REPLY TO APPLICANT
AND STAFF OPPOSITIONS TO
LATE-FILED AMENDED UTAH CONTENTION V

Introduction

Pursuant to the Board's Order of October 22, 1999, the State of Utah hereby replies to the Applicant's and the Nuclear Regulatory Commission's ("NRC's" or "Commission's") responses to State of Utah's Request for Admission of Late-Filed Amended Utah Contention V (October 4, 1999) ("State's Request"). Applicant's Response to State of Utah's Request for Admission of Late-Filed Amended Utah Contention V (October 18, 1999) ("Applicant's Response"); NRC Staff's Response to State of Utah's Request for Admission of Late-Filed Amended Utah Contention V (October 18, 1999) ("Staff's Response"). The Applicant and Staff object to the admissibility of the contention and the State's justification for the late filing. The Applicant also objects that the request constitutes an untimely motion for reconsideration. As discussed below, these objections are without merit.

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ARGUMENT

I. AMENDED CONTENTION V IS ADMISSIBLE.

Amended Contention V challenges the adequacy of the Applicant's Environmental Report ("ER") with respect to the consideration of transportation impacts on the Wasatch Front, *i.e.*, the populous region surrounding Salt Lake City. The Applicant does not address the issue of admissibility, and thus apparently does not contest it. The Staff, however, argues that portions of the contention are inadmissible.

The Staff takes issue with two introductory statements in which the State characterizes the Commission's determinations in NUREG-1437, Addendum 1, the Final Generic Environmental Impact Statement for License Renewal of Nuclear Plants ("GEIS"). While the Staff asks that they be excluded from the contention if it is admitted, they are not actually a part of the contention in the first place. Thus, the Staff's request for exclusion of the statements from the contention cannot be granted as a practical matter.

In any event, the Staff errs in arguing that the assertions are incorrect. First, the Staff takes issue with the State's assertion that in NUREG-1437, Addendum 1, "the Commission found that Table S-4 is inadequate to address the impacts of the convergence of many shipments of spent fuel on a Nevada repository, thus implicitly questioning the adequacy of Table S-4 to address the impacts of the convergence of fuel on Salt Lake City and the PFS facility." NRC Staff Response at 14, *quoting* State's

Request at 2. The language in the GEIS speaks for itself:

There were . . . changed circumstances, not accounted for in the original analyses supporting Table S-4 and not adequately treated in the 1996 amendment for license renewal.

NUREG-1437, Addendum 1 at 3. These circumstances included the contemplated convergence of fuel on a "single destination," Yucca Mountain. *Id.* Thus, the Commission concluded that Table S-4, as originally issued could not be relied upon in current circumstances without a re-evaluation of whether changes in the underlying assumptions would yield a different result. The GEIS ultimately concluded that the environmental impact figures in Table S-4 are consistent with the changed parameters of transportation to Yucca Mountain. However, as discussed in more detail in the next paragraph, Addendum 1 to NUREG 1437 reaches no similar conclusions with respect to the PFS facility.

Second, the Staff takes issue with the State's assertion that the Commission "specifically stated that the impacts of spent fuel transportation through Salt Lake City are to be considered in the environmental review for the Private Fuel Storage facility."

NRC Staff Response at 14, *quoting* State's Request at 2. Again, the accuracy of the statement can be determined by reference to the relevant portion of the GEIS:

The State of Utah maintains that a study similar to the one conducted for Las Vegas and Clark County must be conducted for the cumulative impacts along the Wasatch Front that would originate from the proposed Private Fuel Storage Facility to be located at Skull Valley, Utah. Such an analysis is beyond the scope of this generic rulemaking because the Commission directed that cumulative impacts attributed to transportation be analyzed only in the vicinity

of Yucca Mountain. *However, the NRC is currently reviewing a site-specific application for construction and operation of the proposed Private Fuel Storage Facility at Skull Valley in a separate regulatory action. A site-specific study of the cumulative impacts of transportation is part of that review.* The study will be reported in a draft Environmental Impact Statement to be published for public comment. Its availability will be noticed in the Federal Register.

NUREG-1437 at A1-8 (emphasis added). This portion of the GEIS makes it clear that the Commission considers the PFS facility environmental review to constitute the appropriate forum for evaluating environmental impacts of spent fuel transportation on the Wasatch Front.

Finally, with respect to the language of the contention itself, the Staff asserts the lack of a "valid factual or legal basis" for the State's assertions that the ER should consider cumulative impacts, including economic impacts, of spent fuel shipments on high population zones in both Utah and Nevada, to determine whether the combined impacts may be mitigated by selecting other alternatives, such as leaving spent fuel onsite until a permanent repository is available. NRC Staff Response at 15, *quoting* State's Request at 10-11. The Staff makes no argument that any of these considerations is outside the scope of a NEPA review, and there can be no doubt that they are fundamental to the NEPA decisionmaking process:

In each individual [NEPA] case, the particular economic and technical benefits of planned action must be assessed and then weighed against the environmental costs; alternatives must be considered which would affect the balance of values.

* * *

In some cases, the benefits will be great enough to justify a certain quantum of

environmental costs; in other cases, they will not be so great and the proposed action may have to be abandoned or significantly altered so as to bring the benefits and costs into a proper balance. The point of the individualized balancing analysis is to ensure that with possible alterations, the optimally beneficial action is finally taken.

Calvert Cliffs Coordinating Committee v. AEC, 449 F.2d 1109, 1123 (D.C. Cir. 1971).

Moreover, the Commission itself has recognized that transportation of spent fuel through a single high population area -- Las Vegas -- warrants the preparation of a supplemental GEIS. This alone provides sufficient legal *and* factual basis for the State's claims. In the case of the PFS facility, transportation will typically involve two shipments of fuel through the Salt Lake City area in addition to an ultimate shipment through Las Vegas to Yucca Mountain.¹ Thus, there is no merit to the Staff's argument.

II. AMENDED CONTENTION V DOES NOT SEEK UNTIMELY RECONSIDERATION.

The Applicant claims that Amended Contention V constitutes an untimely motion for reconsideration, which should be rejected out of hand because it was not made by May 4, 1998, the Board's established deadline for seeking reconsideration of LBP-98-7. Applicant's Response at 5. This argument should be rejected out of hand. To the extent that the State seeks reconsideration of LBP-98-7, the request is based on new information and changed circumstances which simply did not exist in 1998. As

¹Most fuel shipments will come from the eastern part of the United States and travel through Salt Lake City en route to the PFS facility. If and when fuel is shipped out of the PFS facility it will again travel through Salt Lake City en route to Las Vegas.

the Commission has held, such changed circumstances constitute valid grounds for filing untimely motions for reconsideration. *Public Service of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-7, 29 NRC 395, 398 and note 8 (1989) (entertaining motion for reconsideration filed over two months after decision issued).

III. AMENDED CONTENTION V MEETS THE STANDARD FOR LATE-FILED CONTENTIONS

Contrary to the arguments by the Applicant and Staff, the State meets the 10 CFR § 2.714(a) late filed factors for amending its contention.

Good Cause: Both the Applicant and Staff argue that the State lacks good cause for filing Amended Contention V, because it did not address regional impacts on the Wasatch Front in its original contention. Applicant's Response at 6-8, Staff's Response at 7. This argument ignores the information set forth in the State's Request, which demonstrates that in fact, the State did seek admission of the issue of the failure of WASH-1238 (on which Table S-4 relies) to address "specific regional characteristics of impacts on the environment from transportation." State's Request at 3, *quoting* the language of the contention as admitted in LBP-98-7, 47 NRC 142, 200 (1998). As also quoted in the State's request, the basis for original Contention V further elaborated that:

WASH-1238 does not separately estimate the consequences of an accident in a specific location, or even limit the analysis to an urban or rural area. It is a generic calculation. (p.3) Thus, it is inadequate to satisfy the requirement of 10 CFR § 72.108, that the EIS must take regional characteristics into account. For example, it fails to estimate the consequences of a severe rail accident in Salt

Lake City, a high population area.

State's Request at 3, *quoting* State's Contentions at 159. Thus, the Applicant and the Staff are incorrect in arguing that the State did not previously attempt to litigate the regional impacts of spent fuel transportation, *i.e.*, the impacts on the Wasatch Front.²

The Staff argues that the State could have raised Amended Contention V when the proposed version of the GEIS was issued. Staff's Response at 8. There was nothing in the Draft GEIS, however, indicating that the State should go back to the Licensing Board on an issue that the Licensing Board plainly had rejected as generic. To the contrary, the fact that the Commission chose to use a generic EIS to evaluate the transportation-related impacts on the particular region of Las Vegas gave the State every indication that the Commission intended to confine its consideration of all issues relating to Table S-4 to a generic rulemaking. Accordingly, the State took the reasonable course of raising its concerns about the Wasatch Front in the generic rulemaking proceeding for NUREG-1437, Addendum 1. Not until the final version of

²The Applicant argues that just as the original version of Contention V was rejected as a "frontal attack" on Table S-4, Amended Contention V should be rejected on the same grounds. Applicant's Response at 8, note 4. This argument completely misses the point of Amended Contention V, which is that with the issuance of NUREG-1437, Addendum 1, the Commission explicitly recognized that Table S-4 may not fit all sizes. Just as the Commission found it necessary to examine, in NUREG-1437 Addendum 1, whether Table S-4's values would hold up under the changed circumstances of funneling spent fuel to a single repository in Nevada, it is also necessary for the Licensing Board to examine whether the values in Table S-4 are applicable to a transportation scheme in which fuel will be funneled through the Salt Lake City region, *i.e.*, the Wasatch Front, before continuing to Yucca Mountain.

the GEIS was issued, on September 3, 1999, was the State informed that the Commission considered impacts on the Wasatch Front to be more appropriately considered in the licensing proceeding for the PFS facility.

Development of a Sound Record: The Staff concedes that the State's participation "may arguably be expected to assist in developing a sound record." State's Response at 12. The Applicant also concedes the expertise of the State's expert, Dr. Marvin Resnikoff. Applicant's Response at 10.

Availability of Other Means for Protecting The State's Interests: The Applicant and Staff both argue that the State has another means for vindicating its interests: commenting on the Draft EIS for the PFS facility. Applicant's Response at 9, Staff's Response at 12. To the contrary, the opportunity to comment on an environmental study, without recourse to administrative or judicial review, can hardly be characterized as a means for protecting the State's interests. The State seeks an opportunity to litigate Amended Utah Contention V, with all the attendant procedural and legal protections offered by the Commission's regulations governing adjudications, and federal statutes governing appeals of NRC decisions.

Broadening of Issues or Delay of the Proceeding: Both the Applicant and the Staff argue that admission of Amended Contention V will broaden and delay the proceeding. Applicant's Response at 10, State's Response at 12. Although admission of the contention may broaden the proceeding somewhat, it is unlikely to delay it.

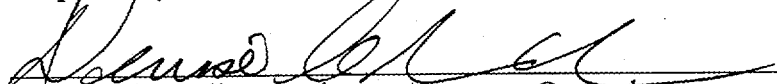
This is a NEPA contention, which would be litigated with the very last group of contentions. Discovery can be taken and testimony can be prepared according to the schedule for the litigation of Group III issues. The addition of this issue to the case should not significantly delay the resolution of the dispute. In weighing this factor, the Board should also bear in mind that whatever delay has occurred here has resulted from the Commission's actions in the generic EIS rulemaking, and were not caused by the State.

Conclusion

For the foregoing reasons, the Staff and Applicant's objections to the admission of Amended Contention V are without merit. Accordingly, it should be admitted.

DATED this 28th day of October, 1999.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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I hereby certify that a copy of STATE OF UTAH'S REPLY TO
APPLICANT'S AND NRC STAFF'S RESPONSES TO REQUEST FOR
ADMISSION OF LATE-FILED AMENDED UTAH CONTENTION V was served

on the persons listed below by electronic mail (unless otherwise noted) with
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A handwritten signature in black ink, appearing to read "Denise Chancellor", written over a horizontal line.

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