

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PRIVATE FUEL STORAGE, L.L.C.	)	Docket No. 72-22-ISFSI
	)	
(Independent Spent	)	
Fuel Storage Installation)	)	

NRC STAFF'S RESPONSE TO PETITION TO INTERVENE
AND CONTENTIONS FILED BY WILLIAM D. PETERSONINTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c) and the Atomic Safety and Licensing Board's "Memorandum and Order (Setting Schedule for Supplement and Responses to Late-Filed Intervention Petition)" (Order), dated June 7, 2000, the staff of the Nuclear Regulatory Commission (Staff) hereby responds to the late-filed intervention petition and contentions filed by William D. Peterson (Petitioner).¹ For the reasons set forth below, the Staff submits that (a) the Petition fails to demonstrate good cause for its late filing, and that a balancing of the other factors specified in 10 C.F.R. § 2.714(a)(1) does not support the grant of the Petition; (b) the Petition fails to demonstrate that the Petitioner possesses the requisite standing to intervene in this matter; and (c) the Petition, Contentions, and Additional

¹ On June 5, 2000, the Petitioner filed a pleading entitled "Petition to Intervene" and "Complaint," in which he seeks party status in this proceeding as a late-filed intervenor (Petition). In its June 7, 2000, Order, the Licensing Board permitted Mr. Peterson to file an amended petition and contentions, as required under 10 C.F.R. § 2.714(b)(2). Order at 1. On June 27 and June 28, 2000, the Petitioner filed amended intervention pleadings and contentions. See "Contentions Third Party Complaint Intervention 10 C.F.R. § 2.714(b)(2)" (Contentions), dated June 27, 2000 and "Additional Contentions Petition to Intervene From Sept 2, 1997, Complaint" (Additional Contentions), dated June 28, 2000. Petitioner additionally submitted letters to the Office of the Secretary and Licensing Board, dated May 26 and May 31, 2000, which relate to the topic of his June 5th pleading and provide additional information.

Contentions do not set forth a valid contention. Accordingly, the Staff opposes the Petition and recommends that it be denied.

BACKGROUND

On June 20, 1997, Private Fuel Storage, L.L.C. (Applicant or PFS) applied for a license, pursuant to 10 C.F.R. Part 72, to receive, transfer and possess power reactor spent fuel and other radioactive material associated with spent fuel storage in an independent spent fuel storage installation (ISFSI), to be constructed and operated on the Skull Valley Indian Reservation in Tooele County, Utah. On July 31, 1997, the Commission published a "Notice of Consideration of Issuance of a Materials License for the Storage of Spent Fuel and Notice of Opportunity for a Hearing," concerning the application. 62 Fed. Reg. 41,099 (July 31, 1997). The Notice stated that the license, if granted, will authorize PFS to store spent fuel in dry storage cask systems at the ISFSI that PFS proposes to construct and operate on the Skull Valley Goshute Indian Reservation, for a term of 20 years. *Id.* The Notice further provided that by September 15, 1997, "any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene with respect to the subject materials license in accordance with the provisions of 10 C.F.R. 2.714." *Id.*

In response to the Notice of Opportunity for Hearing, five petitions for leave to intervene were timely filed by various persons and entities, including the State of Utah, prior to the filing deadline of September 15, 1997. On April 22, 1998, the Licensing Board ruled on standing and the admissibility of contentions. *See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation)*, LBP-98-7, 47 NRC 142 (1998).

On June 5, 2000, almost three years after the Notice of Opportunity to request a hearing was published and more than two years after the Licensing Board ruled on other

petitioners' standing, Petitioner Peterson filed his initial petition to intervene in this proceeding.

DISCUSSION

A. The Petition Is Untimely and Does Not Satisfy the Balancing Test of 10 C.F.R. § 2.714

As indicated in the above discussion, the Commission's Notice of Opportunity for Hearing, published in the Federal Register on July 31, 1997, provided that any person whose interest may be affected by this proceeding and who wishes to participate as a party must file a request and petition for leave to intervene "by September 15, 1997," in accordance with the provisions of 10 C.F.R. 2.714. 62 Fed. Reg. at 41,099. Notwithstanding this requirement, Mr. Peterson's Petition for leave to intervene was not filed until more than two and a half years after the Notice of Opportunity for Hearing had been published. Therefore, his request is untimely in the extreme.

The Commission's regulations require that a late petitioner must demonstrate that his request should be granted, based on a balancing of the factors specified in 10 C.F.R. § 2.714(a)(1). That regulation provides, in pertinent part, as follows:

The petition and/or request shall be filed not later than the time specified in the notice of hearing, or as provided by the . . . Atomic Safety and Licensing Board designated to rule on the petition and/or request Nontimely filings will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the following factors in addition to those set out in paragraph (d)(1) of this section:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

(iv) The extent to which the petitioner's interest will be represented by existing parties.

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

Id.; emphasis added. The burden of proof is on the petitioner, and the petitioner is obliged to affirmatively address the five lateness factors in its petition, and to demonstrate that a balancing of the five factors warrants overlooking the petition's lateness. *Boston Edison Co.* (Pilgrim Nuclear Power Station), ALAB-816, 22 NRC 461, 466 n.22 (1985). Further, the Commission can summarily reject a petition which fails to address the five factors or the standing requirements set forth in 10 C.F.R. § 2.714(d)(1). *Texas Utilities Elec. Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-93-11, 37 NRC 251, 255 (1993).

It is well established that the most important factor is whether the petitioner has shown "good cause" for the lateness of the petition. *See, e.g., State of New Jersey* (Department of Law and Public Safety's Requests Dated October 8, 1993), CLI-93-25, 38 NRC 289, 295 (1993). In this regard, the petitioner must show not only why it did not file in the time provided in the notice of opportunity for hearing, but also why it did not file as soon thereafter as possible. *Id.* Where good cause has not been shown to support the late filing of a petition for leave to intervene, "a petitioner must show a compelling case on the remaining factors." *Id.*, 38 NRC at 296. It has also been held that where good cause for a petition's lateness is not shown, "the petitioner's demonstration on the other factors must be particularly strong." *Duke Power Co.* (Perkins Nuclear Station, Units 1, 2, and 3), ALAB-431, 6 NRC 460, 462 (1977).

In evaluating the five lateness factors, two factors -- the availability of other means to protect the petitioners' interest and the ability of other parties to represent the petitioner's

interest -- are less important than the other factors, and are therefore entitled to less weight. *Texas Utilities Elec. Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 74 (1992). With respect to the third factor (the potential contribution to the development of a sound record), the petitioner is obliged to "set out with as much particularity as possible the precise issues it plans to cover, identify its potential witnesses, and summarize their proposed testimony." *Id.*, citing *Texas Utilities Elec. Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-88-12, 28 NRC 605, 611 (1988), *aff'd sub nom. Citizens for Fair Utility Regulation v. NRC*, 898 F. 2d 51 (5th Cir. 1990), *cert denied*, 498 U.S. 896 (1990).

A balancing of these factors, as applicable to Mr. Peterson's intervention petition, demonstrates that it should be denied. First, the explanation offered by the Petitioner as to the lateness of the petition is stated as follows:

When Utah and Governor Leavitt intervened, he brought with him his 'policy' of the Federal Law does not apply in Utah. Excluding Utah from the Federal Law was not an anticipated action of Congress in CFR Part 10. The intervention of Utah and Governor Leavitt changed the original proceeding, which change affects NRC Docket No. 72-23, more so than 72-22.

Petition at 10. *See also* Petition at 8 ("Today we have a situation that was not expected in the licensing procedure of PSF on the Skull Valley Goshute Indian reservation. Governor Leavitt is an intervener and with his intervention he has brought in an unlawful 'policy' to attempt the use of the land of the Goshute Indian Reservation.").² Apparently, Petitioner bases his good cause for the lateness of his petition on the intervention of the State, which he characterizes as unexpected, and on the State's policy of opposition to storage of spent nuclear fuel in Utah.

² The Petitioner is mistaken that Governor Leavitt is an intervenor. Rather, it is the State of Utah that has intervened. *See Combustion Engineering, Inc.* (Hematite Fuel Fabrication Facility), LBP-89-23, 30 NRC 140, 145 (1989) (a legislator cannot establish standing to intervene on behalf of his constituents).

It is evident, however, that Petitioner was aware of the State's policy of opposition to spent nuclear fuel storage in Utah at least as of September 1997. See Petition at 3 (referencing complaint filed in the U.S. District Court against the Governor of Utah) and Contentions at ¶ 23. Petitioner does not explain when he learned of the State's attempt to intervene in the instant proceeding, which also occurred in September 1997. See "State of Utah's Request For Hearing and Petition For Leave to Intervene," dated September 11, 1997. Based on Petitioner's involvement with respect to spent fuel storage and his sharp disagreement with the State's policy, it is likely that he knew or should have known of the State's status as an intervenor in this proceeding for some time.³ In this regard, the petition is deficient in that it does not explain why Petitioner waited more than two and a half years to file his Petition.

Finally, as this Licensing Board has acknowledged, good cause for lateness cannot be found where a late-filed petitioner trusts others to vigorously pursue matters of importance to that petitioner. See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-99-6, 49 NRC 114, 119 (1999), citing *Houston Lighting & Power Co.* (South Texas Projects, Units 1 and 2), ALAB-799, 21 NRC 360, 382-83 (1985). Similarly, good cause cannot be based solely on a late-filed petitioner's expectation that others would not intervene in a Commission proceeding and advance positions hostile to its own. Accordingly, good cause has not been shown to support the late filing of the Petition.

³ Indeed, Mr. Peterson attended the Public Scoping Meeting for the Environmental Impact Statement held in Salt Lake City on June 2, 1998 and should have been aware of the State's involvement at that time. See NUREG-1714, "Draft Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Skull Valley Band of Goshute Indians and Related Transportation Facility in Tooele County, Utah," dated June, 2000, Appendix A at 21 (William D. Peterson commented on safety and accidents).

With respect to the other factors specified in 10 C.F.R. § 2.714(a)(1), a balancing of these factors does not support the grant of the Petition. Specifically, with respect to factor two, Petitioner has stated that “[t]he Federal court action of Peterson v. Leavitt in Case No. 2:97CV 0691C before Judge Teena Cambell in U.S. District Court for the State of Utah should have resolved this issue.” Petition at 9. Thus, the Petitioner has could have challenged the State’s policy in that action, and thereby had other means to protect his interest, although the resolution of his concerns in that action was not satisfactory to him. Moreover, the Petitioner indicates that he has filed his own application for a license to store spent nuclear fuel under Part 72, and any proceeding on that application should provide an ample opportunity for him to contest the State’s policy if the State opposes his application.

With respect to factor three (the extent to which the petitioner’s participation may reasonably be expected to assist in developing a sound record), the Petition fails to satisfy Commission requirements that it show with particularity “the precise issues” the petitioner plans to address and that it “identify its potential witnesses, and summarize their proposed testimony.” *State of New Jersey*, CLI-93-25, 38 NRC at 296; *Comanche Peak*, CLI-92-12, 36 NRC at 74. Instead, Petitioner claims in general terms that the “scientific data of Governor Leavitt’s ‘policy’ needs to be dealt with” Accordingly, this factor has not been shown to support the grant of the petition.

With respect to factor four (the extent to which the petitioner’s interest will be represented by existing parties), no showing has been made that this factor favors the grant of the Petition. While no other party is likely to advance precisely the same views as the Petitioner, it is likely that the Applicant and the Skull Valley Band of Goshutes will offer relevant testimony and conduct themselves in a manner that supports the application and challenge the State’s opposition to the instant application. Indeed, many of the arguments

now put forth by Petitioner appear likely to be concerns raised by the Applicant and the Skull Valley Band. *See, e.g.*, Petition at 10 (“Both [PFS and Petitioner] are contending with the ‘policy’ of no SNF transport or storage in Utah . . .”). Certainly, to the extent that any party submits expert testimony that is unsound, opposing parties may be expected to point out the testimony’s flaws. Thus, the “scientific data of Governor Leavitt’s ‘policy,’” (Petition at 11) should it be raised as part of the State of Utah’s case, will be addressed during the course of the proceeding.

Finally, with respect to factor five (the extent to which the petitioner’s participation will broaden the issues or delay the proceeding), the grant of the Petition at this late stage of the proceeding could indeed result in a broadening of the issues and/or substantial delay. The Petitioner has stated that he will seek to “subpoena the technical reports Governor Leavitt relies upon for his ‘policy’ stand.” Petition at 10. The resolution of this and other matters may delay the proceeding. Further, the Petitioner’s contentions touch upon many issues that are not presently before the Licensing Board. *See, e.g.*, Contentions at ¶¶ 24 and 27 (pertaining to the Petitioner’s work regarding movement of uranium tailings). Therefore, the Petitioner’s involvement could broaden the issues in the proceeding. Accordingly, factor five should be viewed as weighing against the grant of the petition.

In sum, good cause has not been shown for the lateness of the Peterson petition; and a balancing of the five factors in 10 C.F.R. § 2.714(a)(1) weighs against the grant of the Petition. For these reasons, the Petition should be denied.

B. Petitioner Peterson Fails to Demonstrate that He Possesses Cognizable Interests Which Could Be Adversely Affected by This Proceeding

1. Legal Requirements for Intervention.

It is fundamental that any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that it has standing to do so. Section 189a(1)

of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2239(a) (the Act or AEA), provides:

In any proceeding under this Act, for the granting, suspending, or amending of any license . . . , the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

Id.; emphasis added.

The Commission's regulations in 10 C.F.R. § 2.714(a)(2) provide that a petition to intervene, among other things, "shall set forth with particularity the interest of the petitioner in the proceeding, [and] how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors set forth in [§ 2.714(d)(1)]." Pursuant to 10 C.F.R. § 2.714(d)(1), in ruling on a petition for leave to intervene, the presiding officer of Licensing Board is to consider:

- (i) The nature of the petitioner's right under the Act to be made a party to the proceeding.
- (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
- (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

Finally, a petition for leave to intervene must set forth "the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene," 10 C.F.R. § 2.714(a)(2); and a petitioner must advance at least one admissible contention in order to be permitted to intervene in a proceeding. 10 C.F.R. § 2.714(b).

In determining whether a petitioner has established the requisite interest, the Commission has traditionally applied contemporaneous judicial concepts of standing. *See, e.g., Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 47 (1994).

In order to establish standing, a petitioner must show that the proposed action will cause “injury in fact” to the petitioner’s interest and that the injury is arguably within the “zone of interests” protected by the statutes governing the proceeding. *See, e.g., Georgia Power Co.* (Vogtle Electric Generating Plan, Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993). In Commission proceedings, the injury must fall within the zone of interests sought to be protected by the AEA or the National Environmental Policy Act. *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 316 (1985).

To establish injury in fact and standing, the petitioner must establish (a) that he personally has suffered or will suffer a “distinct and palpable” harm that constitutes injury in fact; (b) that the injury can fairly be traced to the challenged action; and (c) that the injury is likely to be redressed by a favorable decision in the proceeding. *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988); *Vogtle*, 38 NRC at 32.⁴ It must be likely, rather than speculative, that a favorable decision will redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). The injury must be “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Id.* at 560. A petitioner must have a “real stake” in the outcome of the proceeding to establish injury in fact for standing; while this stake need not be a “substantial” one, it must be “actual,” “direct” or “genuine.” *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-48, *aff’d*, ALAB-549, 9 NRC 644 (1979).

A mere academic interest in the outcome of a proceeding or an interest in the litigation is insufficient to confer standing; the requestor must allege some injury that will occur as a result of the action taken. *Puget Sound Power and Light Co.* (Skagit/Hanford

⁴ A determination that the injury is fairly traceable to the challenged action does not depend “on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible.” *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 (1994).

Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 983 (1982), *citing Allied General Nuclear Services* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976); *Puget Sound Power & Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-26, 15 NRC 742, 743 (1982). Similarly, an abstract, hypothetical injury is insufficient to establish standing to intervene. *Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), LBP-91-38, 34 NRC 229, 252 (1991), *aff'd in part on other grounds*, CLI-92-11, 36 NRC 47 (1992).

2. Petitioner Peterson Has Failed to Establish His Standing to Intervene in Accordance with These Requirements.

An application of these principles to the Peterson petition demonstrates that the Petitioner has not established standing to intervene in the proceeding, in that he has not shown an "injury in fact" to his interests that is fairly traceable to the proposed action -- the licensing of the PFS facility. Petitioner Peterson applied to the NRC for a license for an away-from-reactor independent spent fuel storage installation -- the Pigeon Spur Fuel Storage Facility -- in Box Elder County, UT. See Petition at 2; Letter to the Office of Secretary, dated May 26, 2000, at 1. The NRC assigned Docket No. 72-23 to the Petitioner's application, although the application currently is in an inactive status. See Letter from Susan F. Shankman, Deputy Director, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, to William D. Peterson, dated September 2, 1999, attached hereto.

Petitioner asserts that he has "no dispute" with the PFS applicant's efforts to store spent nuclear fuel on the Skull Valley Goshute Indian Reservation. Petition at 5. Rather, the gravamen of Petitioner's complaint is that "[f] or many years Utah's Governor Michael O. Leavitt has conducted an unlawful, ill-informed, misguided, and wrongful attack on storage of spent nuclear fuel (SNF) in Utah." Letter dated May 26, 2000 at 1. Petitioner

asserts that the State's policy against spent nuclear fuel "has hindered the license application of PFS in NRC Docket No. 72-22 and hindered the license application of Pigeon Spur in NRC Docket No. 72-23." *Id.* Specifically, Petitioner states that the State's intervention in the instant proceeding "targets its damaging 'policy' onto Mr. Peterson's efforts to develop the PSFSF." *Id.* at 5. Further, Petitioner claims that the Governor's "political hysteria" and "public displays" were affecting "the subject of Peterson's work." *Id.* at 6.

The Petitioner's assertions do not raise an injury in fact cognizable under relevant statutes. Petitioner has not demonstrated that he will suffer or has suffered a distinct harm that can be traced to the challenged action -- the PFS application. Rather, Petitioner asserts that it is the Governor's policy that harms Petitioner's interest with respect to the Petitioner's own (separate) license application. Petitioner's injury therefore, is not traceable to the grant or denial of the PFS license but is wholly independent of that proposed action. Petitioner does not assert radiological or environmental harm and does not show how he will be adversely affected if the PFS license is or is not granted. *Compare Private Fuel Storage*, LBP-98-7, 47 NRC at 172 (Skull Valley Band has shown that it and its members residing on the reservation have cognizable interests that will be affected adversely by one of the possible outcomes of the proceeding.). Petitioner's injury is more of a general interest in the litigation because some of the issues might be similar with respect to his facility. However, this type of interest is not sufficient to show a real stake in the outcome sufficient to establish injury in fact. *See General Public Utilities Nuclear Corp.* (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143 (1996) (fear of "bad precedent" was too generalized to constitute an injury in fact).

Further, Petitioner has not shown that any injury to him is likely to be redressed by a favorable decision in the proceeding. Indeed, even if PFS is granted a license, this does nothing for the Pigeon Spur Storage Facility, which remains unlicensed.⁵ A favorable decision in the PFS proceeding will not require the Governor to change his “policy” and will not enable Petitioner to recover the damages he seeks against the Governor. Petition at 4 (Peterson claims \$300,000 per day against Governor Leavitt); Contentions at ¶ 27 (Petitioner claims a total of \$386.2 million). Rather, the proper place for the Petitioner to challenge the State’s policy would be in a proceeding on his own application.⁶

Petitioner also states that he seeks intervention for the purpose of reviewing the scientific bases underlying the Governor’s “policy,” or in the alternative, that he seeks a finding that “the Governor has no just reason for his ‘policy’ contrary to Federal law.” Petition at 6. However, a decision favorable to the applicant in the PFS proceeding will not entitle the Petitioner to any relief that he seeks. For the reasons set forth above, the Staff submits that Petitioner has not demonstrated he has standing to intervene in this proceeding. Accordingly, his Petition should be denied.

C. Petitioner Peterson Has Not Set Forth a Valid Contention.

1. Legal Standards Governing the Admission of Contentions

It is well established that contentions may only be admitted in an NRC licensing proceeding if they fall within the scope of issues set forth in the *Federal Register* notice of

⁵ See Attachment (NRC suspends review of Petitioner’s application until he files a new application and pays fees).

⁶ The Staff expresses no opinion with respect to Mr. Peterson’s claim of financial damages, except to note that such a claim is beyond the scope of an NRC licensing proceeding. See *Quivera Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 8-11 (1998) (where a stated injury is purely economic, unrelated in any respect to radiation or to environmental impacts, such injury is outside of the zones of interest of either the AEA or NEPA), *aff’d sub nom. Envirocare of Utah v. United States Nuclear Regulatory Commission*, 194 F. 3d 72 (D.C. Cir. 1999).

hearing and comply with the requirements of 10 C.F.R. § 2.714(b) and applicable Commission case law. See, e.g., *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167-170-71 (1976); *Philadelphia Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974); *Duquesne Light Co.* (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 245 (1973).

Pursuant to 10 C.F.R. § 2.714(b)(1), a petitioner for leave to intervene is required to file a list of contentions it seeks to have litigated in the proceeding, at least one of which must satisfy the requirements of § 2.714(b)(2). Section 2.714(b)(2), as amended, requires that each contention “must consist of a specific statement of the issue of law or fact to be raised or controverted,” and that the following information must be provided in support of the contention.:

(i) A brief explanation of the bases of the contention.

(ii) A concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion.

(iii) Sufficient information . . . to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application (including the applicant’s environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner’s belief. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant’s environmental report.

Further, pursuant to 10 C.F.R. § 2.714(d)(2), a contention must be rejected if:

- (i) The contention and supporting material fail to satisfy the requirements of [§ 2.714(b)(2)]; or
- (ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

In this regard, it is well established that the purpose for the basis requirements of 10 C.F.R. § 2.714(b)(2) is (1) to assure that the contention raises a matter appropriate for adjudication in a particular proceeding; (2) to establish a sufficient foundation for the contention to warrant further inquiry into the assertion; and (3) to put other parties sufficiently on notice of the issues so that they will know generally what they will have to defend against or oppose. *Peach Bottom*, 8 AEC at 20-21. Further, the *Peach Bottom* decision requires that a contention be rejected if:

- (1) it constitutes an attack on applicable statutory requirements;
- (2) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
- (3) it is nothing more than a generalization regarding the petitioner's view of what applicable policies ought to be;
- (4) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
- (5) it seeks to raise an issue which is not concrete or litigable.

Peach Bottom, 8 AEC at 20-21.

2. Petitioner Peterson Has Not Set Forth a Valid Contention

The Licensing Board, in its Order, alerted Petitioner Peterson to the fact that he has not complied with the requirement of 10 C.F.R. § 2.714(b)(2) that he must provide a

statement of contentions and supporting bases that he wishes to have admitted to the proceeding for litigation. Order at 1.

Although the Licensing Board provided Petitioner with an opportunity to submit his contentions, Petitioner did not set forth a valid contention. What Petitioner has done, instead, is to set forth as purported contentions, twenty-seven numbered paragraphs that contain statements or vague assertions that do not rise to the level of specificity required for the submission of contentions.⁷ Contentions 1-9 appear to consist little more than factual background and a discussion of Utah law. These statements are not “issue[s] of law or fact to be raised or controverted” and thus, must be rejected as contentions. See 10 C.F.R. § 2.714(b)(2). Contentions 10-20, 22-25, and 27 challenge various actions and policies of the Governor, the State, and its officers. See, e.g., Contentions at ¶ 16 (“Utah’s Governor has made and perpetuated false impressions about nuclear material.”). The Governor’s actions and policies are not at issue with respect to the matter at issue in this licensing proceeding -- i.e. whether the PFS license application satisfies NRC regulations and should be granted -- and are outside of the scope of the proceeding as set forth in the *Federal Register* notice.⁸ The *Federal Register* notice is limited to the PFS application to possess spent fuel in dry storage cask systems at an ISFSI which the applicant, PFS, proposes to construct and operate on the Skull Valley Goshute Indian Reservation.

⁷ Further, Petitioner’s Additional Contentions consist of a Complaint filed against Governor Leavitt in 1997. The Additional Contentions do not address the standards of 10 C.F.R. § 2.714(b)(2) and should be rejected. Moreover, a reading of this 1997 Complaint demonstrates that, as a statement of additional contentions, it suffers from the same defect as the Petitioner’s other contentions -- namely, it does not raise a matter falling within the scope of the *Federal Register* Notice.

⁸ To the extent that the contentions take issue with the ability of the State of Utah to intervene in this proceedings, the contentions challenge the basic structure of the Commission’s regulatory process, which permits intervention of a State and participation of States not seeking party status. See 10 C.F.R. § 2.715(c). For this reason alone, the contentions should be rejected.

62 *Fed. Reg.* 41,099 (1977). This matter does not pertain to State of Utah's policies, or the status of the Petitioner's Pigeon Spur application before either the Utah Division of Radiation Control or the NRC. See Contentions at ¶¶ 10-20, 22-23, 25 and 27. Further, this license proceeding does not pertain in any way to Petitioner's transport of vitro uranium tailings. See Contentions at ¶¶ 24 and 27. Consequently, these contentions fall outside the scope of the issues set forth in the *Federal Register* notice and should be rejected. In addition, these contentions raise issues which are not proper for adjudication in this proceeding and do not apply to the PFS facility in question. *Peach Bottom*, 8 AEC 20-21. Therefore, these contentions should be dismissed.

Similarly, Contention 21 relates to Petitioner's proposed Pigeon Spur storage facility and Petitioner's proposal for later reprocessing. This contention, however, does not pertain to the PFS facility and should be dismissed. Finally, Contention 26 asserts that "[d]etails of construction oversight and fire control are county issues," and "[t]hey should be worked out between the county people and project engineers." Contentions at ¶ 26. This issue is not concrete or "litigable," and therefore fails to satisfy the specificity requirements of 10 C.F.R. § 2.714(b)(2). Further, the Commission's regulations afford an opportunity for a state to intervene in the licensing proceeding of an ISFSI. See 10 C.F.R. § 2.714(a)(1) ("Any person whose interest may be affected" may file for intervention) and 10 C.F.R. § 2.4 (defining "person" to include "any State.")).⁹ Therefore, this contention should be rejected.

⁹ The Licensing Board approved the State of Utah's intervention request stating:

The reservation of the Skull Valley Band upon which the PFS facility is to be constructed is located wholly within the borders of the State of Utah. The State's asserted health, safety and environmental interests relative to its citizens living, working, and traveling near the proposed facility and in connection with its property adjoining the reservation and the proposed transportation routes to the facility are sufficient to establish its standing in this proceeding.

(continued...)

Finally, the Petitioner's contentions should be rejected because even if they are all true, they would not entitle Petitioner to relief. *See* 10 C.F.R. § 2.714(d)(2)(ii). Petitioner seeks monetary damage from the State for: interference with Petitioner's storage of SNF; interference with Petitioner's reprocessing of SNF; issues involving his movement of vitro tailings; and alleged false filings in Utah's Department of Commerce. None of these matters can be resolved through intervention in this proceeding. Accordingly, Petitioner has failed to raise a valid contention, and his Petition should be denied.

CONCLUSION

For the reasons set forth above, the Peterson Petition should be denied.

Respectfully submitted,

Catherine L. Marco */RA/*
Counsel for NRC Staff

Dated this 12th day of July, 2000
at Rockville, Maryland

⁹(...continued)
Id. at 169. Further, many contentions filed by the State of Utah were found acceptable for litigation.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PRIVATE FUEL STORAGE L.L.C.	)	Docket No. 72-22-ISFSI
	)	
(Independent Spent	)	
Fuel Storage Installation)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO PETITION TO INTERVENE AND CONTENTIONS FILED BY WILLIAM D. PETERSON" in the above captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 12th day of July, 2000:

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