

November 23, 1997

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

STATEMENT OF CONTENTIONS ON BEHALF OF
THE CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION
AND DAVID PETE

Petitioners, the Confederated Tribes of the Goshute Reservation (herein, "the Goshute Tribe") and David Pete, by and through their counsel, John Paul Kennedy, 1385 Yale Avenue, Salt Lake City, Utah 84105, in accordance with the regulations of the Nuclear Regulatory Commission hereby submit the following Statement of Contentions with respect to the foregoing matter and as a supplement to the Petition earlier filed by them.

INTRODUCTION

On August 29, 1997, a Petition to Intervene was filed by the Confederated Tribes of the Goshute Reservation (herein, "the Goshute Tribe") and David Pete, individually and as Chairman of the Goshute Tribal Business Council. A supplemental memorandum in support of the Petition was filed on October 15, 1997.

Petitioners contend, as more fully set forth below, that applicant Private Fuel Storage (herein "PFS") has not complied with the required standards established for licensing an Independent Spent Fuel Storage Installation ("ISFSI"). In fact, the license application is substantially incomplete. Petitioners therefore respectfully submit that this license application should be denied.

STATEMENT OF CONTENTIONS:

A. Decommissioning Plan Deficiencies.

PFS has not provided reasonable assurance that the ISFSI can be cleaned up and adequately restored upon cessation of operations.

BASIS: The Plan is inadequate in the following respects:

1. Inadequate costs analysis. The relative unavailability of disposal sites raises substantial costs factors which are not fully considered by applicant. For example, according to DOD, there are no sites currently available for the disposal of mixed wastes.¹ No information has yet been released on the consideration being offered to the Skull Valley Band for permission to locate this facility on the Band's Reservation. Other sites (if they could be found) may be much more costly. The application should include realistic cost figures for disposal of the radioactive materials at the conclusion of the operation of the ISFSI.

2. Until PFS has a specific plan for disposal of the stored radioactive materials, there is no rational basis for assuming that those materials will in fact be disposed of prior to the decommissioning of the ISFSI. The license application should be rejected because it does not

¹ Defense Environmental Management Study, Draft #13, at 11.

provide a reasonable assurance that PFS knows how the stored radioactive materials will ultimately be disposed of or how much such disposal will cost.

3. No specific information has been provided to define the amount of funds required to be allocated to insure the adequate and timely handling of the eventual decommissioning of the ISFSI. See, 10 C.F.R. §70.25 and §72.30(a), (b). The decommissioning plan "must include a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning . . . , including means of adjusting cost estimates and associated funding levels periodically over the life of the ISFSI." Section 72.30 (b). This has not been done. PFS should be required to more adequately explain the derivation of its anticipated costs to demonstrate that its estimates are rational and accurate.

4. PFS's description of the decommissioning process is not adequate. The application should be amended to include full details of decommissioning and dismantlement of the ISFSI, including whether PFS intends to leave buildings standing that may have been radioactively contaminated.

B. Lack of protection against worst case accidents.

PFS has violated both NRC regulations and NEPA requirements by not adequately dealing with certain reasonably foreseeable accidents and failing to fully evaluate their potential impacts on health and the environment, to protect against them in an adequate manner, or to provide adequate emergency response measures.

BASIS: Under NEPA, PFS must assess the consequences of reasonably foreseeable low probability worst case accidents. NRC emergency planning regulations at 10

C.F.R. §70.22 require license applicants to describe "each type of radioactive materials accident for which protective action may be needed." For such accidents, the applicant must also submit a classification system, means of timely detection, means for mitigation, and means for assessing releases.

PFS has not satisfied such requirements in the following respects:

1. No adequate plan for protection against accidental mishandling of storage containers has been provided.
2. No adequate plan for protection against terrorist attack (by ground or air) which could result in the rupture of the storage containers has been provided.
3. No adequate plan for protection against mishaps or terrorism during transportation of radioactive material to the facility has been provided.
4. No adequate plan for emergencies has been provided. PFS has not secured commitments from local emergency responders. See exhibit 2(1) and (2), attached to the State of Utah's Motion to Suspend Licensing Proceeding.
5. No adequate plan for handling the impacts stemming from natural disasters such as wildfires has been provided. It has been noted that in the short span of only ten years there have been 48 wildfires at Skull Valley. See exhibit 2(5) attached to the State of Utah's Motion to Suspend Licensing Proceeding. Half of those fires were started by lightning strikes. Id.

Before the license is approved, such information and plan must be supplied to the NRC and an opportunity should be granted to the public to respond to any new issues raised.

C. Inadequate Assessment of Costs under NEPA.

PFS has not adequately described or weighed the environmental, social, and economic impacts and costs of operating the ISFSI. Indeed, there is no adequate benefit-cost analysis which even demonstrates a need for the ISFSI. On the whole, Petitioners contend that the costs of the project far outweigh the benefits of the proposed action. See, e.g., *Public Service Co. of New Hampshire*, 6 NRC 33, 90 (1977).

BASIS: NEPA requires the NRC to fully assess the impacts of the proposed licensing action, and to weigh its costs and benefits. PFS has failed to adequately meet this standard in the following respects:

1. Failure to discuss the environmental impacts caused by the storage of a large amount of radioactive waste, for which no realistic disposal options currently exist.
2. Failure to discuss the environmental impacts caused by creating an ISFSI without an adequate decommissioning plan for the facility.
3. Failure to discuss the environmental impacts resulting from severe low probability accidents which may cause the release of discharges which exceed legal limits.
4. Failure to adequately assess the environmental impacts stemming from underestimating the costs associated with decommissioning the project.
5. Failure to present a complete or adequate assessment of the potential environmental impacts of the ISFSI on ground and surface water. Groundwater is the sole source of drinking water for all of the residents of the Reservation and for many of the surrounding communities. In addition, groundwater and surface water provide much of the

drinking water for wild and domesticated animal life in the area. Natural drainage from the area flows toward the Great Salt Lake.

The environmental report should fully evaluate the potential impacts of the proposed project on the ground and surface water in the area, and discuss in detail the manner in which such waters will be kept free from contamination.

6. The ISFSI will also have a dramatic economic and sociological impact on the minority community residing on the Skull Valley Reservation. The proposed siting of the ISFSI in a minority community follows a pattern noted in a 1987 study by the United Church of Christ, "Toxic Wastes and Race In the United States, A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites."² The study found that "race proved to be the most significant among variables tested in association with the location of commercial hazardous waste facilities. This represented a consistent national pattern." Id. at xiii. It also found that "in communities with one commercial hazardous waste facility, the average minority percentage of the population was twice the average minority percentage of the population in communities without such facilities. The ISFSI in this case does not vary from this unfortunate pattern. No attempt has been made in this instance to avoid or mitigate the disparate impact of the proposed facility on this minority community residing on the Skull Valley Reservation. No assessment of the impacts upon Indian religious ceremonies or visits by Indians to the Skull Valley burial ground has been made.

² A copy of this report was submitted by Citizens Against Nuclear Trash in its Contentions filed in Docket No. 70-3070.

In the face of potential costs to the Skull Valley community, there is no mention of the amount of the benefit which the community will derive from the project. The amount payable to the Skull Valley Band has not been disclosed, making it impossible to do a benefit-cost comparison.

D. Inadequate Discussion of No-Action Alternative.

PFS has failed to satisfy the requirements of NEPA because it does not adequately discuss the alternatives to the proposed action.

BASIS: NEPA, as implemented by 10 C.F.R. §51.54, requires that environmental reports must include at least a discussion of "alternatives available for reducing or avoiding adverse environmental effects." PFS has failed to satisfy this requirement in that it has failed to discuss the no-action alternative. In view of the significant environmental costs of this project and the fact that PFS has not demonstrated a need for the facility, this alternative should have been given substantially more attention.

E. Failure to Give Adequate consideration to Adverse Impacts on the Historic District.

PFS has failed to comply with NEPA in that it has not adequately discussed the impacts upon the historic district and the archeological heritage of the area.

BASIS: NEPA requires a complete assessment of impacts upon the historic and archeological aspects of the area. While the area is rural, this does not mean that it is devoid of historic significance. For example, the historic Pony Express Trail passes only about ten miles

south of the Skull Valley Reservation area. PFS has not adequately evaluated the impact of the facility on the historic character of the area.

F. Failure to Adequately Establish Financial Qualifications.

PFS has failed to demonstrate that it is financially qualified to build and operate the ISFSI.

BASIS: The applicant is required to show that if the license is approved, it will be able to build and operate the facility in a financially responsible manner. The applicant must "either possess the necessary funds, or . . . have reasonable assurance of obtaining the necessary funds." 10 C.F.R. §72.22(e). This standard has not been met as indicated below:

1. The License Application (LA) states that PFS is "a limited liability company owned by eight U.S. utilities. LA p. 1-3. Those utilities are unnamed; however, PFS lists individuals from seven nuclear power utilities as directors of PFS. LA 1-10. PFS states that each member utility selects one member of the Board of Managers. SAR 9.1-1. PFS does not clarify the obvious discrepancy between the numbers of supposed member companies with the number of directors. Perhaps there are now only seven participating companies. The initial number of participants at organization was eleven companies. No evidence has been presented that the consortium will be able to hold its present eight (or seven) members. Moreover, while there is a general discussion about staffing positions and such unsupported statements as "the Board will ensure the appropriate financial stability is maintained on an operating basis" (SAR p. 9.1-3), there is no description of the assets of the limited liability company nor is there any mention or copy of any limited liability company agreement.

2. Similarly, there is no detail provided with respect to the basis for the estimated construction costs of \$100 million. The LA simply lumps "site preparation; construction of the access road, administration building, visitors center, security and health physics building, operations and maintenance building, canister transfer building and storage pads, procurement of canister transfer and transport equipment, and transportation corridor construction" into one mass of undefined expenses. LA p. 1-5. No effort has been made to show that the component costs have been legally pinned down with binding agreements.

3. Likewise, while PFS indicates that it intends to obtain an additional \$6 million from each of its participating companies, it has failed to provide any subscription agreements or other legally binding commitments which give any assurance of obtaining the necessary funding. PFS has failed also to show that the participating companies have any long term commitment to remain with the project to provide needed financial stability in the future.

4. PFS has also failed to provide any documentary evidence that shows it will be able to raise the additional \$52 million of additional capital through "service agreements" with customers. LA p. 1-5. Simply identifying the mechanism for seeking funds does not establish any assurance that the funds will be obtained. In addition, the terms of such service agreements have not been provided to show the rational support for the generation of such additional capital.

5. As already noted, PFS has not provided any information which would show the amount to be paid to the Skull Valley Band for rental of its lands. Since this amount is unknown, it follows that it must also be unknown whether PFS has the financial capacity to meet this fundamental cost of the project.

G. The Goshute Tribe hereby adopts and incorporates by reference the following Contentions and the Bases stated by Castle Rock Land & Livestock, L.C.:

1. **Absence of NRC Authority.** The Application is defective because NRC does not have authority to license a large-scale, off-site facility for the long-term storage of spent nuclear fuel such as the proposed ISFSI.
2. **Non-Compliance with Regulations.** PFS's Application is defective because it seeks a license for an ISFSI pursuant to 10 C.F.R. Part 72. However, the proposed storage installation is not an ISFSI and is otherwise not licensable under 10 C.F.R. Part 72.
3. **Application for Permanent Repository.** The proposed PFSF is properly characterized as a de facto permanent repository, and the Application fails to comply with the licensing requirements for a permanent repository.
4. **Inadequate Financial Qualifications.** The Application does not provide assurance that PFS will have the necessary funds to cover estimated construction costs, operating costs, and decommissioning costs, as required by 10 C.F.R. §72.22(e).
5. **Regional and Cumulative Environmental Impacts.** The Application fails to adequately discuss the regional and cumulative environmental impacts of the proposed PFSF, as required by 10 C.F.R. §§ 72.98(b) & c), NEPA.

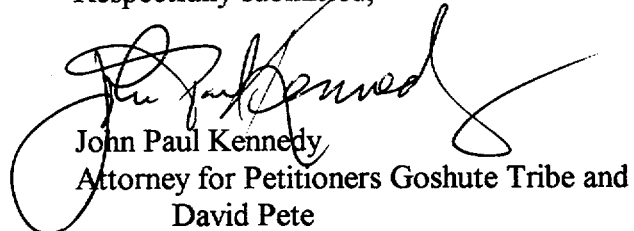
H. The Goshute Tribe hereby adopts and incorporates by reference the Contentions and the Bases stated by the State of Utah including without limit the following:

A. **Statutory Authority.** Congress has not authorized NRC to issue a license to a private entity for 4,000 cask, away-from reactor, centralized, spent nuclear fuel storage facility.

B. **License Needed for Intermodal Transfer Facility.** PFS's application should be rejected because it does not seek approval for receipt, transfer, and possession of spent nuclear fuel at the Rowley Junction Intermodal Transfer Point, in violation of 10 C.F.R. §72.6 c)(1).

Dated: November 24, 1997.

Respectfully submitted,



John Paul Kennedy
Attorney for Petitioners Goshute Tribe and
David Pete

Certificate of Service

I hereby certify that copies of the above Statement of Contentions were served upon the persons indicated below in the manner stated on the date stated:

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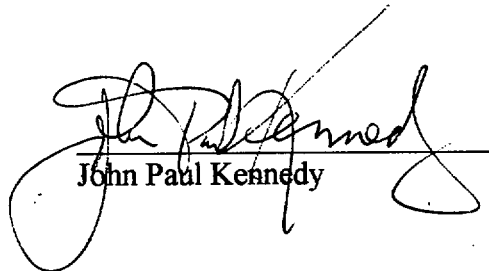
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