

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:

Private Fuel Storage, L.L.C.,
(Independent Spent Fuel Storage
Installation)

Docket No. 72-22

ASLBP No. 97-732-02-ISFSI

CASTLE ROCK LAND & LIVESTOCK, L.C. AND SKULL VALLEY CO., LTD.'S
RESPONSE TO MOTION FOR RECONSIDERATION

INTRODUCTION

Pursuant to the Licensing Board's Memorandum and Order dated May 8, 1998, Castle Rock Land and Livestock, L.C. and Skull Valley Co., Ltd. (collectively, "Castle Rock") file this response to the Applicant's Motion for Reconsideration and Clarification (the "Applicant's Motion") filed by Private Fuel Storage L.L.C. ("PFS" or the "Applicant") on May 6, 1998. For the reasons discussed below, the Applicant's Motion must be denied to the extent it affects Contentions filed or adopted by Castle Rock.

- A. **Subpart 7 of combined Utah Contention E/Castle Rock 7/Confederated Tribes F ("Subpart 7") Must Be Admitted Because Evidence of a Market For PFS's Services Is Necessary to Provide Reasonable Assurance of Adequate Funding.**

As admitted by the Board, Subpart 7 provides:

the Applicant has failed to demonstrate that it is financially qualified because . . . [t]he applicant must document an existing market for the storage of spent nuclear fuel and the commitment of a sufficient number of Service Agreements to fully fund construction of the proposed ISFSI. The applicant has not shown that the commitment of 15,000 MTUs is sufficient to fund the Facility including operation, decommission and contingencies.

(Memorandum and Order, LBP-98-7, dated April 22, 1998 (the "Order"), App. A, at 3). The Applicant requests that the Board reconsider the portion of Subpart 7 which claims that the "applicant must document an existing market for the storage of spent nuclear fuel." (Applicant's Motion, at 6). The Applicant's request is based on a purported similarity between this proceeding and Louisiana Energy Services, L.P. (Clairborne Enrichment Center), CLI-97-15, 46 NRC 294 (1997) ("Clairborne"), in which the Nuclear Regulatory Commission (the "Commission") determined that, under the particular circumstances of that case, the applicant appeared to be financially qualified even though the application materials did not contain firm contractual commitments from customers sufficient to fund all costs of constructing and operating the proposed uranium enrichment facility.

The portion of Subpart 7 requiring the Applicant to demonstrate an existing market must be admitted because documentation of a market for spent nuclear fuel is necessary to provide reasonable assurance that PFS can obtain the funds necessary to cover construction, operation, and decommissioning of the proposed Private Fuel Storage Facility (the "PFSF"). Section 72.22(e) of 10 C.F.R. requires an applicant for an ISFSI license to show that it possesses, or that it has a "reasonable assurance" of obtaining, all funds necessary to cover construction costs, operating costs over the planned life of the ISFSI, and decommissioning costs. (Id.). The Applicant's skeletal budget for the proposed PFSF estimates construction costs at \$100 million and operating costs for the planned 40 year life in excess of \$1.8 billion (License Application ("Application"), at 1-5, 1-6). The Application represents that \$48 million of the posited \$100 million cost of constructing the PFSF will be funded by equity contributions from PFS members.

This means that a majority of the costs of construction, and all of the in excess of \$1.8 billion in operating costs, must be funded through customer services agreements. (Id.)

The Application contains no evidence that PFS has obtained customer commitments sufficient to fund construction and operation of the proposed PFSF. In fact, the Application does not contain evidence of any customer commitments, or even a form of the proposed service agreement. Aware that it has failed to provide evidence of its ability to obtain the \$1.9 billion necessary to construct and operate the PFSF, the Applicant offers a vague commitment not to commence construction unless service agreements for a "significant quantity of spent fuel storage have been signed" and suggests 15,000 MTU as a target quantity (Id. at 1-5). The Application does not specify precisely what it means by a "significant quantity" of spent fuel storage. To the extent it is suggesting 15,000 MTU would be a significant quantity, the Application nonetheless contains no firm commitment to abandon the project if service agreements for 15,000 MTU of spent fuel have not been signed. In addition, the Application fails to demonstrate that commitments with respect to 15,000 MTU (or some other amount) of spent fuel are sufficient to fund construction, operation, and decommissioning of the PFSF.

Documentation of an existing and adequate market for the storage of spent nuclear fuel is essential because, without such documentation, the Application lacks any evidence that the Applicant has, or can reasonably obtain, any more than \$48 million¹ of the \$1.9 billion dollars

¹In fact, because the Applicant has failed to fully disclose the identity and financial status of the constituent members, it has not even demonstrated its ability to provide the initial \$48 million in equity contributions.

required to construct and operate the PFSF.² The Application does not describe or document any definitive funding commitments from customers and lacks even draft copies of marketing materials and agreements PFS proposes to use in obtaining such commitments. Having failed to obtain definitive funding commitments at this stage, the Applicant's duty to provide "reasonable assurance" of its ability to fully fund the PFSF requires, at a minimum, that it demonstrate through market surveys that there is sufficient interest in its service, at its proposed offering price, that one may reasonably expect the revenues from spent fuel services to exceed the over \$1.9 billion estimated cost of constructing, operating, and decommissioning the proposed PFSF.

The Commission's decision in Clairborne is inapposite because, unlike PFS, the applicant in Clairborne expressly committed that it would not commence construction absent binding commitments sufficient to fund all construction and operating costs. As claimed by PFS, the panel in Clairborne did not require the applicant to demonstrate that it had firm commitments to fund construction and operation of the proposed uranium enrichment facility on the theory that, if the project proved a failure in the marketplace, no facility would be built and no harm done to the public. (Clairborne, at 308). However, such decision rested expressly on a factor absent in this case. The applicant in Clairborne had expressly committed that it "will not proceed with the project unless it has in place enrichment contracts with prices sufficient to cover both construction and operating costs, including a return on investment." (Id. at __, __)

² Moreover, in (among other places) subparts 6, 9, and 19, of Utah E/Castle Rock 7/Confederated Tribes F, Castle Rock, the State of Utah, and the Confederated Tribes have questioned the accuracy of PFS's costs estimates for constructing and operating the facility. The amount required to construct, operate, and decommission the facility is bound to far exceed the approximately \$1.9 billion estimate provided by PFS.

(emphasis added). In stark contrast to the Clairborne applicant, PFS has not made a firm commitment not to commence construction absent contractual commitments sufficient to fund all construction and operating costs.³ In fact, PFS is not even willing to commit to a concrete lesser threshold. Absent a binding commitment by PFS similar to that in Clairborne, the "reasonable assurance" requirement in Section 72.22(e) dictates that PFS provide market surveys demonstrating that there is, or will be, sufficient demand for private spent fuel storage to fund the PFSF over its entire proposed operating life.

B. Castle Rock Contention 17, Subparts b. and e. Must Be Admitted Because the Environmental Report (the "ER") Provides an Incomplete and Misleading Description of the Population Potentially Affected by the PFSF and the Impact the PFSF Will Have on the Deseret Peak Wilderness Area.

As admitted by the Board, Castle Rock Contention 17 provides, in relevant part, that the application violates NRC regulations and NEPA because . . .

- b. The ER paints a misleading picture of the area population by ignoring a majority of the Salt Lake Valley;
- . . .
- e. the ER fails to discuss the impact of placing a spent fuel storage areas near a national wilderness area.

(Order, App. A, at 10-11).

Subpart b of Contention 17 ("Subpart B") should be admitted because the ER misleadingly accounts for only a small portion of the population of the Salt Lake Valley (the "Valley"). Sections 72.90(e) and 72.98(c) of 10 C.F.R. require that an applicant's environmental report describe the potential for radiological and other environmental impacts

³ Moreover, in Clairborne, no party disputed the accuracy of the applicant's cost projections--a factor that is absent in this case. (Id.)

caused by the construction, operation, and decommissioning of a proposed ISFSI in light of the characteristics and distribution of the present and future population in the region. (10 C.F.R. § 72.90(e), 72.98(c). The relevant "region" is not defined in Part 72 but presumably includes any surrounding area that may be impacted by the proposed facility. As indicated by Figure 2.2.-3, a portion of the Valley is within 50 miles--the distance suggested by NUREG-1567 for population impact analysis--of the proposed PFSF site. Although the Valley is subdivided into numerous cities, towns, and suburbs, these different political units function as an integrated business, social, transportation, and environmental unit. Section 2.2.3.3 and Figure 2.2-3 discuss portions of the Valley in terms of smaller political units or in terms of a partial geographic unit lying within a certain distance from the proposed PFSF, despite the integrated nature of the Valley. By arbitrarily excluding the vast majority of the Valley's population that lies just outside of the 50 mile area and by referencing the Valley's distinct political units--rather than the Valley as a whole--the ER distorts the size and nature of the population potentially affected by the PFSF. Accordingly, Subpart B must be admitted.

Subpart e of Contention 17 ("Subpart E") must be admitted because the ER fails to acknowledge or discuss the impact the ISFSI will have on the Deseret Peak National Wilderness Area (the "Wilderness Area"). Section 72.90(e) requires that the siting of proposed facility be evaluated in light of "the regional environs, including its historical and aesthetic values." (10 C.F.R. § 72.90(e). Similarly, sections 72.98(c)(2) and 72.100(b) require consideration of the effect of any proposed facility on regional land use and the environment. In the Applicant's Motion, PFS suggests that it has examined the effect of the proposed PFSF on the Wilderness Area because the ER "recognizes that off-road vehicle use, dispersed camping and hunting

activities take place in the areas around the ISFSI site and it specifically addresses the impacts that the ISFSI . . . might have on the view from the wilderness area." (Motion, at 18 (citing ER at 2.2-3, 4.2-7)). Although the ER does acknowledge the existence of the Wilderness Area approximately six miles from the proposed PFSF site, (ER at 4.2-7), it fails to accurately portray the effect the PFSF would have on the aesthetic value and use of the Wilderness Area.

First, the inadequacy of PFS's investigation and evaluation of the PFSF's impacts on the Wilderness Area is revealed by the suggestion in the Applicant's Motion that references in the ER to regional "off-road vehicle use" in the areas around the proposed PFSF apply to the Wilderness Area. Motor vehicle use is strictly prohibited in the Wilderness Area.

Moreover, the ER suggests that the PFSF would not affect the Wilderness Areas because, it claims, "recreation access . . . is from the eastern side of the Stansbury Mountains," and "no primary view areas or scenic viewpoints are located within the 5-mile radius." (ER, at 4.2-7). Contrary to these claims, numerous roads lead from Skull Valley to the western boundary of the Wilderness area (not inside because motor vehicle traffic is prohibited), and such roads are commonly used to facilitate access on horse or by foot. Furthermore, although no view area is located within five miles of the proposed area, from the 11,031 foot summit of Desert Peak, and numerous other peaks and ridges within the Wilderness Area, the proposed ISFSI would be very visible--and the aesthetic impact of such visibility is far from negligible. The attractiveness and beauty of the Wilderness Area stems from the fact that it, and the ever-visible Skull Valley, are pristine, untrammled, and devoid of a significant industrial presence. This unsullied quality of the Wilderness Area will be severely impacted by the presence of the nation's largest nuclear

waste storage facility six miles from its border in the adjacent valley floor. The ER fails to acknowledge or describe this impact.

The ER omits a complete and accurate portrayal of the uses of and access to the Wilderness Area. Moreover, it omits any discussion of the importance of a visually uncontaminated Skull Valley to the enjoyment and aesthetic integrity of the Wilderness Area. Commission rules governing the admissibility of contentions provide that where the applicant has filed incomplete documents or failed to supply necessary information, it "will be sufficient for the intervenor to explain why the application is deficient." 54 Fed. Reg. 33,168, 33170 (1989); 10 C.F.R. § 2.714(b)(2)(iii)(providing that "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" is sufficient). Consistent with the requirements of 10 C.F.R. § 2.714(b)(2)(iii), Castle Rock has identified omissions and distortions of relevant information with respect to the Wilderness Area; therefore, Subpart E should be admitted.

Dated this 13th day of May, 1998.

Respectfully submitted,



Michael M. Later, USB #3728

Bryan T. Allen, USB #7127

PARR, WADDOUPS, BROWN, GEE & LOVELESS

Attorneys for Petitioners

185 S. State Street, Suite 1300

P.O. Box 11019

Salt Lake City, UT 84147-0019

Telephone: (801) 532-7840

Facsimile: (801) 532-7750

E-Mail: karenj@kimballparr.com

Certificate of Mailing

I hereby certify that I caused to be sent by E-Mail and regular mail (except as otherwise indicated) a copy of the foregoing RESPONSE TO MOTION FOR RECONSIDERATION to the following:

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
E-Mail: jrk2@nrc.gov

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
E-Mail: psl@nrc.gov

G. Paul Bollwerk, III, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
E-Mail: gpb@nrc.gov

Office of the Secretary
ATTN: Rulemakings and Adjudications Staff
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(U. S. Mail only)

James M. Cutchin
Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-Mail: jmc3@nrc.gov

Attn: Docketing & Services Branch
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Mail Stop: 016G15
11555 Rockville Pike One White Flint North
Rockville, MD 20852-2728
(original and two copies - U.S. Mail only)

Sherwin E. Turk, Esq.
Catherine L. Marco, Esq.
Office of General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop: 0-15 B18
Washington, D.C. 20555
Fax: (301) 415-3725
E-Mail: set@nrc.gov; clm@nrc.gov

Diane Curran, Esq.
Harmon, Curran, Spielberg & Eisenberg
2001 S Street, N.W., Suite 430
Washington, D.C. 20009
E-Mail: DCurran.HCSE@zzapp.org

Jay E. Silberg, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street N.W.
Washington, D.C. 20037-8007
Fax: (202) 663-8007
E-Mail: jasilberg@shawpittman.com

Jean Belille, Esq.
Land and Water Fund of the Rockies
2260 Baseline Road, Suite 200
Boulder, Colorado 80302
Fax: (303) 786-8054
E-Mail: landwater@lawfund.org


Danny Quintana, Esq.
Danny Quintana & Associates, P.C.
50 West Broadway, Fourth Floor
Salt Lake City, UT 84101
Fax: (801) 363-7726
E-Mail: quintana@Xmission.com

Denise Chancellor
Assistant Attorney General
Utah Attorney General's Office
P. O. Box 140873
Salt Lake City, UT 84114-0873
Fax: (801) 366-0292/0293
E-Mail: dchancel@state.ut.us

John Paul Kennedy, Sr., Esq.
1385 Yale Avenue
Salt Lake City, UT 84105
Fax: (801) 581-1007
E-Mail: john@kennedys.org

Connie Nakahara, Esq.
Utah Dept. of Environmental Quality
168 North 1950 West
P. O. Box 144810
Salt Lake City, UT 84114-4810
Fax: (801) 536-4401
E-Mail: cnakahar@state.ut.us

Dated this 13th day of May, 1998.



DeAnn Thompson