

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

December 1, 1998

On November 18, 1998 Southern Utah Wilderness Alliance (SUWA)

The Board permitted party responses to SUWA's pleadings to be filed by December 1, 1998. The State files this response in support of SUWA's Petition and Contentions.

In the original June 1997 license application, the Applicant made reference to a rail spur to be constructed from Rowley Junction on the north side of Interstate 80, passing under the freeway underpass, and then running south in the right-of-way along Skull Valley Road. *See e.g.*, Environmental Report at 4.4.-1 (Rev. 0 June 1997). However, the application was short on

details about property acquisition, rail spur construction, and rail alignment. The State pointed out in Contention T the infeasibility of PFS constructing a rail spur along Skull Valley Road because the freeway underpass at Rowley Junction was too narrow and too low to accommodate a rail spur and, furthermore, the Applicant did not have permission to build the spur in the public right-of-way along Skull Valley Road. State's Contentions at 133-134; *see also, id.* at 11, n. 3. Thus, under the original license application, it appeared unlikely that the rail spur option could go forward.

In 1998, the Applicant, aware of the shortcomings of the Skull Valley Road rail proposal, conducted a transportation study and announced, for the first time, at the scoping meeting held in Salt Lake City on June 2, 1998, that it expected to build a rail spur somewhere on the west side of Skull Valley. However, at that time the Applicant was still in the process of evaluating its transportation options and it was not until August 1998 that the Applicant submitted the Low rail spur license amendment to the NRC. The rail route differed considerably from that proposed along Skull Valley Road.

The State considers the Low rail spur license amendment to be a significant change from the original proposal. First, the proposed rail spur will cut across 32 miles of public lands. Second, it will be located in close proximity to a proposed wilderness area. Third, for the first time the rail spur becomes the

preferred transportation mode. Fourth, for the reasons stated in the State's contentions on the Low rail spur amendment, the new route poses significant fire hazards and increased access to public lands.

NRC's view of the license amendment obviously differed from that of the State because NRC did not bother to notice the amendment in the Federal Register or otherwise publish the receipt of this document. Parties already admitted to the proceeding were unaware of the license amendment. Therefore, it would be unreasonable to expect that SUWA should file its petition or contentions any sooner than the current pleading before the Board. Under these circumstances, good cause exists for SUWA's filing late.

SUWA has limited its Petition and Contentions to those areas that are unique to its mission: protection of wilderness values in Utah. No other party in the proceeding will be able to represent these interests on its behalf. Even if the State's Low license amendment contentions were to be admitted, the State would not be able to represent SUWA's interests.

The State contends that SUWA has timely filed its Petition to Intervene and meets the late-filed factors listed in 10 CFR 2.714(a). SUWA has detailed why the Low Rail Spur license amendment is different from the Applicant's originally proposed rail option and has the expertise to support its contentions and, thus, will assist in developing a sound record. Finally, the issues in this

proceeding are already quite broad, and SUWA's intervention should not delay the proceedings.

For the reasons stated above, the State supports SUWA's Petition and Contentions.

DATED this 1st day of December, 1998.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Denise Chancellor", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S RESPONSE TO REQUEST FOR HEARING, PETITION TO INTERVENE AND CONTENTIONS OF SOUTHERN UTAH WILDERNESS ALLIANCE was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 1st day of December, 1998:

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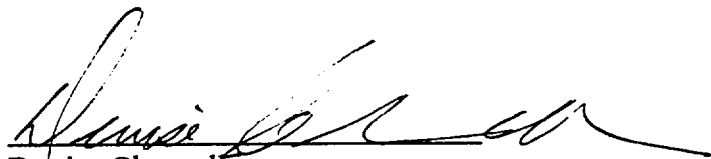
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