

February 16, 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

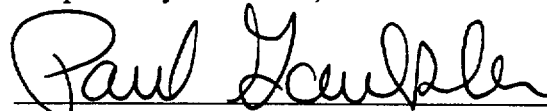
Before the Commission

In the Matter of)
)
PRIVATE FUEL STORAGE L.L.C.) Docket No. 72-22
)
(Private Fuel Storage Facility))

APPLICANT'S NOTICE OF APPEAL OF ORDER GRANTING THE SOUTHERN UTAH WILDERNESS ALLIANCE'S PETITION FOR INTERVENTION

Applicant Private Fuel Storage L.L.C., pursuant to 10 C.F.R. § 2.714a, files a notice of appeal of the Memorandum and Order (Granting Late-Filed Intervention Petition), LBP-99-3, issued on February 3, 1999 granting the Petition to Intervene of the Southern Utah Wilderness Alliance ("SUWA"). The Applicant appeals the Memorandum and Order determinations that SUWA has submitted an admissible contention and has established standing to intervene in this licensing proceeding.

Respectfully submitted,



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PRIVATE FUEL STORAGE L.L.C.)	Docket No. 72-22
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**APPLICANT'S BRIEF ON APPEAL OF ORDER ADMITTING
SOUTHERN UTAH WILDERNESS ALLIANCE AS AN INTERVENOR**

I. INTRODUCTION

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") respectfully submits this brief in support of its appeal, filed pursuant to 10 C.F.R. § 2.714a, of the admission of the Southern Utah Wilderness Alliance ("SUWA") as an intervenor in this proceeding. SUWA was admitted by Memorandum and Order (Granting Late-Filed Intervention Petition), LBP-99-3, issued on February 3, 1999. The Applicant opposes the intervention of SUWA on the grounds that SUWA has neither submitted an admissible contention nor established standing to intervene in this proceeding.

II. STATEMENT OF THE CASE

PFS submitted a license application, dated June 20, 1997, to the Nuclear Regulatory Commission ("NRC") to construct and operate an Independent Spent Fuel Storage Installation ("ISFSI") on the reservation of the Skull Valley Band of Goshute Indians in

Tooele County, Utah. On July 31, 1997, a notice of opportunity for hearing was published in the Federal Register which provided for the filing of intervention petitions by September 15, 1997. 62 Fed. Reg. 41,099 (1997). An Atomic Safety and Licensing Board ("Licensing Board" or "Board") was established on September 15, 1997, to rule upon any requests for hearings and any petitions to intervene. 62 Fed. Reg. 49,263 (Sept. 19, 1997). Various petitions to intervene were timely filed and on April 22, 1998, the Board admitted five intervenors and various contentions. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 251-58 (1998).

The site of the proposed ISFSI is approximately 25 to 30 miles south of the Union Pacific rail line running west from Salt Lake City. Under PFS's proposal, spent fuel casks would be shipped by rail to a point north of the ISFSI on the Union Pacific line at which point the casks would be transported to the ISFSI by one of two means. First, they could be transferred to heavy haul trucks at an intermodal transfer point ("ITP") and hauled to the ISFSI on Skull Valley Road, which runs south along the east side of Skull Valley. PFS Environmental Report ("ER"), Rev. 1 at §4.3. Alternatively, they could be shipped directly to the ISFSI on a rail line to be built by PFS from the Union Pacific line to the site.

The Application as initially filed proposed that PFS's rail line would begin at the Union Pacific line at Rowley Junction and run south directly alongside Skull Valley Road to the ISFSI. ER, Rev. 0 at § 4.4. On August 28, 1998, however, PFS submitted an amendment to its application which changed the location of the rail line alternative for

transporting spent fuel casks from the Union Pacific line to the ISFSI.¹ Under the amended proposal, the PFS line would originate from the Union Pacific line at Low Junction, run south down the west side of Skull Valley, and turn east to enter the site. ER, Rev. 1 at § 4.4.² In September, October, and November, three intervenors already admitted to this proceeding – the State of Utah, Confederated Tribes, and Ohngo Gaudadeh Devia – filed contentions concerning the new location of the rail line alternative. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-29, 48 NRC __, __, slip op. at 1 (1998). On November 30, the Licensing Board rejected all the contentions for being inappropriately late-filed and/or for not satisfying the Commission's contention pleading requirements. Id. at 38-39.

On November 18, 1998, SUWA filed its petition to intervene along with two contentions concerning the new location of the PFS rail line.³ In its petition, SUWA claimed that it is dedicated to obtaining wilderness designation for qualifying Bureau of Land Management ("BLM") roadless areas and that the construction of the PFS rail line would disqualify its proposed North Cedar Mountains roadless area for wilderness design-

¹ See "Applicant's Answer to Petition to Intervene and Contentions of Southern Utah Wilderness Alliance" at 1 n.1, dated December 1, 1998 (hereinafter "PFS Ans.").

² Low Junction is the first point west of Salt Lake City at which the main Union Pacific Line crosses Interstate 80 and runs parallel to the south side of the freeway, which allows construction of the PFS rail line to the site without having to cross Interstate 80. See ER, Rev. 1 at Figure 2.1-1.

³ "Southern Utah Wilderness Alliance's Request for Hearing and Petition to Intervene," dated November 18, 1998 (hereinafter "SUWA Pet."); "Southern Utah Wilderness Alliance's Contentions Regarding Private Fuel Storage Facility License Application (The Low Rail Spur)," dated November 18, 1998 (hereinafter "SUWA Cont.").

nation. SUWA Pet. at 14. As reflected in Exhibit 2 to its petition, SUWA's self described North Cedar Mountains roadless area – located just one to three miles south of Interstate 80 and the main Union Pacific rail line – is approximately five miles wide (east to west) and seven miles long (north to south). PFS's proposed rail line would affect only a thin sliver of that area. It would pass through the area one half to three quarters of a mile from its easternmost edge for a distance of less than three miles of the 32 mile rail route.⁴

Both PFS and the NRC Staff filed responses opposing SUWA's intervention while the State of Utah filed a response favoring it.⁵ SUWA filed a reply to PFS's and the Staff's responses.⁶ In its Memorandum and Order of February 3, 1999, the Board granted SUWA's petition to intervene. The Board found that SUWA had satisfied the criteria for entertaining late-filed petitions and "ha[d] representational standing as of right." LBP-99-3, 49 NRC ___, slip op. at 20. Further, finding SUWA Contention B re-

⁴ See SUWA Pet., Exh. 2; see also ER Rev. 1, Fig. 3.2-2 (Sheet 2) and Exhibit 1 to PFS's Answer (explained at footnote 2 to PFS's Answer). As discussed in PFS's Answer, the responsible federal agency, BLM, declined in 1980 to designate the North Cedar Mountains as a wilderness area because of its lack of wilderness characteristics and dropped the area from further consideration as wilderness. See PFS Ans. at 2-4.

⁵ PFS Ans., *supra* note 1; "NRC Staff's Response to Southern Utah Wilderness Alliance's Request for Hearing, Petition to Intervene, and Contentions Regarding Private Fuel Storage Facility License Application (The Low Rail Spur)," dated December 1, 1998; "State of Utah's Response to Request for Hearing, Petition to Intervene and Contentions of Southern Utah Wilderness Alliance," dated December 1, 1998.

⁶ "Reply of Southern Utah Wilderness Alliance (SUWA) to Staff and Applicant Responses to SUWA's Petition to Intervene, Request for Hearing and Contentions," dated December 8, 1998 (hereinafter "SUWA Reply").

lating to alternatives to the proposed rail line to be admissible in part, the Board ruled that SUWA "ha[d] proffered an admissible contention." Id. at 22.⁷

III. LEGAL ARGUMENT

PFS appeals the admission of SUWA as an intervenor in this proceeding on the grounds that 1) SUWA has failed to submit an admissible contention and 2) SUWA has not established representational standing to intervene. Each of these grounds is addressed in turn below.

A. SUWA's Failure to Submit an Admissible Contention

To be admitted as an intervenor to an NRC licensing proceeding, a petitioner must submit at least one contention which is admissible under 10 C.F.R. § 2.714. Yankee Atomic Electric Company (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248 (1996). In reviewing the admissibility of a contention, the Commission may review the matter de novo. See id. at 248-49 (reviewing petitioners' contentions); see also Arizona Public Service Company (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991).

The SUWA contention admitted here should be dismissed because it fails to show a genuine dispute with the Applicant on a material issue of law or fact. 10 C.F.R. §

⁷ The Board dismissed SUWA Contention A regarding PFS's alleged failure to consider the impacts of the rail line on the wilderness character and potential designation as wilderness of the tract of land through which the rail line crosses because the contention and its supporting bases "lack[ed] adequate factual or expert opinion support" and/or "fail[ed] to challenge the PFS application, as amended." Id. at 21; see also PFS Ans. at 18-23.

2.714(b)(2)(iii). A contention fails to show a material dispute if, inter alia, it ignores relevant material submitted in the application.⁸ Moreover, a contention alleging that an applicant has not considered sufficient alternatives under NEPA fails to show a material dispute if it does not propose at least a “colorable alternative” to those put forth by the applicant. See Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 412 (1976). Such colorable alternatives must be specific, not “cryptic and obscure references to matters that ‘ought to be’ considered.” Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 553-54 (1978).⁹ They must also be materially different from what has already been put forth. See id. at 553 (alternatives must “step over a threshold of materiality” and must be “of possible significance in the results” of the proceeding). Finally, “alternatives of speculative feasibility or alternatives which could only be implemented after significant changes in governmental policy or legislation” are insufficient and cannot provide the basis for an admissible contention. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 145 (1993) (citations omitted).

SUWA’s proposed Contention B stated as follows:

⁸ See Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 247-48 (1993); Georgia Power Company (Vogtle Electric Generating Plant, Units 1 and 2), LBP-91-21, 33 NRC 419, 424 (1991), appeal dismissed, CLI-92-3, 35 NRC 63 (1992).

⁹ See also id. at 551 (“NEPA was not meant to require detailed discussion of the environmental effects of ‘alternatives’ put forward in comments when these effects cannot be readily ascertained . . .”) (quoting NRDC v. Morton, 458 F.2d 827, 837-38 (D.C. Cir. 1972); id. at 553 (“intervenors [must] structure their

The License Application Amendment fails to develop and analyze a meaningful range of alternatives to the Low Corridor Rail Spur and the associated fire buffer zone that will preserve the wilderness character and the potential wilderness designation of a tract of roadless Bureau of Land Management (BLM) land – the North Cedar Mountains – which it crosses.

SUWA Cont. at 5; LBP-99-3, 49 NRC at __, slip op. at 21. The contention was admitted “[a]s it seeks to explore the question of alignment alternatives to the proposed placement of the Low Junction rail spur.” Id.

At the outset, the contention should be rejected for having failed to propose any colorable alternatives to PFS’s alignment of the Low Junction rail line. See Catawba, supra, ALAB-355, 4 NRC at 412. The contention as filed utterly ignored PFS’s analysis of other spent fuel transportation alternatives (movement by truck down Skull Valley Road and movement by rail built along Skull Valley Road).¹⁰ Moreover, SUWA proposed no alternatives to those set forth by PFS or to PFS’s placement of the Low Junction rail line. See SUWA Cont. at 5-6. In determining the admissibility of a contention, facts not pled by a petitioner – such as the existence of viable alternatives to PFS’s alignment of the Low Junction rail line – are not to be presumed. See Palo Verde, supra, CLI-91-12, 34 NRC at 155-56. Accordingly, the contention as filed by SUWA was fatally flawed and hence inadmissible.

participation [in a proceeding] so that it is meaningful, so that it alerts the agency to the intervenors’ position and contentions.”).

¹⁰ See PFS Ans. at 23-24. This failing also constitutes a failure to show the existence of a material dispute. Id. But since the Board admitted the contention only to consider alignment alternatives to the Low Corridor rail line, not transportation alternatives generally, PFS does not address this shortcoming further.

In its reply to PFS's and the Staff's responses to its petition, SUWA did propose an alternative alignment for the placement of the Low Junction rail line. See SUWA Reply at 15; Second Declaration of Jim Catlin for Petitioner Southern Utah Wilderness Alliance (SUWA), at ¶ 9 (hereinafter "Catlin 2d Dec."). This new basis for its contention – proffered for the first time in its reply – must be rejected, however, as a late-filed supplement without justification.¹¹ See Yankee Atomic, supra, CLI-96-7, 43 NRC at 255 & n.15 (late-filed contention bases must be justified under 10 C.F.R. § 2.714(a)). It is well established in this regard that an "intervenor's reply should not be an opportunity to assert new bases for late-filed contentions." Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 & 2), LBP-82-89, 16 NRC 1355, 1357 (1982). As the licensing board there went on to state:

Their initial filings . . . are expected to contain their best arguments and factual support for their contentions. While they may respond to applicant's challenges, their response should be more by way of explanation than of new evidence or entirely new lines of argument.

Id.; accord Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521, 523 n.11 (1979) ("substantive alterations of contentions" – such as seeking "to advance new bases" – are not the proper subject of a petitioner's oral or written reply to objections raised to their admission). Thus, SUWA's be-

¹¹ Even assuming arguendo that the late-filing of SUWA's contention was justified, the additional lateness of its proposed alternative to the alignment of the PFS rail line was not, in that the lateness was wholly unexplained by SUWA. See Baltimore Gas & Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC __, __, slip op. at 18 (1998).

lated attempt in its reply to advance new bases for its contention – with no attempt to justify its lateness under 10 C.F.R. § 2.714(a) – must be rejected. See note 11, supra.

Moreover, even if SUWA's alternative alignment for the Low Junction rail line advanced for the first time in its reply is deemed timely, it cannot serve as the basis for the contention because it is not feasible. Rancho Seco, supra, CLI-93-3, 37 NRC at 145. SUWA claims that an alternative alignment "that avoided the North Cedar Mountains roadless area . . . and/or ran two miles to the east of the current alignment (avoiding sensitive wetlands, etc.)" would have less impact. Catlin 2d Dec. ¶ 9 (citing SUWA Pet. Exhibit 2). Such an alignment of the PFS Low Junction rail line is not feasible, however, because it would cross State-owned land,¹² and the State is intractably opposed to the construction and operation of the ISFSI. The Governor of Utah has asserted that any ISFSI on the Skull Valley reservation would be built "over [his] dead body,"¹³ and the State of Utah has opposed the building of the ISFSI before the NRC at every turn.¹⁴ Moreover, the Governor has threatened in his recent State of the State address to "form a 'moat'"

¹² Exhibit 2 to SUWA's petition, a map entitled "The impacts of the Low rail spur on the North Cedar Mountains Roadless area," shows the path of PFS's Low Corridor rail line as it crosses the North Cedar Mountains area (as defined by SUWA). It also shows, depicted as darker squares, two parcels of State-owned land directly adjacent to and east of SUWA's proposed North Cedar Mountains area which lie between SUWA's proposed North Cedar Mountains area and Interstate 80. Thus, any realignment of the PFS Low Junction rail line that moved it out of SUWA's proposed North Cedar Mountains area to the east would require crossing State land.

¹³ See Exhibit 4 to "Applicant's Answer to the State of Utah's Motion for an Extension of Time to File Contention," dated October 6, 1997.

¹⁴ See, e.g., "State of Utah's Contentions on the Construction and Operating License Application by Private Fuel Storage, L.L.C. for an Independent Spent Fuel Storage Facility," dated November 23, 1997.

around the Skull Valley Band reservation and to refuse passage to PFS's transport of spent fuel to the site "no matter the price." See Exhibit 1. Thus, the State would obviously not consent to realigning the Low Junction rail line over State lands as proposed by SUWA in its reply. Hence, SUWA's proposed alternative – even if timely – is infeasible and cannot serve as a basis for the contention.¹⁵

In short, SUWA's Contention B fails to show a genuine dispute with the Applicant on a material issue of fact or law and the contention should be dismissed.

B. SUWA Lacks Standing to Intervene in This Proceeding

To be admitted to an NRC licensing proceeding, a petitioner must also demonstrate that it has standing in the case. Yankee Atomic, CLI-96-7, 43 NRC at 248. The standard of review of licensing board determinations on standing is "substantial deference," "except when the Board has clearly misapplied the facts or law." Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 32 (1998); accord International Uranium (USA) Corporation (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 117 (1998) (the "Commission generally defers to . . . determinations regarding standing, absent an error of law or an abuse of discretion").

¹⁵ SUWA has also not provided any factual basis to show that its proposed alternative is materially different from that proposed by PFS, see Vermont Yankee, 435 U.S. at 553, in that SUWA has not shown that the environmental impacts from its proposal – moving the PFS line two miles or so to the east – would be significantly different from the environmental impacts from PFS' proposal as is. In fact, the environment across the Skull Valley contains similar vegetation types, soils, and wildlife to those found in the Low Corridor. See ER § 2.3.3. Thus, without more, the environmental impact of building a rail line slightly to the east of PFS' proposed location would likely be quite similar to the impact of building it where it is now proposed. SUWA certainly has alleged no facts to claim otherwise.

SUWA lacks standing here because the organizational member from whom it seeks to derive representational standing has failed to show, as a matter of law, sufficient contact with the area alleged to be harmed by the PFS proposal.¹⁶ An intervention petition "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." 10 C.F.R. § 2.714(a)(2). "In evaluating whether a petitioner's 'interest' provides an appropriate basis for intervention, the Commission has long looked for guidance to current judicial concepts of standing." Quivira Mining Company (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 5-6 (1998) (citations omitted).¹⁷ "To demonstrate standing . . . , a petitioner must allege a particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision." Id. at 6. Furthermore, the petitioner's asserted injury must be "distinct and palpable, particular and concrete, as opposed to being conjectural or hypothetical." International Uranium (USA) Corporation, supra, CLI-98-6, 47 NRC at 117. Where a petitioner asserts standing through environmental harm, it must have current contact or show that it will have immi-

¹⁶ An organization may derive its standing from the standing of one of its members. Yankee Atomic Electric Company (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994). Here, the Licensing Board found that SUWA had "representational standing" based on the standing of one of its members. LBP-99-3, 49 NRC at __, slip op. at 13, 20. Accordingly, PFS's appeal of this finding focuses on the standing of the member from whom SUWA claims to derive standing.

¹⁷ Nevertheless, because the NRC is not an Article III court, it is not bound to apply judicial concepts of standing and may interpret the Atomic Energy Act's "interest" requirement to be narrower than that sufficient to provide standing in federal court. See International Uranium (USA) Corporation (Receipt of Material from Tonawanda, New York), CLI-98-23, 48 NRC at __, slip op. at 7 (1998).

ment future contact with the area where the harm will occur. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 564 (1992). The burden of proof on standing resides with the petitioner. Texas Utilities Electric Company (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 163 (1993). Moreover, licensing boards may not presume facts not pled in petitions. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-92-23, 36 NRC 120, 127 (1992) (citing Palo Verde, CLI-91-12, 34 NRC at 155-56).

Dr. Jim Catlin, the member from whom SUWA seeks to derive representational standing, SUWA Pet. at 14, describes his contact with the small tract of land (approximately two square miles or less) of SUWA's proposed North Cedar Mountain area through which the PFS rail line would pass as "frequent," but provides no specific information whatsoever regarding the time or duration of his contact with this area. Catlin 2d Dec. ¶ 11. This assertion does not show sufficient contact with the area in question, in that – without more specificity – it does not show how much contact Dr. Catlin actually has with the area.

The purpose of demonstrating the proximity (closeness in space) and frequency (closeness in time) of a petitioner's contacts with an area is to show that the petitioner will be sufficiently likely to suffer legal harm from the proposed action, such that the petitioner should be allowed to challenge the action before an adjudicatory body. Lujan, 504 U.S. at 564 n.2. Thus a petitioner who has close contact with an area allegedly af-

affected by a proposed action, but only briefly or infrequently, does not have standing. Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1448 (1982) (petitioner made "occasional visits close to the site"); Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1150 (1977) (petitioner made "occasional" trips to communities near the site). Likewise, a petitioner who has frequent or even continuous contact with an area, but only at a distance, also does not have standing. See, e.g., Yankee Atomic Electric Company (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994) (organization located more than 50 miles from reactor site). To establish its standing, a petitioner must demonstrate sufficiently close contact with the area in question in both space and time. Indeed, Federal courts require pleading with "heightened specificity" rather than "conclusory allegations" where standing is at issue, to ensure that the judicial process is not improperly invoked. E.g., United States v. AVX Corp., 962 F.2d 108, 115 (1st Cir. 1992) ("The complainant must set forth reasonably definite factual allegations, . . . , regarding each material element needed to sustain standing."). The Commission should require no less here.

The February 3rd Memorandum and Order stated that Dr. Catlin's use of the term "frequent" showed that "his bond with the area is sufficiently concrete to establish his standing." LBP-99-3, 49 NRC at ___, slip op. at 20. It added:

In this connection, we are considerably less concerned about precision regarding a standing showing that is based on actual physical contact . . . with the object of the purported injury . . . , than we would be for a stand-

ing showing based on distance from the object in question An ongoing presence via physical contact can be adequately conveyed with a general term such as "frequently." General references regarding distance, however, will usually be inadequate to establish the requisite concreteness.

Id. at 20 n.7.

PFS respectfully submits that this statement of the law is incorrect. If a petitioner must be specific enough regarding distance to allow a board to determine whether its contacts with an area are sufficient to provide it with standing, it must also be specific enough regarding the frequency of the contacts. Absent specific information regarding the frequency of a petitioner's contacts with an area, it is not possible to know how frequent its contacts in fact are. A petitioner could say that he or she contacted an area "frequently," in that he or she drove by the area daily while commuting to work. A petitioner could also say that he or she contacted an area "frequently," in that he or she vacationed there once every other year. Both uses of the word "frequently" would be proper, but daily contact with an area would provide standing, Georgia Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 NRC at 117 (1995), while biennial contact would not, see Houston Lighting and Power Company (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 456-57 (1979).¹⁸

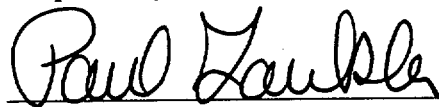
¹⁸ While some licensing board and Commission opinions finding standing for petitioners have used terms like "frequent" or "regular" to describe the petitioners' contacts with the relevant areas, such were conclusions derived from specific information provided by the petitioners. E.g., Georgia Tech, CLI-95-12, 42 NRC at 117. Here, no specific facts have been pled from which such conclusions could be properly drawn.

Here, Dr. Catlin provided no specific information whatsoever regarding the frequency of his contacts with the area to be traversed by PFS's Low Corridor rail line. See First Declaration of Jim Catlin for Petitioner Southern Utah Wilderness Alliance (SUWA) ¶ 20; Catlin 2d Dec. ¶ 11. Thus, there is no way to know the frequency of his contacts and therefore no way to know whether such contacts establish his standing in this case. Therefore, Dr. Catlin has not met his burden of demonstrating that he has standing and SUWA may not draw representational standing from him. Hence, SUWA does not have standing and its petition to intervene in this proceeding must be rejected.

IV. CONCLUSION

For the forgoing reasons, the Commission should reverse Memorandum and Order LBP-99-3 and deny SUWA's petition to intervene in this licensing proceeding for failure to proffer an admissible contention and for lack of standing.

Respectfully submitted,



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