

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, LLC)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel)	
Storage Installation))	August 9, 1999

STATE OF UTAH'S RESPONSE TO THE APPLICANT'S
MOTION FOR PARTIAL SUMMARY DISPOSITION OF
UTAH CONTENTION R AND REPLY TO THE STAFF'S
RESPONSE TO THE APPLICANT'S MOTION

I. INTRODUCTION

The Applicant filed a Motion for Partial Summary Disposition of Contention R (Emergency Plan), Basis 3,¹ on June 28, 1999 ("Applicant's Motion"). The Applicant urges the Board to grant its Motion based on the underlying fact that the PFS facility "is designed to withstand the effects of credible fires without fire-fighting by personnel or the operation of any automatic fire detection/suppression system." Motion at 3 (*emphasis added*). In its July 28, 1999 Response to Applicant's Motion for

¹Contention R, Basis 3, is as follows:

CONTENTION: The Applicant has not provided reasonable assurance that the public health and safety will be adequately protected in the event of an emergency at the storage site or the transfer facility in that ... (3) PFS has not adequately described the means and equipment for mitigation of accidents because it does not have adequate support capability to fight fires onsite.

Partial Summary Disposition of Utah Contention R - Emergency Plan ("Staff's Response"), the Staff supports the Applicant's Motion albeit on a different premise. The Staff relies on the fact that the Applicant's emergency response plans are sufficient to respond to a fire event. Unlike the Applicant, the Staff does not base its determination on the fact that it is not credible that a fire will occur which may result in the significant release of radiation.² Staff's Response at 11 and n. 16. In accordance with the Board's Order of July 1, 1999, the State hereby responds to the Applicant's Motion and replies to the Staff's Response. In this response, the State shows that many material facts are in dispute with the Applicant. The State also disputes some of the factual premises underlying the Staff's response. Accordingly, summary disposition should not be denied.

II. STANDARD OF REVIEW

Pursuant to 10 CFR § 2.740, a party is entitled to summary disposition if "there is no genuine issue as to any material fact" and the party "is entitled to a decision as a matter of law." The burden of proving entitlement to summary disposition is on the movant. Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio 44041),

²In its Response at 11, the Staff concluded,

[S]ufficient information has been provided concerning the Applicant's plans for detecting, assessing, and mitigating the consequences of fires at the facility.... [T]his determination is based, not on the credibility of a fire occurring which may result in a significant release of radiation, but on the sufficiency of the Applicant's plans for responding to a fire event.

CLI-93-22, 38 NRC 98, 102 (1993). Because the burden of proof is on the proponent, "the evidence submitted must be construed in favor of the party in opposition thereto, who receives the benefit of any favorable inferences that can be drawn." Sequoyah Fuels Corp. and General Atomics Corp. (Gore, Oklahoma Site Decontamination and Decommissioning Funding), (hereafter "Gore") LBP-94-17, 39 NRC 359, 361, *aff'd* 40 NRC 55, CLI-94-11 (1994). Furthermore, if there is any possibility that a litigable issue of fact exists or any doubt as to whether the parties should be permitted or required to proceed further, the motion must be denied. General Electric Co. (GE Morris Operation Spent Fuel Storage Facility), LBP-82-14, 15 NRC 530, 532 (1982).

III. ARGUMENT

A. SUMMARY JUDGMENT IS INAPPROPRIATE BECAUSE THERE ARE SIGNIFICANT MATERIAL FACTUAL DISPUTES AND MATERIAL FACTUAL UNCERTAINTIES THAT CANNOT BE RESOLVED WITHOUT A HEARING.

PFS has moved for partial summary disposition "on the grounds that the adequacy of the PFS [facility] water supply (and firefighting generally) is immaterial to the decision the NRC must make regarding the adequacy of the PFS Emergency Plan...." because the facility is designed to withstand the credible effects of fires.³

³The Applicant's Motion is supported by the Declarations of Jeffrey Johns and Ram Srinivasan. In response to the State's general and continuing interrogatories Nos. 3 - 5, which require the identification of witnesses, their qualifications, and the scope of their testimony, PFS has identified only Dr. Carlton Britton as an expert witness testifying about wildfires for Contention R. Applicant's Objections and Non-Proprietary Responses to State's First Requests for Discovery, dated April 21, 1999, at 17-18; *see also* Applicant's Objections and Non-Proprietary (*sic*) Responses to State's Second Requests for Discovery (Group I)(June 4, 1999) at 5; Applicant's Objections and Non-Proprietary Responses to State's Second Requests for Discovery (Group II and III)(June 28, 1999) at 5-6; Applicant's

Applicant's Motion at 3. The NRC Staff, however, "does not agree ... that events involving fires are beyond the EP [Emergency Plan] planning basis; indeed the Commission's regulatory guidance indicates that an ISFSI emergency plan needs to consider events involving fires." Staff Response at 11 and n. 16. Thus, contrary to PFS's assertion, the Staff's analysis is not based on whether an event involving a fire is "credible." Instead the Staff's determination is based on "the Applicant's plans for detecting, assessing, and mitigating the consequences of fires at the facility." Staff Response at 11.

PFS's underlying premise that its Emergency Plan need only describe the consequences of radiological accidents at the facility does not comport with NUREG 1567, Standard Review Plan for Spent Fuel Dry Storage Facilities. Applicant's Motion at 5. According to NUREG 1567, Appendix C, the accident description in an emergency plan must include, *inter alia*, "any non-radiological, hazardous material releases that could impact emergency response efforts ..." and "events which could lead to initiation of an alert ... [including] fire onsite that might affect radioactive systems important to safety . . . [or compromise] ongoing security...." NUREG 1567 at C-6 to C-7. NUREG 1567 is consistent with 10 CFR § 32(a)(5), which requires the Emergency Plan to provide a description of "the means of mitigating the consequences

Objections and Non-Proprietary Responses to State's Third Requests for Discovery (June 28, 1999) at 6. The Applicant stated it would supplement its response as it obtains further information, which obviously it has not done. Applicant's Discovery Response at 18.

of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment."

There are fatal shortcomings in the Applicant's Motion because litigable facts remain and the Motion omits significant material facts. In addition, the Staff cannot support the Applicant's Motion when it too has not provided the answer to important material facts omitted from the Applicant's Motion.

The Applicant has failed to analyze the effects from fire to other systems, structures or components important to safety ("SSCs") at the facility, especially from a fire caused by spilled fuel inside the Canister Transfer Building. It is in this building that fuel is at its most vulnerable; the canister is taken out of the transportation cask, placed in a transfer cask and then transferred to a storage cask. Material Fact ¶ 8. The Holtec Topical Safety Analysis Report ("TSAR") has only analyzed a fire from a 50 gallon diesel fuel spill involving the storage casks, while the TranStor TSAR has no such analysis. Material Fact. ¶ 11; Resnikoff Dec. ¶¶ 7-8. Moreover, the Holtec TSAR does not analyze a fire involving a 50 gallon fuel spill inside the transfer bay during canister transfer operations. Meanwhile, in its Motion, the Applicant purports to have analyzed a 300 gallon fuel spill inside the Canister Transfer Building.⁴ Applicant's Motion at 6-7; Johns Dec. at ¶¶ 5, 8-10. PFS relies on the assumption that a 300 gallon fuel spill from a heavy haul trailer will not spread beyond the unloading

⁴In its 300 gallon fuel spill analysis supporting its Motion, the Applicant takes no credit for the sprinkler system inside the Canister Transfer Building. Applicant's Motion at 7.

bays. Johns Dec. at ¶ 11. The SAR provides absolutely no facts to support PFS's assertion that the building design will assure that 300 gallons of spilled fuel will not run into the transfer cells. SAR at 8.2-27. PFS uses the same design basis argument to preclude a 50 gallon fuel spill from the cask transporter reaching the transfer bays. Id. at 8.2-28. Furthermore, there are significant unanswered questions relating to the collection of spilled diesel fuel in the drain sumps. Johns Dec. at ¶ 11.

The State surely is entitled to cross examine the Applicant's witnesses as to what these building design measures will be and how they will prevent the spread of spilled fuel and the collection of fuel in drain sumps. These facts are critical because PFS has stated that a fire involving 300 gallons of diesel fuel will cause temperatures inside the Canister Transfer Building to reach 1200°F. Johns Dec. at ¶ 10. The transfer casks are not designed to withstand such temperatures and such temperatures would likely cause degradation of the cladding surrounding the spent fuel. Resnikoff Dec at ¶ 7; Facts at ¶¶ 13-14.

The Applicant admits that a fire involving 300 gallons of fuel may cause the loss of electrical power to SSCs inside the Canister Transfer building. Johns Dec. ¶ 10. The Applicant even argues that if such a loss of power occurred "while canister transfer operations were in progress" it would not result in the release of radioactivity. Id. The Applicant's conclusions bring up a number of significant and unresolved questions. First, neither the Applicant's Motion nor the SAR discuss how electrical

power will be restored if there is a fire in the middle of canister transfer operations that cuts off electricity and burns out electrical wiring inside the Canister Transfer Building. Material Facts ¶¶ 15-16. Second, the Applicant has not described how the recovery sequence would be completed if electrical wiring supplying the Canister Transfer Building is burned out during canister transfer operations. *Id.* ¶ 16. Third, the Applicant has not analyzed the means of protecting onsite electrical repair workers needed to repair faulty or burned out wiring inside the Canister Transfer Building. *Id.* Again, the State is entitled to cross examine the Applicant's expert witnesses to obtain answers to the foregoing questions which are germane to the Applicant's ability to mitigate the consequences of accidents. *See* 10 CFR § 72.32 (a)(5).

The Applicant's analysis of a fire involving fuel from a locomotive is woefully deficient. There is not one iota of evidence as to the fuel capacity of the locomotive that will be at the PFS site. The Board should not uphold the Staff's position that the PFS Emergency Plan is adequate when the Staff, either through ignorance or oversight, has not divulged this critical fact. The fuel capacity of the locomotive at the PFS ISFSI is a significant fact; locomotives may have a fuel capacity of as much as 6,000 gallons. Exhibit 1 to Resnikoff Dec.

The Applicant's attempted analysis of a fire involving a mysterious quantity of fuel from a locomotive located outside the Canister Transfer Building concludes: "the heat flux impinging on a storage cask from the fire [involving an unknown quantity of

diesel fuel] would be much less than the heat flux that would impinge on a storage cask from a 50-gallon diesel fuel fire engulfing a cask." Motion at 8. The State would merely add that as the quantity of fuel is unknown, the Applicant's flux analysis impinges upon credulity. Material Facts at ¶¶ 17 and 18; Resnikoff Dec. at ¶¶ 10, 11 and Exhibit 1. Furthermore, the Applicant has only attempted to analyze the effect of a radiological release and has given no consideration to the effects on SSCs.

The Applicant's Motion relies on the fact that administrative procedures will keep the locomotive outside the Canister Transfer Building. Applicant's Motion at n.8.⁵ Another significant material fact absent in the Applicant's motion is how a cask loaded on a railcar weighing over 200 tons will get into the Canister Transfer Building and how an unloaded car will exit the building. Material Facts ¶¶ 19-22. Nowhere in the license application is there a discussion of how casks will be moved into or out of the Canister Transfer Building. In a summary disposition motion, the burden is on the Applicant and any favorable inference from the evidence must be construed to the benefit of the State (the party opposing the motion). Gore, 39 NRC at 361.

Therefore, as there is no evidence to show how railcars will enter or exit the Canister Transfer Building, the Board should infer that the locomotive will be required to enter the Canister Transfer Building to accomplish this operation.

⁵In addition, the Applicant again relies on unspecified building design to prevent the movement of spilled fuel. This time the design is supposed to prevent fuel from entering into the building. Applicant's Motion at 8 and n. 8. Because PFS relies on building design for its analysis, the State must be given the opportunity to examine PFS's witnesses about the design details.

It is obvious why the Applicant does not want the locomotive inside the Canister Transfer Building. A fire involving 50 or 300 gallons of fuel pales in comparison to a 6,000 gallon spill; so does the analysis. The Applicant's omission of how the railcars get inside and out of the building, creates a material deficiency in its analysis of fires involving the locomotive. Furthermore, the Applicant must also analyze the effects of a fire on both the locomotive and heavy haul trailer being in the building at the same time. Material Fact ¶ 23; see SAR Fig. 4.7-1.

Finally, the Staff's analysis comes up short. The Staff has not disclosed (or does not have before it) the material facts described above that are critical to analyzing the Applicant's position (e.g., building design to prevent fuel from spreading, fuel capacity of the locomotive, recovery operations after burn out of electrical wiring in the Canister Transfer Building). Moreover, the Staff first regurgitates the Applicant's position that the ISFSI does not need to rely on firefighting personnel or automatic fire suppression system (e.g., sprinkler system).⁶ Staff Response at 3-4. Then the Staff relies on the fact that the Applicant will have a fire pumper truck on site, another fire truck elsewhere on the reservation, and an unsupported response to an RAI that sufficient water will be maintained for firefighting. Staff's Response at 9. In the arid west, the availability of water should not be taken for granted. The Utah State Engineer is charged with the allocation of all water within the State, including

⁶It is unclear whether the Staff's Response supports the Applicant's supposition.


groundwater. Material Fact ¶ 27; Utah Code Ann. Chapter 73. PFS has not applied to the State Engineer for a water right to withdraw groundwater. See Material Fact ¶ 27. Thus, there is no evidence in the record to support the assumption that PFS will have enough water to fight fires on site. The maintenance and operability of the PFS fire truck is irrelevant if there is insufficient water to supply fire fighting needs. Accordingly, there is a genuine dispute between the Staff and the State whether there will, in fact, be a sufficient quantity of water allocated to PFS or the tribe that will enable PFS to fulfil the commitments it made in its RAI responses with respect to the quantity of water it will have on site.

IV. CONCLUSION

The Applicant's Motion and the Staff's Response are rife with disputed and absent material facts. The State must be given the opportunity to cross examine the Applicant's witnesses and those of the Staff. It would be patently unfair of the Board to grant summary disposition in these circumstances.

DATED this 9th day of August, 1999.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S RESPONSE TO THE APPLICANT'S MOTION FOR PARTIAL SUMMARY DISPOSITION OF UTAH CONTENTION R AND REPLY TO THE STAFF'S RESPONSE TO THE APPLICANT'S MOTION was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 9th day of August, 1999:

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