

RAS 2183

RELATED CORRESPONDENCE
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

September 13, 2000
DOCKETED 9/14/00

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

PRIVATE FUEL STORAGE, L.L.C.

(Independent Spent Fuel
Storage Installation)

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Docket No. 72-22-ISFSI

NRC STAFF'S OBJECTIONS AND RESPONSES TO "STATE OF UTAH'S
SEVENTH SET OF DISCOVERY REQUESTS DIRECTED TO THE NRC STAFF"

INTRODUCTION

On August 31, 2000, the State of Utah ("State") filed the "State of Utah's Seventh Set of Discovery Requests Directed to the NRC Staff" ("Request"), concerning the application for an Independent Spent Fuel Storage Installation ("ISFSI") filed by Private Fuel Storage, L.L.C. ("PFS" or "Applicant"). In its Request, the State filed five general interrogatories, seven requests for admission, and 16 document requests. The requests for admission and document requests pertain to Utah Contention Z (no action alternative). The NRC Staff ("Staff") hereby files its objections and responses to the State's Request, as follows.¹

GENERAL OBJECTIONS

Objection 1. The Staff objects to each of the State's discovery requests, in that the State has not complied with the Commission's regulations that govern discovery from the Staff. In this regard, it is well established that discovery against the Staff rests on a different footing than discovery in general. *Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-634, 13 NRC 96, 97-98 (1981). While discovery from parties in an NRC adjudicatory proceeding is generally

¹ This response is filed pursuant to a two-day extension of time, with agreement by the State of Utah.

governed by the provisions of 10 C.F.R. § 2.740 *et seq.*, interrogatory and document discovery against the Staff is governed by the provisions of 10 C.F.R. §§ 2.720(h)(ii)-(iii), 2.744, and 2.790.² These regulations establish certain limits to the Staff's obligation to respond to requests for discovery.

In particular, with regard to interrogatories, the Commission's rules provide:

[A] party may file with the presiding officer written interrogatories to be answered by NRC personnel with knowledge of the facts designated by the Executive Director for Operations. Upon a finding by the presiding officer that answers to the interrogatories are necessary to a proper decision in the proceeding and that answers to the interrogatories are not reasonably obtainable from any other source, the presiding officer may require that the staff answer the interrogatories.

10 C.F.R. § 2.720(h)(2)(ii). With regard to requests for the production of documents, the Commission's rules similarly provide:

(a) A request for the production of an NRC record or document not available pursuant to 10 C.F.R. § 2.790 . . . shall set forth the records or documents requested, either by individual item or by category, and shall describe each item or category with reasonable particularity and shall state why that record or document is relevant to the proceeding.

(b) If the Executive Director for Operations objects to producing a requested record or document on the ground that (1) it is not relevant or (2) it is exempted from disclosure under § 2.790 and the disclosure is not necessary to a proper decision in the proceeding or the document or the information therein is reasonably obtainable from another source, he shall so advise the requesting party.

10 C.F.R. § 2.744(b). The rule further provides for application by the requesting party to the presiding officer to compel production of the documents, where the movant shows that the document is relevant to the issues in the proceeding; and the document is not exempt from disclosure under 10 C.F.R. § 2.790 -- or, if exempt, that the document or information is necessary

² See also 10 C.F.R. §§ 2.740(f)(3), 2.740a(j), 2.740b(a), and 2.741(e) (excluding discovery from the Staff from the general provisions of those regulations).

to a proper decision in the proceeding and is not reasonably obtainable from another source. 10 C.F.R. §§ 2.744(c)-(d).³

Moreover, it is an adequate response to *any* discovery request for a party to state that the information or document requested is available in the public domain and to provide information to locate the material requested. 10 C.F.R. § 2.740(b)(1); *accord*, *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No. 1), CLI-79-8, 10 NRC 141, 147-48 (1979).

Here, the State has not complied with any of the Commission's requirements governing discovery against the Staff. First, the State has not indicated that the requested documents and information are not available in the public domain. In this regard, the Staff notes that much of the requested information and documents are, in fact, readily available to the State through its access to publicly available documents. The State, moreover, is well aware of the fact that many of the requested documents are available in the public domain, having been informed long ago that documents are available in the Public Document Room (PDR) or the former Local PDR (LPDR) that was established in Salt Lake City (which, the Staff understands, continues to maintain the documents which it received prior to its official closure). Second, the State has not indicated, as is required under Commission regulations, that the requested information and documents are exempt from disclosure under 10 C.F.R. § 2.790 or that it cannot obtain the documents from public sources. Similarly, to the extent that the documents may be exempt from disclosure, the State has not explained why each of the exempt items is necessary to a proper decision in the proceeding. Further, as set forth in Objection 2 below, the State has not shown that the requested documents are relevant to the issues in this proceeding. For all of these reasons, the Staff objects to the State's discovery requests.

³ Additionally, 10 C.F.R. § 2.744(e) provides a framework for limited disclosure (under a protective order) of documents exempt from disclosure under 10 C.F.R. § 2.790, upon a finding by the presiding officer that such disclosure is necessary to a proper decision in the proceeding. *Cf.* 10 C.F.R. § 2.740(c).

Objection 2. The Staff objects to each of the State's discovery requests, insofar as they request information that is not relevant to the issues in this proceeding or that exceeds the scope of admitted contentions in this proceeding.

Objection 3. The Staff objects to the State's discovery requests insofar as they relate to matters which are outside the jurisdiction of the NRC or are beyond the proper scope of this proceeding.

Objection 4. The Staff objects to each of the State's discovery requests, insofar as they request information or documents from the "Nuclear Regulatory Commission" or the "NRC," or other persons or entities who are not members of the NRC Staff or consultants to the Staff in this proceeding. *See, e.g.,* Instruction A, "Scope of Discovery"; and Definition 1 (Request at 1-2, 4). The NRC and persons other than NRC Staff Members (*e.g.,* the Commissioners, Commissioners' Assistants, Licensing Board members, ACRS members, etc.) are not parties to this proceeding and are not properly subject to the State's requests for discovery in this proceeding.

Objection 5. The Staff objects to each of the State's discovery requests, insofar as they seek to impose an obligation to respond that is different from or greater than the obligations imposed by Commission regulations, as set forth in 10 C.F.R. Part 2. *See, e.g.,* Instruction B, "Lack of Information" (Request at 2).

Objection 6. The Staff objects to each of the State's discovery requests, insofar as they may request information or documents protected under the attorney-client privilege, the doctrines governing the disclosure of attorney work product and trial preparation materials, or any other privilege or exemption that warrants or permits the non-disclosure of documents under the Freedom of Information Act, as set forth in 10 C.F.R. § 2.790(a). Notwithstanding this objection, the Staff will supplement its privilege log to identify any additional documents that are sought to be withheld from discovery as privileged, and will produce that log to the State.

RESPONSES TO DISCOVERY REQUESTS

Notwithstanding the above objections to the State's Seventh Discovery Request, and without waiving these objections or its right to interpose these or other objections in the future, the Staff hereby voluntarily provides the following responses to the State's discovery requests.

A. GENERAL DISCOVERY

To the extent that the Staff now has updated information for, or has not already answered the general interrogatories in the State's first set of discovery requests, please answer or supplement the following:

GENERAL INTERROGATORIES

These general interrogatories apply to all Utah admitted contentions, are in addition to the ten interrogatories per contention allowed by the Board's Order dated April 22, 1998 (LBP-98-7), and are continuing in accordance with 10 CFR § 2.740(e).

GENERAL INTERROGATORY NO. 1. State the name, business address, and job title of each person who was consulted and/or who supplied information for responding to interrogatories and requests for admissions. Specifically note for which interrogatories and requests for admissions each such person was consulted and/or supplied information.

If the information or opinions of anyone who was consulted in connection with your response to an interrogatory or request for admission differs from your written answer to the discovery request, please describe in detail the differing information or opinions, and indicate why such differing information or opinions are not your official position as expressed in your written answer to the request.

GENERAL INTERROGATORY NO. 2. Identify all documents relevant to any Utah admitted contention upon which NRC Staff intends to rely in litigating each Utah contention.

GENERAL INTERROGATORY NO. 3. For each admitted Utah contention, give the name, address, profession, employer, area of professional expertise, and educational and scientific experience of each person whom NRC Staff expects to call as a witness at the hearing. For purposes of answering this interrogatory, the educational and scientific experience of expected witnesses may be provided by a resume of the person attached to the response.

GENERAL INTERROGATORY NO. 4. For each admitted Utah contention, identify the qualifications of each expert witness whom

NRC Staff expects to call at the hearing, including but not limited to a list of all publications authored by the witness within the preceding ten years and a listing of any other cases in which the witness has testified as an expert at a trial, hearing or by deposition within the preceding four years.

GENERAL INTERROGATORY NO. 5. For each admitted Utah contention, describe the subject matter on which each of the witnesses is expected to testify at the hearing, describe the facts and opinions to which each witness is expected to testify, including a summary of the grounds for each opinion, and identify the documents (including all pertinent pages or parts thereof), data or other information which each witness has reviewed and considered, or is expected to consider or to rely on for his or her testimony.

STAFF RESPONSE. These interrogatories, which pertain to all of the State's admitted contentions, reiterate, almost *verbatim*, the general interrogatories contained in the "State of Utah's First Set of Discovery Requests Directed to the NRC Staff" ("First Request"), dated June 10, 1999.⁴ Indeed, the State appears to have intended to restate those earlier interrogatories herein; and the State has repeatedly issued these same general interrogatories throughout the discovery process.⁵ The Staff objects to being served with repeated requests to respond to the same interrogatories, as repetitious and burdensome, particularly in light of the supplementation of discovery responses required under 10 C.F.R. §2.740(e). Notwithstanding this objection, however, the Staff will review its answers to the State's First Request, and will provide a supplement thereto, as appropriate and required under the Commission's regulations, with respect to each of the contentions remaining to be heard in this proceeding.

⁴ The two sets of general interrogatories differ only in that the State's Seventh Request (a) deletes the phrase "requests for the production of documents" in General Interrogatory No. 1 (which seeks the names of persons who were consulted and/or who supplied information concerning the State's discovery requests, and (b) adds the word "Staff" following "NRC" in General Interrogatory 4 of the State's Seventh Request.

⁵ See, e.g., "State of Utah's Sixth Set of Discovery Requests Directed to the NRC Staff (Utah Contention L)," dated February 4, 2000.

B. DISCOVERY REQUESTS - UTAH CONTENTION Z (NO ACTION ALTERNATIVE)

1. Requests for Admissions - Utah Contention Z

REQUEST FOR ADMISSION NO. 1 - UTAH Z. Do you admit that calculations supporting *Utility At-Reactor Spent Fuel Storage Costs For the Private Fuel Storage Facility Cost-Benefit Analysis* Revision 2, ERI 2025-0001, April 2000, are treated by NRC as proprietary. See DEIS¹ at Section 8.1.1 PFS's Model and Assumptions; and letter from John L. Donnell to NRC dated April 14, 2000 (re: submittal of Revised Cost Benefit Analysis).

¹ NUREG-1714, *Draft Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah*, June 2000.

STAFF RESPONSE. The Staff objects to this request on the grounds that (a) it is vague and ambiguous, (b) it seeks information that is presently available to the State, and (c) it is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence.

First, it is unclear from this request for admission which particular "calculations" are the subject of this contention. In the absence of such specification, the State's request would appear to require the Staff to identify each item of information that could be deemed to be "calculations supporting" the referenced document, and to review each item to determine whether it has or has not been identified as proprietary. This would place an unwarranted burden on the Staff, which the State could have eliminated by posing a more precise request for admission.

Second, while the State explicitly cites a letter from PFS to the Staff, dated April 14, 2000, it fails to note that the PFS letter specifically identified proprietary and non-proprietary versions of certain information submitted to the NRC. The State is fully capable of reviewing that information, since it has been authorized to receive proprietary information in this proceeding. No reason appears why the State could not determine, for itself, whether the information at issue has been submitted as proprietary. Further, once the State identifies the information that is of concern to it,

no reason appears why it could not review the docket to determine if the Staff has acted upon the claim of proprietary information; and, having done so, either find that the Staff has acted upon that request, or seek a ruling as to whether the claim of proprietary information is proper.

Finally, the State's request for admission as to whether any of these (unidentified) calculations are deemed to be proprietary is irrelevant, in that a response would not tend to prove or disprove Utah Contention Z, and is not reasonably calculated to lead to the discovery of admissible evidence. Regardless of whether any or all of the information at issue has been identified as proprietary, such classification of the information is not relevant to the question of whether the DEIS analysis of the "no action" alternative is adequate, nor is it relevant to the merits of the contention. Accordingly, this request for admission is improper. See 10 CFR § 2.740(b)(1).

REQUEST FOR ADMISSION NO. 2 - UTAH Z. Do you admit that the public does not have access to the full range of information relied on by PFS and the Staff in describing PFS's assumptions and calculations with respect to projection of the generation of spent nuclear fuel, storage requirements, and storage costs.

STAFF RESPONSE. The Staff objects to this request on the ground that it is not relevant to the question of whether the analysis of the "no action" alternative in the DEIS is adequate, is not relevant to the merits of the contention, and is not reasonably calculated to lead to the discovery of admissible evidence. Whether or not the public has "access to the full range of information" relied upon by PFS and the Staff does not provide information that would prove or disprove Utah Contention Z. Further, to the extent that the request for admission concerns information available to and relied upon by PFS, the State fails to show that it could not obtain this information directly from PFS. Accordingly, this request for admission is improper. See 10 CFR § 2.740(b)(1).

REQUEST FOR ADMISSION NO. 3 - UTAH Z. Do you admit that the DEIS does not comply with NUREG-1555, Environmental Standard Review Plan (March 2000)?

STAFF RESPONSE. The Staff objects to this request on the ground that it is irrelevant. NUREG-1555, "Standard Review Plans for Environmental Reviews for Nuclear Power Plants," explicitly applies only to environmental reviews performed in connection with nuclear reactor licensing actions. Since the instant proceeding involves an ISFSI rather than a nuclear reactor, NUREG-1555 does not apply. Accordingly, the guidance in NUREG-1555 is irrelevant to this contention, concerning the Staff's consideration of the "no action" alternative for the PFS facility.

REQUEST FOR ADMISSION NO. 4 - UTAH Z. Do you admit that the DEIS does not consider the costs to the State of Utah from the transportation of spent nuclear fuel from reactor sites to the proposed PFS facility in Utah?

STAFF RESPONSE. The Staff objects to this request on the ground that it is not relevant to the question of whether the analysis of the "no action" alternative in the DEIS is adequate, is not relevant to the merits of Contention Utah Z, and is not reasonably calculated to lead to the discovery of admissible evidence. Utah Contention Z is limited to the "no action" alternative. This request for admission, in contrast, relates to the costs of the proposed PFS facility -- rather than the costs of the "no action" alternative. Whether or not "costs to the State of Utah" arising from the transportation of spent fuel to the PFS facility have been considered in the DEIS is irrelevant to the question of whether the DEIS gives adequate consideration to the "no action" alternative.⁶ Further, even if consideration of such costs was relevant to this contention (which it is not), the National Environmental Policy Act of 1969 (NEPA) does not require that a DEIS consider costs to any particular party (such as the State) as a distinct entity, when considering alternatives. Accordingly,

⁶ This request for admission appears to relate either to (a) the State's late-filed Contentions LL-OO, which have not been admitted in this proceeding, and on which discovery is therefore improper, or (b) Utah Contention CC, "One-Sided Cost-Benefit Analysis," which the Licensing Board has previously rejected, and on which discovery is therefore improper. See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 204 (1998).

this request for admission, regarding the costs or benefits of the project, is irrelevant to Contention Utah Z. See 10 CFR § 2.740(b)(1).

REQUEST FOR ADMISSION NO. 5 - UTAH Z. Do you admit that the DEIS does not consider the costs to the corridor states from the transportation of spent nuclear fuel from reactor sites to the proposed PFS facility in Utah?

STAFF RESPONSE. The Staff objects to this request for admission, on the grounds that it is not relevant to the question of whether the analysis of the “no action” alternative in the DEIS is adequate, is not relevant to the merits of Contention Utah Z, and is not reasonably calculated to lead to the discovery of admissible evidence. Utah Contention Z is limited to the “no action” alternative. This request for admission, in contrast, relates to the costs of the proposed PFS facility -- not the costs of the “no action” alternative. Whether or not “costs to the corridor states” arising from the transportation of spent fuel to the PFS facility have been considered in the DEIS is irrelevant to the question of whether the DEIS gives adequate consideration to the “no action” alternative. Further, even if consideration of such costs was relevant to this contention (which it is not), the National Environmental Policy Act of 1969 (NEPA) does not require that a DEIS consider costs to any particular party (such as the undefined “corridor states”) as a distinct entity, when considering alternatives. Accordingly, this request for admission, regarding the costs or benefits of the project, is irrelevant to Contention Utah Z. See 10 C.F.R. § 2.740(b)(1).⁷

REQUEST FOR ADMISSION NO. 6 - UTAH Z. Do you admit there are no significant environmental impacts from constructing new or expanded at-reactor spent nuclear fuel (“SNF”) storage facilities? See DEIS at xli (Waste Confidence Decision).

STAFF RESPONSE. The Staff objects to this request on the ground that it is vague and ambiguous. Nowhere in this request does the State identify the type(s) of “new or expanded”

⁷ See n.6, *supra*.

at-reactor spent fuel storage facilities which are the subject of this request, nor does it identify the reactor sites to which it applies. Thus, it cannot be discerned whether the request for admission relates to dry storage or wet storage; the expansion of existing storage capacity; or the construction of new storage capacity. Accordingly, the request for admission is also impermissibly overbroad and confusing.

Notwithstanding (and without waiving) this objection, the Staff notes that the Commission has previously issued a generic environmental assessment which concluded that the environmental impacts of SNF storage at reactor sites “will not have a significant incremental effect on the quality of the human environment.” See NUREG-1714, at xli and 9-9. Further, the Commission has made a generic finding that, “if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor at its spent fuel storage basin or at either onsite or offsite independent spent fuel storage installations.” 10 C.F.R. § 51.23(a). In addition, to date, the Staff has issued numerous environmental assessments for at-reactor storage of spent fuel on a site-specific basis (both for ISFSI licenses and spent fuel pool expansions), all of which found no significant environmental impacts would result from such storage of spent fuel. Accordingly, while specific details relating to any specific at-reactor storage proposal could affect a determination as to its environmental impacts, the Staff expects that some form of additional at-reactor spent fuel storage generally may be constructed without resulting in significant environmental impacts. See NUREG-1714, at 9-9.

REQUEST FOR ADMISSION NO. 7 - UTAH Z. Do you admit that regardless of the PFS proposal, fuel will continue to accumulate in existing at-reactor storage facilities? See DEIS at xli.

STAFF RESPONSE. The Staff objects to this request on the ground that it is vague and ambiguous. Nowhere in this request does the State identify the “at-reactor storage facilities” to

which it applies. Thus, the request lumps together operating reactors, shutdown or closed facilities, and facilities which may have reached their full storage capacity. Similarly, the request is open-ended in time, so as to be incapable of direct response. In addition, to the extent that the State seeks information concerning the extent of existing storage capacity at reactor sites, the State has not shown that the requested information could not reasonably be obtained from other publicly available sources. *See, e.g.*, 10 C.F.R. §§ 2.720(h)(2)(ii), 2.744(c)(4).

2. Document Requests - Utah Contention Z

DOCUMENT REQUEST NO. 1 - UTAH Z. Please provide all documents that relate to “sites where expansion of onsite storage cannot be accommodated either economically or because of physical constraints,” as described in section 2.2.5 No-Action Alternative of the DEIS at 2-43.

STAFF RESPONSE. Documents in response to this request will be provided or identified, to the extent that they are not (a) otherwise publicly available or (b) privileged or exempt from disclosure under 10 C.F.R. § 2.790.

DOCUMENT REQUEST NO. 2 - UTAH Z. Please provide all documents that the Staff has written or compiled relevant to the no action alternative for the PFS ISFSI application.

STAFF RESPONSE. *See* Response to Document Request No. 1, *supra*.

DOCUMENT REQUEST NO. 3 - UTAH Z. Please provide all documents that the Staff has written or compiled relevant to the no action alternative for any Part 72 ISFSI application other than the PFS application.

STAFF RESPONSE. The staff objects to this response on the grounds that it is (a) burdensome and overbroad, and (b) irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Documents that relate to “any Part 72 ISFSI application other than the PFS application” are irrelevant in this proceeding, in which only the PFS application is at issue. Further, documents which relate to other Part 72 ISFSI applications are not relevant to the

“no action” alternative for this facility. Finally, to the extent that this request seeks information that is publicly available, the State has not shown that it could not reasonably obtain the requested information from other sources (*e.g.*, in the docket of another proceeding).

DOCUMENT REQUEST NO. 4 - UTAH Z. Please provide all documents that describe or otherwise address the need for SNF storage at nuclear reactor sites.

STAFF RESPONSE. The Staff objects to this request on the ground that it is outside the scope of Utah Contention Z, and is therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Utah Contention Z relates only to the “no action” alternative. This request, in contrast, relates to the purpose and need for the proposed PFS facility. The Licensing Board has previously rejected Utah Contention X, “Need for the Facility,” in LBP-98-7, 47 NRC at 202. Therefore, this request is not relevant to the issues in this proceeding. Notwithstanding this objection, the Staff will identify or produce documents related to the “no action” alternative, as set forth in response to Document Request No. 1, *supra*.

DOCUMENT REQUEST NO. 5 - UTAH Z. Please provide all documents that describe or otherwise address the cost of storing SNF at nuclear reactor sites.

STAFF RESPONSE. The Staff objects to this request on the ground that it is outside the scope of Utah Contention Z, and is therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Contention Utah Z is limited to the “no action” alternative. In contrast, this request relates to the cost-benefit analysis of the proposed PFS facility. The Licensing Board has previously rejected Contention Utah CC, “One-Sided Cost-Benefit Analysis,” in LBP-98-7, 47 NRC at 204. Documents concerning the cost of storing spent nuclear fuel at nuclear reactor sites, raised in Contention Utah CC, are not relevant to the issues raised in Contention Utah Z.

DOCUMENT REQUEST NO. 6 - UTAH Z. Please provide all documents that describe or otherwise address the cost of storing SNF at an on-site ISFSI.

STAFF RESPONSE. See Response to Document Request No. 5, *supra*.

DOCUMENT REQUEST NO. 7 - UTAH Z. Please provide all documents that describe or otherwise address the cost of licensing an on-site ISFSI.

STAFF RESPONSE. See Response to Document Request No. 5, *supra*.

DOCUMENT REQUEST NO. 8 - UTAH Z. Please provide all documents that describe or otherwise address the benefits to the State of Utah from not choosing the no action alternative.

STAFF RESPONSE. The Staff objects to this request on the ground that it is outside the scope of Utah Contention Z, and is therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The National Environmental Policy Act of 1969 (NEPA) does not require that a DEIS consider costs to any particular party (such as the State) as a distinct entity, when considering alternatives. Further, whether or not a specific entity, such as the State of Utah, would derive benefits as a result of “not choosing the no action alternative” is not relevant to the adequacy of the Staff’s analysis of the “no action” alternative.

DOCUMENT REQUEST NO. 9 - UTAH Z. Please provide all documents that relate in any way to identifying the specific nuclear power plants which would terminate the “power generating activities before operating license expiration” if the proposed PFS facility is not licensed. DEIS at xlii, lines 43-44.

STAFF RESPONSE. See Response to Document Request No. 1, *supra*.

DOCUMENT REQUEST NO. 10 - UTAH Z. Please provide all documents that relate in any way to quantifying air pollutants that may be released from the increased use of fossil fuel fired power plants if the proposed PFS facility is not licensed. DEIS at xlii, lines 44-46.

STAFF RESPONSE. The Staff objects to this request on the ground that it is outside the scope of Utah Contention Z, and is therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Utah Contention Z is limited to the “no action” alternative. In contrast, this request relates to the cost-benefit analysis for the proposed PFS facility. The Licensing Board has previously rejected Utah Contention CC, “One-Sided Cost-Benefit Analysis,” in LBP-98-7, 47 NRC at 204. Documents concerning “air pollutants that may be released from the increased use of fossil fuel fired power plants if the proposed PFS facility is not licensed” may relate to the benefit of issuing the instant license and/or Contention Utah CC, but are not relevant to the issues raised in Contention Utah Z, concerning the “no action” alternative.

DOCUMENT REQUEST NO. 11 - UTAH Z. Please provide all documents that relate in any way to identifying the permanently shut down reactors which could be decommissioned sooner if the PFS facility is licensed? See DEIS at 1-6, line 17.

STAFF RESPONSE. The Staff objects to this request on the ground that it is outside the scope of Utah Contention Z, and is therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Utah Contention Z is limited to the “no action” alternative. This request relates to the PFS facility’s cost-benefit analysis, and the purpose and need for the proposed PFS facility. The Licensing Board has previously rejected Utah Contention CC, “One-Sided Cost-Benefit Analysis,” and Utah Contention X, “Need for the Facility,” in LBP-98-7, 47 NRC at 202, 204. Documents concerning reactors which “could be decommissioned sooner if the PFS facility is licensed” are not relevant to the issues raised in Contention Utah Z.

DOCUMENT REQUEST NO. 12 - UTAH Z. Please provide all documents that relate in any way to reactors that are in the process of obtaining an on-site Part 72 license.

STAFF RESPONSE. The staff objects to this response on the grounds that it is (a) burdensome and overbroad, and (b) irrelevant and not reasonably calculated to lead to the

discovery of admissible evidence. Documents that relate to any and all “reactors that are in the process of obtaining an on-site Part 72 license” are irrelevant in this proceeding, in which only the PFS application is at issue. Further, this document request seeks any and all documents concerning reactor licensees that may have submitted Part 72 ISFSI applications, regardless of whether or not those documents relate to the “no action” alternative -- or indeed, to any environmental issue. Finally, to the extent that this request seeks information that is publicly available, the State has not shown that it could not reasonably obtain the requested information from other sources (*e.g.*, in the docket of another proceeding).

DOCUMENT REQUEST NO. 13 - UTAH Z. Please provide all documents that relate in any way to quantifying the savings to utilities from shipping fuel off site to PFS so that the permanently shut down reactors may decommission the reactor site sooner. See DEIS at 1-6.

STAFF RESPONSE. The Staff objects to this request on the ground that it is outside the scope of Utah Contention Z, and is therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Utah Contention Z is limited to the “no action” alternative. This request relates to the PFS facility’s cost-benefit analysis, and the purpose and need for the proposed PFS facility. The Licensing Board has previously rejected Utah Contention CC, “One-Sided Cost-Benefit Analysis,” and Utah Contention X, “Need for the Facility,” in LBP-98-7, 47 NRC at 202, 204. Documents concerning the savings to utilities who ship fuel offsite “so that the permanently shut down reactors may decommission the reactor site sooner” are not relevant to the issues raised in Contention Utah Z.

DOCUMENT REQUEST NO. 14 - UTAH Z. Please provide all documents that relate in any way to the earlier use of land for other activities because permanently shut down reactors may decommission the reactor site sooner. See DEIS at 1-6.

STAFF RESPONSE. The Staff objects to this request on the ground that it is outside the scope of Utah Contention Z, and is therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Utah Contention Z is limited to the “no action” alternative. This request relates to the PFS facility’s cost-benefit analysis, and the purpose and need for the proposed PFS facility. The Licensing Board has previously rejected Utah Contention CC, “One-Sided Cost-Benefit Analysis,” and Utah Contention X, “Need for the Facility,” in LBP-98-7, 47 NRC at 202, 204. Documents concerning the “earlier use of land for other activities,” as a result of earlier decommissioning, are not relevant to the issues raised in Contention Utah Z.

DOCUMENT REQUEST NO. 15 - UTAH Z. Please provide all documents that relate in any way to identifying specific utilities for which PFS would provide an economic alternative to at-reactor storage. See DEIS at 1-6.

STAFF RESPONSE. The Staff objects to this request on the ground that it is outside the scope of Utah Contention Z, and is therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Utah Contention Z is limited to the “no action” alternative. This request relates to the PFS facility’s cost-benefit analysis, and the purpose and need for the proposed PFS facility. The Licensing Board has previously rejected Utah Contention CC, “One-Sided Cost-Benefit Analysis,” and Utah Contention X, “Need for the Facility,” in LBP-98-7, 47 NRC at 202, 204. Documents concerning “specific utilities for which PFS would provide an economic alternative to at-reactor storage” are not relevant to the issues raised in Contention Utah Z.

DOCUMENT REQUEST NO. 16 - UTAH Z. Please provide all documents that relate in any way to identifying all reactor sites that have physical limitations that would prevent building or expanding an at-reactor ISFSI. See DEIS at 1-11.

STAFF RESPONSE. The Staff objects to this request on the ground that it is outside the scope of Utah Contention Z, and is therefore irrelevant and not reasonably calculated to lead to the

discovery of admissible evidence. Utah Contention Z relates only to the "no action" alternative. This request, in contrast, relates to the purpose and need for the proposed PFS facility. The Licensing Board has previously rejected Utah Contention X, "Need for the Facility," in LBP-98-7, 47 NRC at 202. Documents concerning "physical limitations that would prevent building or expanding an at-reactor ISFSI" are not relevant to the issues in this proceeding.

Respectfully submitted,

Sherwin E. Turk */RA/*
Robert M. Weisman */RA/*
Jennifer M. Euchner */RA/*
Counsel for NRC Staff

Dated at Rockville, Maryland
this 13th day of September 2000

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))	

AFFIDAVIT OF SCOTT C. FLANDERS

I, Scott C. Flanders, having first been duly sworn, do hereby state as follows:

1. I am employed as an Environmental Project Manager in the Spent Fuel Project Office, which is a division of the Office Nuclear Material Safety and Safeguards at the U. S. Nuclear Regulatory Commission. A statement of my professional qualifications is attached hereto.

2. I have reviewed the foregoing "NRC Staff's Objections and Responses to the State of Utah's Seventh Set of Discovery Requests Directed to the NRC Staff," as they pertain to Contention Utah Z (No Action Alternative) and verify that they are true and correct to the best of my knowledge, information and belief.

Scott C. Flanders

Sworn to before me this
13th day of September 2000

Notary Public

My Commission expires:_____

Scott C. Flanders
Statement of Professional Qualifications

Mr. Flanders is currently a senior project manager with the U.S. Nuclear Regulatory Commission (NRC). He has been employed by the NRC for nine years, during which time he has served in both technical and project management capacities. He has conducted nuclear power plant inspections, and prepared safety evaluations and environmental assessments. Mr. Flanders was the Environmental Project Manager for the Watts Bar Supplemental Final Environmental Statement (NUREG-0498, Supplement 1), and is currently responsible for preparation of the draft and final environmental impact statements related to the Private Fuel Storage, L.L.C. independent spent fuel storage installation.

EDUCATION

B.S. in Mechanical Engineering, University of Maryland, College Park, MD, 1990
M.B.A. Candidate, American University, Washington D.C. (2001)

PROFESSIONAL COURSES

Writing Environmental Impact Statements/Environmental Assessments
NEPA Compliance
Environmental Regulation

PROFESSIONAL EXPERIENCE

From 1993 to 1999, Mr. Flanders was a Project Manager in the NRC Office of Nuclear Reactor Regulation.

From 1998 to 1999, he served as the Project Manager for the Shearon Harris Nuclear Power Plant. In this role, he was responsible for coordinating and performing the technical review of all licensee submittals including amendments, exemptions, ASME relief requests, and responses to NRC generic communications. He also conducted reviews and inspections under 10 C.F.R. § 50.59, and FSAR reviews under 10 C.F.R. § 50.71(e); prepared input to licensee SALP reports; and served as the primary liaison between the NRC and the licensee.

From 1995 to 1998, Mr. Flanders served as the agency's lead Project Manager for the Westinghouse Owners Group (WOG) and the Baltimore Gas and Electric Company (BGE) license renewal activities. He participated in the review of the license renewal activities for the WOG and BGE, including both technical and environmental issues. In this role, he also reviewed system and component technical reports related to pressurized water reactor containments, reactor pressure vessels, and component supports.

Mr. Flanders served as co-author of a paper entitled, "The United States Regulatory Approach For Ensuring The Safety Of Existing Nuclear Power Plants, IAEA-SM-342/46"; and as co-author of a paper on license renewal, which was presented at the American Nuclear Society 1994 annual meeting.

From 1994 to 1995, Mr. Flanders led a 20 person government and contractor environmental team responsible for reviewing the operational environmental impacts of the Watts Bar Nuclear Plant, and preparing a supplemental final environmental impact statement. He was responsible for developing project schedules, organizing and managing plant and site inspections, preparing written correspondence, providing environmental policy recommendations to upper level management, and organizing and participating in public meetings;, and he served as the primary liaison between the NRC and the license applicant.

From 1993 to 1995, Mr. Flanders served as an environmental reviewer. In this role, Mr. Flanders participated in several environmental reviews, including the following:

- Prepared an environmental assessment for the renewal of the Georgia Tech Research Reactor, including an evaluation of environmental impacts such as heat dissipation and radiological waste.

- Prepared a technical evaluation for a Callaway license amendment that involved changes to the licensee's environmental protection plan and Appendix B technical specifications, including maintenance of historic archaeological sites on the Callaway site.

- Assisted in the development of portions of the Generic Environmental Impact Statement (GEIS) for license renewal, including over 104 environmental issues; also prepared responses to public comments on the GEIS.

- Served as a member of the team that developed the agency's policy for addressing need for power and alternatives issues for license renewal environmental reviews, in support of the Part 51 rulemaking for license renewal.

- Served as a principal contributor to the development of the NRC policy regarding the review of Severe Accident Mitigation Design Alternatives (SAMDAs) for license renewal.

- Assisted in the development of revision 1 to NRR Office Letter 906, "Procedural Guidance for Preparing Environmental Assessments and Considering Environmental Issues."

From 1991 to 1993, Mr. Flanders participated in the Office of Nuclear Reactor Regulation Reactor Engineer Intern Program. During this program, he completed an extensive on-the-job training program that included: 13 weeks of reactor technology training (courses included nuclear physics, nuclear technology, radiation protection, and plant operations), and 7 weeks of training in NRC and government policy. Mr. Flanders also rotated through several NRC offices with individual responsibilities that included preparation of safety evaluations reports and license amendments, performing power plant inspections, assessing operating plant events, and briefing NRC senior management on plant events and complex regulatory issues.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S OBJECTIONS AND RESPONSES TO 'STATE OF UTAH'S SEVENTH SET OF DISCOVERY REQUESTS DIRECTED TO THE NRC STAFF'" in the above captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 13th day of September, 2000:

G. Paul Bollwerk, III, Chairman*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to GPB@NRC.GOV)

Dr. Jerry R. Kline*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to JRK2@NRC.GOV)

Dr. Peter S. Lam*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to PSL@NRC.GOV)

Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of the Secretary*
ATTN: Rulemakings and Adjudications
Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to
HEARINGDOCKET@NRC.GOV)

Office of the Commission Appellate
Adjudication
Mail Stop: 16-C-1 OWFN
U.S. Nuclear Regulatory Commission
Washington, DC 20555

James M. Cutchin, V*
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail to JMC3@NRC.GOV)

Jay E. Silberg, Esq.**
Ernest Blake, Esq.
Paul A. Gaukler, Esq.
SHAW, PITTMAN, POTTS &
TROWBRIDGE
2300 N Street, N.W
Washington, DC 20037-8007
(E-mail copy to jay_silberg, paul_gaukler,
and ernest_blake@shawpittman.com)

Danny Quintana, Esq.**
Danny Quintana & Associates, P.C.
68 South Main Street, Suite 600
Salt Lake City, UT 84101
(E-mail copy to quintana
@Xmission.com)

Denise Chancellor, Esq.**
Fred G Nelson, Esq.
Laura Lockhart, Esq.
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, UT 84114-0873 (E-mail
copy to dchancel@State.UT.US), and
jbraxton@email.usertrust.com

Connie Nakahara, Esq.**
Utah Dep't of Environmental Quality
168 North 1950 West
P. O. Box 144810
Salt Lake City, UT 84114-4810
(E-mail copy to cnakahar@state.UT.US)

Diane Curran, Esq.**
Harmon, Curran, Spielberg & Eisenberg
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
(E-mail copy to
dcurran@harmoncurran.com)

John Paul Kennedy, Sr., Esq.**
1385 Yale Ave.
Salt Lake City, UT 84105
(E-mail copy to john@kennedys.org)

Joro Walker, Esq.**
Land and Water Fund of the Rockies
2056 East 3300 South, Suite 1
Salt Lake City, UT 84109
(E-mail copy to joro61@inconnect.com)

Land and Water Fund of the Rockies**
2260 Baseline Road, Suite 200
Boulder, CO 80302

William D. (Bill) Peterson**
Pigeon Spur Fuel Storage Facility
2127 Lincoln Lane
Holladay, UT 84124
(E - m a i l c o p y t o
BillPeterson@OlympicHost.com)

Jennifer M. Euchner */RA/*
Counsel for NRC Staff