

September 25, 2000

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)	)	

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

INTRODUCTION

On September 14, 2000, the State of Utah ("State") filed the "State of Utah's Eighth 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 requests for admission and 31 document requests, all of which pertain to Contention Utah Z (no action alternative). The NRC Staff ("Staff") hereby files its objections and responses to the State's Request, as follows.

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 governed by the provisions of 10 C.F.R. § 2.740 *et seq.*, document discovery against the Staff is

governed by the provisions of 10 C.F.R. §§ 2.744 and 2.790.<sup>1</sup> These regulations establish certain limits to the Staff's obligation to respond to requests for discovery.

In particular, 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.

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 indicated that it is unaware of what documents

---

<sup>1</sup> 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).

support certain Staff representations in the Draft Environmental Impact Statement (Request at 7),<sup>2</sup> and, therefore, the requested documents and information are not available in the public domain. In this regard, the Staff does not agree that the State's lack of knowledge as to the documents it seeks results in them not being available in the public domain. Further, 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, or why it cannot obtain those documents subject to disclosure agreements with the Applicant from the Applicant. 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.

**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.

---

<sup>2</sup> 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) ("DEIS").

**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 Eighth 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. Requests for Admissions - Utah Contention Z (No Action Alternative)**

All the requests for admissions are based on a passage from page 8-5 of the DEIS that reads as follows:

The staff has reviewed some of the key cost assumptions in the [PFS] business plan and noted that the assumed costs for canisters and overpacks utilized by the proposed PFSF are 30 percent lower than what was assumed for the canisters and overpacks used for at-reactor storage.

See Request at 8-9.

**REQUEST FOR ADMISSION NO. 1 - UTAH Z.** Do you admit that the Staff relies on the canister and overpacks costs, to be used at the PFS site, from the 1997 PFS Business Plan?

**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 environmental effects of the "no action" alternative. Whether or not "canister and overpacks costs, to be used at the facility, from the 1997 PFS Business Plan," have been considered in the DEIS is irrelevant to the question of whether the DEIS gives adequate consideration to the "no action" alternative. Moreover, this request for admission and Requests for Admissions 2, 3, and 4, which are set forth below, relate to 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). In view of the foregoing, this request for admission, regarding the costs or benefits of the project, is improper. See 10 CFR § 2.740(b)(1).

**REQUEST FOR ADMISSION NO. 2 - UTAH Z.** Do you admit that the Staff relies on the canister and overpacks costs, to be used at the PFS site, from the 1998 PFS Business Plan?

**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 environmental effects of the "no action" alternative. Whether or not "canister and overpacks costs, to be used at the facility, from the 1998 PFS Business Plan," have been considered in the DEIS is irrelevant to the question of whether the DEIS gives adequate consideration to the "no action" alternative.<sup>3</sup> Accordingly, this request for admission, regarding the costs or benefits of the project, is improper. See 10 CFR § 2.740(b)(1).

**REQUEST FOR ADMISSION NO. 3 - UTAH Z.** Do you admit that the 1997 Business Plan does not contain key assumptions as to the cost of canisters and overpacks to be used at the PFS site?

**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

---

<sup>3</sup> This request for admission relates to Utah Contention CC, "One-Sided Cost-Benefit Analysis," and is, therefore, improper. See Staff Response to Request for Admission 1.

the environmental effects of the "no action" alternative. Whether or not the 1997 Business Plan "contain[s] key assumptions as to the cost of canisters and overpacks to be used at the PFS site," is irrelevant to the question of whether the DEIS gives adequate consideration to the "no action" alternative.<sup>4</sup> Accordingly, this request for admission, regarding the costs or benefits of the project, is improper. See 10 CFR § 2.740(b)(1).

**REQUEST FOR ADMISSION NO. 4 - UTAH Z.** Do you admit that the 1998 Business Plan does not contain key assumptions as to the cost of canisters and overpacks to be used at the PFS site?

**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 environmental effects of the "no action" alternative. Whether or not the 1998 Business Plan "contain[s] key assumptions as to the cost of canisters and overpacks to be used at the PFS site," is irrelevant to the question of whether the DEIS gives adequate consideration to the "no action" alternative.<sup>5</sup> Accordingly, 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 cost of canisters and overpacks used for at-reactor storage will not be uniform for all at-reactor sites?

---

<sup>4</sup> This request for admission relates to Utah Contention CC, "One-Sided Cost-Benefit Analysis," and is, therefore, improper. See Staff Response to Request for Admission 1.

<sup>5</sup> This request for admission relates to Utah Contention CC, "One-Sided Cost-Benefit Analysis," and is, therefore, improper. See Staff Response to Request for Admission 1.

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. The basis for Contention Utah Z does not include the economic or monetary costs of the no action alternative. The scope of a contention is limited to its basis and, therefore, this request is not relevant to Contention Utah Z, as admitted. In addition, this request relates to the cost-benefit analysis for 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. Whether or not "the cost of canisters and overpacks used for at-reactor storage will . . . be uniform for all at-reactor sites" relates to Contention Utah CC, is not within the scope of Contention Utah Z, as admitted, and is irrelevant to the question of whether the DEIS gives adequate consideration to the "no action" alternative. Accordingly, this request for admission is irrelevant to Contention Utah Z. See 10 C.F.R. § 2.740(b)(1).

**B. Document Requests - Utah Contention Z (No Action Alternative)**

DOCUMENT REQUEST NO. 1 - UTAH Z. All documents that relate to key cost assumptions for canisters and overpacks contained in the PFS business plan.

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 document request, in contrast, relates to the costs of the proposed PFS facility -- rather than the environmental effects of the "no action" alternative. The Licensing Board has previously rejected Utah Contention CC, "One-Sided Cost-Benefit Analysis," in LBP-98-7, 47 NRC at 204. Documents concerning "key cost assumptions for canisters and overpacks contained in the PFS business plan"

may relate to Contention Utah CC, but are not relevant to the issues raised in Contention Utah Z, concerning the "no action" alternative.

**DOCUMENT REQUEST NO. 2 - UTAH Z.** All documents that relate to the costs of canisters and overpacks that will be used at the PFS site.

**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 document request, in contrast, relates to the costs of the proposed PFS facility -- rather than the environmental effects of the "no action" alternative. The Licensing Board has previously rejected Utah Contention CC, "One-Sided Cost-Benefit Analysis," in LBP-98-7, 47 NRC at 204. Documents concerning "the costs of canisters and overpacks that will be used at the PFS site" may relate to Contention Utah CC, but are not relevant to the issues raised in Contention Utah Z, concerning the "no action" alternative.

**DOCUMENT REQUEST NO. 3 - UTAH Z.** All documents that relate to the cost of canisters and overpacks used for at-reactor storage.

**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. The basis for Contention Utah Z does not include the economic or monetary costs of the no action alternative. The scope of a contention is limited to its basis and, therefore, this request is not relevant to Contention Utah Z, as admitted. In addition, this request relates to the cost-benefit analysis for 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 may relate to Contention Utah CC, but are not relevant to the issues raised in Contention Utah Z, concerning the "no action" alternative.

**DOCUMENT REQUEST NO. 4 - UTAH Z.** All documents that relate to the statement in the DEIS "key cost assumptions in the business plan." DEIS at 8-5.

**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 document request, in contrast, relates to the costs of the proposed PFS facility – rather than the environmental effects of the "no action" alternative. The Licensing Board has previously rejected Utah Contention CC, "One-Sided Cost-Benefit Analysis," in LBP-98-7, 47 NRC at 204. Documents concerning "the costs of canisters and overpacks that will be used at the PFS site" may relate to Contention Utah CC, but are not relevant to the issues raised in Contention Utah Z, concerning the "no action" alternative.

**DOCUMENT REQUEST NO. 5 - UTAH Z.** All documents that relate to the statement in the DEIS "canisters and overpacks utilized by the proposed PFSF are 30 percent lower than what was assumed for the canisters and overpacks used for at-reactor storage." DEIS at 8-5.

**STAFF RESPONSE.** The Staff objects to this request 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 outside the scope of Utah Contention Z, is not relevant to the merits of Contention Utah 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. The basis for Contention Utah Z does not include the economic or monetary costs of the no action alternative. The scope of a contention

is limited to its basis and, therefore, this request is not relevant to Contention Utah Z, as admitted. In addition, this request relates to the cost-benefit analysis for 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 whether the "cost of canisters and overpacks utilized by the proposed PFSF are 30 percent lower than what was assumed for the canisters and overpacks used for at-reactor storage of spent nuclear fuel" may relate to Contention Utah CC, but are not relevant to the issues raised in Contention Utah Z, concerning the "no action" alternative.

**DOCUMENT REQUEST NO. 6 - UTAH Z** All documents that relate to the characteristics of the canisters and overpacks that will be used for at-reactor storage, such as the name or model of the canister and/or overpack and the name of the manufacturer.

**STAFF RESPONSE.** The staff objects to this document request on the ground that it is burdensome and overbroad. In addition, to the extent that the State is requesting publicly available documents that relate to the characteristics of the canisters and overpacks that will be used for at-reactor storage, 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. 7 - UTAH Z.** DEIS p.1-7 lines 43-45 refers to "15 ISFSIs operating in the U.S. . . . and approximately 15 to 20 additional ISFSIs are proposed for the near term." Please provide documentary support for the assertion that "15 to 20 additional ISFSIs are proposed for the near term."

**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. 8 - UTAH Z.** DEIS p.1-7. Please provide (or at least list) all documents in the possession of the Staff that discuss the actual or proposed cost of constructing and/or

operating (a) the 15 operating ISFSIs, and (b) the "15 to 20 additional ISFSIs . . . proposed for the near term."

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. The basis for Contention Utah Z does not include the economic or monetary costs of the no action alternative. The scope of a contention is limited to its basis and, therefore, this request is not relevant to Contention Utah Z, as admitted. In addition, this request relates to the cost-benefit analysis for 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 costs of constructing or operating ISFSIs at nuclear reactor sites may relate to Contention Utah CC, but are not relevant to the issues raised in Contention Utah Z, concerning the "no action" alternative.

DOCUMENT REQUEST NO. 9 - UTAH Z. DEIS p. xli lines 43-46.  
Please provide a copy of (or at least list) each environmental assessment that reached a conclusion of "no significant impact."

STAFF RESPONSE. Documents in response to this request have previously been identified. See Letter dated September 18, 2000, from S. Turk, Counsel for NRC Staff, to D. Chancellor, Utah Attorney General's Office, Attachment A, Items 1-9.

DOCUMENT REQUEST NO. 10 - UTAH Z. DEIS p.9-9 lines 31-34.  
Please provide the documents reflecting the Staff's analysis of the economic benefits or costs of building onsite SNF storage facilities at reactors.

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. The basis for Contention Utah Z does not include the economic or monetary costs of the no action

alternative. The scope of a contention is limited to its basis and, therefore, this request is not relevant to Contention Utah Z, as admitted. In addition, this request relates to the cost-benefit analysis for 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 economic benefits or costs of building onsite SNF storage facilities at reactors" may relate to 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. DEIS 8-1 lines 20-26.  
Please provide a copy of each manual, policy guidance, or other document relied on by the Staff showing or advising or mandating how the Staff is to conduct, research, write, or otherwise prepare EISs or DEISs for an ISFSI such as the one proposed by PFS.

STAFF RESPONSE. The Staff relied on 10 C.F.R. Part 51 in preparing the DEIS. No other documents are responsive to this request.

DOCUMENT REQUEST NO. 12 - UTAH Z. EIS 8-1 lines 39-42.  
Please provide the document(s) which inform the Staff that it is a correct procedure not to "make a judgment about the comparative likelihood" of the scenarios considered by the Staff.

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 document request, in contrast, relates to the costs of the proposed PFS facility -- rather than the environmental effects of the "no action" alternative. The Licensing Board has previously rejected Utah Contention CC, "One-Sided Cost-Benefit Analysis," in LBP-98-7, 47 NRC at 204. Documents "which inform the Staff that it is a correct procedure not to 'make a judgment about the comparative

likelihood' of the scenarios considered" by the staff may relate to Contention Utah CC, but are not relevant to the issues raised in Contention Utah Z, concerning the "no action" alternative.

**DOCUMENT REQUEST NO. 13 - UTAH Z.** DEIS 8-2 lines 1-5.  
Please provide the documentary support for the Staff's decision to eliminate from consideration the "small throughput" scenario.

**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 document request, in contrast, relates to the costs of the proposed PFS facility -- rather than the environmental effects of the "no action" alternative. The Licensing Board has previously rejected Utah Contention CC, "One-Sided Cost-Benefit Analysis," in LBP-98-7, 47 NRC at 204. Documents that provide "support for the Staff's decision to eliminate from consideration the 'small throughput' scenario" may relate to Contention Utah CC, but are not relevant to the issues raised in Contention Utah Z, concerning the "no action" alternative.

**DOCUMENT REQUEST NO. 14 - UTAH Z.** DEIS 8-2 lines 1-5.  
Please provide all documents relating to the decision not to include an evaluation of the "small throughput" scenario in the DEIS.

**STAFF RESPONSE.** See Response to Document Request No. 13, *supra*.

**DOCUMENT REQUEST NO. 15 - UTAH Z.** DEIS 8-2 lines 1-5.  
Please provide all documents evaluating the "small throughput" scenario in terms of benefits and costs or as included in sensitivity analysis not used in the DEIS.

**STAFF RESPONSE.** See Response to Document Request No. 13, *supra*.

**DOCUMENT REQUEST NO. 16 - UTAH Z.** DEIS 8-2 lines 24-27.  
The analysis in the ERI Report ("Utility At-Reactor Spent Fuel Storage Costs For The Private Fuel Storage Facility Cost-Benefit Analysis Revision 2" ERI-2025-0001, April 2000 (referenced at DEIS

8-2, lines 13-19)) is based entirely on a 40 year operating life assumption for the PFS facility. Please provide all documents relating to costs and benefits assuming a 20 year operating life for the PFS facility.

**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. The document request, in contrast, relates to the assumptions underlying the cost-benefit analysis for the proposed PFS facility -- rather than the environmental effects of the "no action" alternative. The Licensing Board has previously rejected Utah Contention CC, "One-Sided Cost-Benefit Analysis," in LBP-98-7, 47 NRC at 204. Documents "relating to costs and benefits assuming a 20 year operating life for the PFS facility" may relate to Contention Utah CC, but are not relevant to the issues raised in Contention Utah Z, concerning the "no action" alternative.

**DOCUMENT REQUEST NO. 17 - UTAH Z.** DEIS Table 8-3 and related text. Please provide all documents describing or dealing in any way with sensitivity analyses for other sensitivity scenarios or variations considered by the Staff but not included in the DEIS.

**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 "sensitivity analyses" to which it applies. Thus, the request lumps together cost/benefit analyses of the proposed PFSF and analysis of at-reactor SNF storage. In addition, the Staff objects to this request 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 outside the scope of Utah Contention Z, is not relevant to the merits of Contention Utah 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 "sensitivity analyses" may relate to Contention Utah CC, but are not relevant to the issues raised in Contention Utah Z, concerning the "no action" alternative.

**DOCUMENT REQUEST NO. 18 - UTAH Z.** Staff describes a "detailed chain of logic" (DEIS page 8-2, line 15) which leads from the ERI study ("Utility At-Reactor Spent Fuel Storage Costs For The Private Fuel Storage Facility Cost-Benefit Analysis Revision 2" ERI-2025-0001, April 2000) to calculations of benefits and costs described in Tables 8-2 and 8-3. Please provide all documents that Staff relied upon, utilized, consulted or which support the figures presented in Tables 8-2 and 8-3.

**STAFF RESPONSE.** The Staff objects to this request 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 outside the scope of Utah Contention Z, is not relevant to the merits of Contention Utah Z, and is therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The basis for Contention Utah Z does not include the economic or monetary costs of the no action alternative. The scope of a contention is limited to its basis and, therefore, this request is not relevant to Contention Utah Z, as admitted. In addition, this request relates to the cost-benefit analysis for 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 "calculations of benefits and costs described in Tables 8-2 and 8-3" may relate to Contention Utah CC, but are not relevant to the issues raised in Contention Utah Z, concerning the "no action" alternative.

**DOCUMENT REQUEST NO. 19 - UTAH Z.** Please provide the data used to calculate each of the figures for Scenario I, II, III, and IV in DEIS, Table 8.2.

**STAFF RESPONSE.** See Response to Document Request No. 18, *supra*.

DOCUMENT REQUEST NO. 20 - UTAH Z. Please provide all documents that the Staff relied upon, utilized, consulted or which support the benefit and cost figures for the proposed PFSF, accepting SNF only from PFS member utilities (a facility capacity of 6,600 or 8,000 MTU with and SNF throughput of 12,565 MTU; see p. 8-1, lines 31-41). This is the scenario the Staff has labeled as the "small throughput" scenario.

STAFF RESPONSE. See Response to Document Request No. 12, *supra*.

DOCUMENT REQUEST NO. 21 - UTAH Z. Please provide all documents that the Staff relied on to conclude it can "make no judgment about the comparative likelihood of these scenarios" the Staff characterizes on page 8-1, lines 31-41, as "small throughput," "medium throughput," and "maximum throughput."

STAFF RESPONSE. See Response to Document Request No. 12, *supra*.

DOCUMENT REQUEST NO. 22 - UTAH Z. Please provide all documents that Staff relied on in evaluating the analysis by ERI in PFS's February 25, 2000 EIS Commitment Resolution Letter #7 (question 5), which assumes that a reactor will choose pool storage over dry storage for post-shutdown spent fuel storage.

STAFF RESPONSE. The analysis in PFS's February 25, 2000 EIS Commitment Resolution Letter #7 (question 5), concerns the cost-benefit analysis. Therefore, the Staff objects to this request on the ground that it is outside the scope of Contention Utah 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. The basis for Contention Utah Z does not include the economic or monetary costs of the no action alternative. The scope of a contention is limited to its basis and, therefore, this request is not relevant to Contention Utah Z, as admitted. In addition, this request relates to the cost-benefit analysis for 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 whether "a reactor will choose pool storage over dry storage

for post-shutdown spent fuel storage" may relate to Contention Utah CC, but are not relevant to the issues raised in Contention Utah Z, concerning the "no action" alternative.

DOCUMENT REQUEST NO. 23 - UTAH Z. Please provide any analysis which compares costs for dry cask storage and pool storage for the following:

- 1) A reactor that has closed more than ten years before 2002;
- 2) A reactor that has closed less than ten years before 2002;
- 3) A reactor where loss of full core discharge capability is imminent;
- 4) A reactor that is assumed to require no additional SNF storage capacity until far into the future.

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. The basis for Contention Utah Z does not include the economic or monetary costs of the no action alternative. The scope of a contention is limited to its basis and, therefore, this request is not relevant to Contention Utah Z, as admitted. In addition, this request relates to the cost-benefit analysis for 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 comparing "costs for dry cask storage and pool storage" may relate to Contention Utah CC, but are not relevant to the issues raised in Contention Utah Z, concerning the "no action" alternative.

DOCUMENT REQUEST NO. 24 - UTAH Z. Please provide all documents that analyze a delay in the assumed completion of the PFS facility.

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. The document request, in contrast, relates to the costs of the proposed PFS facility -- rather than the environmental effects of the "no action" alternative. The Licensing Board has previously rejected Utah Contention CC, "One-Sided Cost-Benefit Analysis," in LBP-98-7, 47 NRC at 204. Documents that "analyze a delay in the assumed completion of the PFS facility" may relate to Contention Utah CC, but are not relevant to the issues raised in Contention Utah Z, concerning the "no action" alternative.

DOCUMENT REQUEST NO. 25 - UTAH Z. DEIS 8-9 lines 1-17. Please provide a list of the documents reviewed by the Staff to prepare this paragraph.

STAFF RESPONSE. See Response to Document Request No. 23, *supra*.

DOCUMENT REQUEST NO. 26 - UTAH Z. DEIS 8-9 lines 47-48, and 8-10 line 1: "From an economic perspective, the net benefit of the proposed PFSF is directly proportional to the quantity of SNF shipped to the facility. The scenarios evaluated by the staff indicate the potential for a net positive benefit." Please provide a list of documents reviewed by the Staff to support these sentences.

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. The document request, in contrast, relates to the costs of the proposed PFS facility -- rather than the environmental effects of the "no action" alternative. The Licensing Board has previously rejected Utah Contention CC, "One-Sided Cost-Benefit Analysis," in LBP-98-7, 47 NRC at 204. Documents relating to whether "the net benefit of the proposed PFSF is directly proportional to the quantity of SNF shipped to the facility," or whether there is any net benefit at all, may relate to Contention

Utah CC, but are not relevant to the issues raised in Contention Utah Z, concerning the "no action" alternative.

**DOCUMENT REQUEST NO. 27 - UTAH Z.** DEIS 8-10 lines 19-23.  
Please provide all documents supporting the statement that if PFS is not licensed, "it could lead to cessation of the power generating activities . . . at one or more nuclear power plants."

**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. The document 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 relating to whether the failure to license the proposed PFSF "could lead to cessation of the power generating activities . . . at one or more nuclear power plants" may relate to Contention Utah X, but are not relevant to the issues raised in Contention Utah Z, concerning the "no action" alternative.

**DOCUMENT REQUEST NO. 28 - UTAH Z.** DEIS 8-10 lines 19-23.  
Please provide all documents that show or indicate that were a power reactor to close before the expiration of its license term that this would inevitably have a net adverse impact from "a societal perspective." See DEIS at 8-1 lines 22-23.

**STAFF RESPONSE.** The Staff objects to the State's characterization of the Staff's DEIS as indicating that "were a power reactor to close before the expiration of its license term that this would inevitably have a net adverse impact from 'a societal perspective.'" The DEIS does not make such a statement. See DEIS at 8-10. The Staff also 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. The document request, in contrast, relates to the purpose and need for the proposed PFS facility, and the cost-benefit analysis for it. The Licensing Board has previously rejected Contention Utah X, "Need for the Facility," and Contention Utah CC, "One-Sided Cost-Benefit Analysis," in LBP-98-7, 47 NRC at 202, 204. Documents relating to whether the closure of a nuclear power reactor before the expiration of its license term "would inevitably have a net adverse impact from 'a societal perspective'" may relate to Contention Utah X, but are not relevant to the issues raised in Contention Utah Z, concerning the "no action" alternative.

DOCUMENT REQUEST NO. 29 - UTAH Z. In 64 FR 68005, 68006 (*Waste Confidence Decision Review: Status*) (December 6, 1999), the NRC said, "the NRC is reviewing an application for an away-from-reactor Independent Spent Fuel Storage Installation (ISFSI), and a second application is expected in fiscal year 2000." (Emphasis added). Please provide all documents that identify or discuss this second off-site ISFSI.

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.

DOCUMENT REQUEST NO. 30 - UTAH Z. Refer to Document Request No. 29. Please provide all documents relating in any way to the impact of a second off-site ISFSI on the benefits and costs associated with the PFS facility, especially in light of the Staff's statement that the net benefits of the PFS facility are "directly proportional" to the quantity of SNF shipped to the facility." DEIS 8-9 lines 47-48.

STAFF RESPONSE. See Response to Document Request No. 29, *supra*.

DOCUMENT REQUEST NO. 31 - UTAH Z. DEIS Chapter 8 generally. Please provide all documents relating in any way to the Staff's presentation, assumptions and conclusions in chapters 8 and

9 if the geologic repository were to be built other than at Yucca Mountain.

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.

Respectfully submitted,

*Robert M. Weisman*

Robert M. Weisman  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 25<sup>th</sup> day of September 2000

September 25, 2000

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 EIGHTH 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 25<sup>th</sup> 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](mailto: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](mailto: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](mailto:PSL@NRC.GOV))

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

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

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](mailto: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](mailto: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](mailto:quintana@Xmission.com))

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

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](mailto:dchancel@State.UT.US)), and  
[jbraxton@email.usertrust.com](mailto:jbraxton@email.usertrust.com))

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](mailto:joro61@inconnect.com))

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

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](mailto:cnakahar@state.UT.US))

William D. (Bill) Peterson\*\*  
Pigeon Spur Fuel Storage Facility  
2127 Lincoln Lane  
Holladay, UT 84124  
(E-mail copy to  
[BillPeterson@OlympicHost.com](mailto:BillPeterson@OlympicHost.com))

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](mailto:dcurran@harmoncurran.com))

*Robert M. Weisman*  
Robert M. Weisman  
Counsel for NRC Staff