

November 9, 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, L.L.C.)	
)	ASLBP No. 97-732-02-ISFSI
(Independent Spent)	
Fuel Storage Installation))	
)	

NRC STAFF'S RESPONSE TO STATE OF UTAH'S REQUEST
FOR ADMISSION OF LATE-FILED CONTENTION UTAH PP

INTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c) and the Atomic Safety and Licensing Board's "Order (Scheduling Matters)," dated October 26, 2000, the staff of the Nuclear Regulatory Commission ("Staff") hereby responds to the "State of Utah's Request for Admission of Late-Filed Contention Utah PP (Exceedance of Rail Loading Capacities)," dated October 25, 2000 ("State Request"). As discussed below, the Staff submits that proposed Contention Utah PP does not satisfy the Commission's standards for late-filing, and does not meet the Commission's legal standards for an admissible contention. Therefore, the State's request for admission of late-filed Contention Utah PP should be denied.

BACKGROUND

On June 25, 1997, Private Fuel Storage, L.L.C. ("PFS" or "Applicant"), filed an application for a license to possess and store spent nuclear fuel ("SNF") in an Independent Spent Fuel Storage Installation ("ISFSI") to be constructed and operated on the Skull Valley Goshute Indian Reservation in Skull Valley, Utah. The application included five documents: a license application, safety analysis report, emergency plan, physical security plan -- and, as pertinent here, an Environmental Report ("ER").

On July 31, 1997, the Commission published in the *Federal Register* a Notice of Consideration and Notice of Opportunity for Hearing concerning the license application. See 62 Fed. Reg. 41,099 (1997). The Notice advised interested persons, *inter alia*, that petitioners for leave to intervene must file a list of contentions they wish to litigate no later than 15 days before the first prehearing conference scheduled in the proceeding. In accordance with the Board's orders in this proceeding, on or before November 24, 1997, numerous contentions were timely filed by various petitioners, including approximately 40 contentions filed by the State of Utah ("State"). In a decision dated April 22, 1998, the Board found, *inter alia*, that the State and other petitioners had demonstrated their standing to intervene and had submitted at least one admissible contention, and admitted them as parties to this proceeding. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142 (1998).

Subsequently, recognizing that the Staff would be issuing a Draft Environmental Impact Statement ("DEIS") regarding the proposed PFS facility ("PFSF"), and that the issuance of the DEIS could result in the submission of additional, late-filed contentions, the Licensing Board indicated, *inter alia*, that (1) the Staff should notify the intervening parties and the Board of its intent to make the DEIS public at least fifteen days before its public issuance; and (2) any late-filed contentions should be filed within thirty days of the DEIS being made available to the public. See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-28, 52 NRC ___, slip op. at 2-3 (Oct. 30, 2000), citing "Memorandum and Order (General Schedule for Proceeding and Associated Guidance)," at 4-5 (June 29, 1998) (unpublished).¹ In sum, the Board permitted the Intervenor to

¹ The Board intended that advance notice of issuance of the DEIS would allow the intervenors "to 'hit the ground running' so as to meet the thirty-day time limit for submitting late-filed issues." *PFS*, LBP-00-28, slip op. at 11-12.

submit additional, late-filed contentions based on the DEIS, up to 45 days from the date of the Staff's notice of the impending issuance of the DEIS.

On June 12, 2000, the Staff gave notice that it intended to make the DEIS available to the parties at a hearing session scheduled for June 19, 2000.² On or about June 16, 2000, the NRC Staff and the cooperating federal agencies (the U.S. Bureau of Indian Affairs, U.S. Bureau of Land Management, and U.S. Surface Transportation Board) issued the DEIS, in accordance with their responsibilities under the National Environmental Policy Act of 1969 ("NEPA").³ The Staff made copies of the DEIS available to the parties at the hearing on June 19, 2000 (see Tr. at 1387), and published notice in the *Federal Register* of the availability of the DEIS on June 23, 2000.⁴

In the DEIS, the Staff and cooperating agencies evaluated the environmental effects of their proposed actions, including, *inter alia*, the environmental impacts resulting from the transportation of spent nuclear fuel to and from the PFS facility. See, e.g., DEIS, § 5.7.1 ("Non-Radiological Impacts"); § 5.7.2 ("Radiological Impacts"); Appendix C ("Rail Routes to the Proposed PFSF Site"); and Appendix D ("Transportation Risks Analysis").

On August 2, 2000, the State filed the "State of Utah's Request for Admission of Late-Filed Contentions Utah LL Through OO (Relating to the DEIS's analysis of spent fuel transportation risks)" ("First Late-Filed Request"), challenging various aspects of the Staff's

² Letter from Robert Weisman, Esq., to the Licensing Board, dated June 12, 2000.

³ 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").

⁴ See "Notice of Availability of Draft Environmental Impact Statement and Notice of Public Meetings for the Private Fuel Storage, L.L.C.; 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," 65 Fed. Reg. 39,206 (June 23, 2000).

DEIS transportation risk analysis. Included within those contentions was a challenge to the weight of the loaded railcars proposed for use by PFS, in which the State asserted as follows:

The DEIS does not . . . evaluate the accident risks posed by putting extremely heavy loads on the rails.

First Late-Filed Request at 12 (Proposed Contention LL, Subpart 2). These contentions, however, were filed approximately 51 days following the Staff's June 12 notice of the impending issuance of the DEIS, and on November 1, 2000, the Licensing Board denied the State's request for admission of late-filed Contentions Utah LL-OO (including the cited assertion in Contention LL, Subpart 2), because they failed to meet the standards for late filing set forth in 10 C.F.R. § 2.714(a). *PFS*, LBP-00-28, slip op. at 8-15.⁵

On October 25, 2000, the State filed its request for admission of late-filed Contention Utah PP. As proposed, Contention Utah PP, "Exceedance of Rail Loading Capacities," states as follows:

The DEIS, NUREG-1714, fails to comply with the National Environmental Policy Act and 10 CFR § 51.71(d) because it fails to address the environmental impacts of transporting loaded spent fuel transportation casks on railway cars that are not separated by spacer or buffer cars and whose allowable weight exceeds guidelines for transportation on U.S. railway lines.

State Request at 2.

For the reasons set forth below, the Staff respectfully submits that Contention Utah PP should be rejected on the grounds that (a) the contention is impermissibly late, and the State has not demonstrated that good cause and the other

⁵ While the Licensing Board noted that it did not need to determine whether late-filed Contentions Utah LL-OO were admissible under the criteria set forth in 10 C.F.R. §§ 2.714(b) and (d), it stated that it would not have admitted late-filed Contention Utah LL because the State failed to show that a genuine dispute existed on a material issue of fact or law. *PFS*, LBP-00-28, slip op at 15 n.3.

factors set forth in 10 C.F.R. § 2.714(a)(1) support its admission, and (b) the contention fails to meet the Commission's standards for admissible contentions.

DISCUSSION

I. Legal Standards for Late-Filed Contentions.

The legal standards for the admission of late-filed contentions are set forth in 10 C.F.R. § 2.714(a). Under those standards, it is well-settled that where a contention is based upon the publication of a licensing-related document (such as a DEIS), the institutional unavailability of the document does not establish good cause for filing a contention late under 10 C.F.R. § 2.714(a)(1)(i) if information was publicly available early enough to provide the basis for the timely filing of that contention. *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1045 (1983). Thus, it has been held that where a contention purportedly is based on the existence of a document recently made publically available, an important consideration in assessing good cause for lateness is the extent to which the contention could have been submitted prior to the document's availability. See *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-737, 18 NRC 168, 172 n.4 (1983); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-29, 48 NRC 286, 292 (1998).

In evaluating the five lateness factors of 10 C.F.R. § 2.714(a), two factors -- the availability of other means to protect the petitioner's interest and the ability of other parties to represent the petitioner's interest -- are less important than the other factors, and are therefore entitled to less weight. *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 74 (1992). With respect to the third factor (the potential contribution to the development of a sound record), petitioners are to provide a "real clue about what they would say to support the contention beyond the minimal information they provide for admitting the contention." *Private Fuel Storage, L.L.C.*

(Independent Spent Fuel Storage Installation) LBP-98-7, 47 NRC 142, 208-09 (1998). Finally, in addition to showing that a balancing of the five factors favors intervention, a petitioner must also meet the requirements for setting forth a valid contention, as stated in 10 C.F.R. § 2.714(d)(2).

For the reasons set forth below, the Staff submits that the State has failed to demonstrate that a balancing of these factors favors the admission of late-filed Contention Utah PP.

II. Contention Utah PP Should Be Rejected as Late-Filed Without Good Cause.

Proposed late-filed Contention Utah PP, set forth above, centers on two concerns: (1) PFS' proposal to place "loaded spent fuel transportation casks on railway cars that are not separated by spacer or buffer cars" (State Request at 2), and (2) PFS' placement of loaded casks on railway cars "whose allowable weight exceeds allowable guidelines for transportation on U.S. railway lines" (*Id.*).

While the State discusses the issue of whether it has "good cause" under 10 C.F.R. § 2.714(a)(1)(i) to raise matters relating to the asserted lack of buffer cars (*see* discussion *infra* at 7-8), the State nowhere addresses the issue of whether it has good cause for the untimely submission of a contention concerning railcar weight -- a matter which was (or reasonably could have been) known to the State since the Applicant's submission of its application in 1997 -- nor does the State indicate that the other factors in 10 C.F.R. § 2.714(a) favor the admission of a late-filed contention concerning railcar weight. *See* State Request at 8.

With respect to the issue of railcar weight, the State has not indicated that information concerning this issue only recently became available. Rather, the State has long been aware of the proposed weight of the loaded railcars -- as demonstrated by its filing of Contention LL on August 2, 2000, in which the State explicitly asserted that "the

Applicant's ER assumes that the cask plus rail carriage will weigh more than 211 tons." See First Late-Filed Request at 6. Further, the State does not assert that the "Railway Line Clearances" document on which it now relies (see State Request at 3-7) – published in 1958 (42 years ago) – has only recently become available. See *id.* at 5 n.9, and 8. Therefore, the State has not shown good cause for the October 2000 late-filing of its concern regarding the weight of the railcars.⁶ Inasmuch as the State could have submitted a contention embodying these concerns when timely contentions were due, *i.e.*, by November 24, 1997, under *Seabrook* the State has not satisfied its burden to show that it meets the late-filing standards of 10 C.F.R. § 2.714(a)(1) with respect to the asserted overweight of railcars proposed to transport SNF to the proposed PFSF. This portion of late-filed Contention Utah PP should therefore be rejected.

The State similarly lacks good cause for the late filing of its assertions that buffer cars have been removed from between the loaded railcars carrying SNF shipping casks. In this regard, the State argues that it has good cause for its untimely filing of this issue, on the grounds that: (a) before receiving PFS's comments on the DEIS of September 25, 2000, the State "assumed" that PFS would use buffer cars between the loaded fuel cars on rail shipments; (b) the Staff "apparently" shared this assumption; (c) "PFS testified in the hearing on Contention E as to the cost of buffer cars and the make up of a unit train for spent fuel shipment, which included buffer cars"; and (d) "[o]nly when PFS submitted its DEIS comments was the State aware of this significant change to the make up of a unit train shipment to the PFS facility." State Request at 8. Further, the State indicates that it

⁶ In addition, the State does not connect the issue of railcar weight to its assertions regarding the purported "elimination" of buffer cars. Instead, the State simply compares the weight of individual loaded railcars proposed by PFS to asserted "allowable" individual loaded railcar weight. See State Request at 3-8.

filed proposed Contention Utah PP within 30 days of receipt of PFS's comments on the DEIS, and, given its other responsibilities, that this is reasonable. *Id.* at 8-9.

The State's claim rests upon its assertion that it had a valid reason to assume that buffer cars would be used to separate cars carrying loaded shipping casks. *Id.* This assertion, however, is without merit -- because neither the ER nor PFS's testimony states that PFS intended to use buffer cars in the manner assumed by the State. Significantly, the ER does not state that buffer cars would be used to separate railcars carrying loaded shipping casks. Rather, in describing direct rail delivery of shipping casks to the proposed PFSF, the ER refers to "mainline locomotives" and "the balance of the train (containing the loaded cask cars, security car and buffer cars)." ER at 3.3-6. This portion of the ER does not state whether buffer cars would be placed between the loaded cask cars -- or only between the loaded railcars and cars containing train and security personnel. Elsewhere, however, in describing the transfer of shipping casks from railcars to heavy-haul vehicles at the Intermodal Transfer Point ("ITP"), the ER specifically describes the placement of buffer cars, as follows:

For the duration of time that the first shipping cask is being moved from rail car to heavy haul trailer and delivered to the PFSF, a maximum of two (more likely one) other shipping cask rail cars would be parked on the adjacent rail sidings located at the ITP. These casks (or cask) would represent the remaining part of the single purpose train (which would also include the security car and associated buffer car). The mainline locomotives, associated buffer car, and empty cask cars awaiting return to the delivery cycle will be picked up by Union Pacific

ER at 3.3-8 to 3.3-9 (Revision 6, Dec. 16, 1999). Thus, in this portion of the ER, PFS clearly described the use of a single buffer car associated with the security car, and a single buffer car associated with the mainline locomotives.

Nor is there any merit in the State's assertion that Mr. Parkyn's testimony supports its assumption as to the train configuration. In this regard, the State claims that PFS testified as to "the make up of a unit train spent fuel shipment, which included buffer cars," and asserts that "[t]he State had no reason to assume that PFS would eliminate the use of buffer cars in proposed rail shipments to the PFS facility." State Request at 8. This assertion is not supported by Mr. Parkyn's testimony, in which his description of the train configuration matches the description contained in the ER, set forth above. Thus, in his testimony on June 20, 2000, Mr. Parkyn testified as follows:

Well, listing the fixed components that wouldn't vary would be: two locomotive, the security car, and two buffer cars, one between the locomotive and the first fuel loaded car and one between the last loaded fuel car and the security car which carries staff. And then there would be one or more loaded fuel cars in the middle.

Tr. at 1881; emphasis added. Mr. Parkyn's testimony does not state that buffer cars would be placed between railcars carrying loaded casks -- but indeed indicates that the buffer cars would be placed at either end of the center segment containing the loaded railcars. Thus, his testimony does not support the State's assumption that buffer cars would be placed between the loaded railcars.

To the extent that the State may believe that buffer cars should be placed between loaded railcars, the State should have been able to identify its concern based upon the ER statements cited above. Accordingly, the State could have filed this contention at least since December 1999, when ER Revision 6 was issued, or at the latest, within 30 days after Mr. Parkyn's testimony of June 20, 2000. In sum, the State has not established good cause for its delay in submitting this late-filed issue in Contention Utah PP. *See, e.g., Catawba,*

CLI-83-19, 17 NRC at 1045; *Seabrook*, ALAB-737, 18 NRC at 172 n.4; *PFS*, LBP-98-29, 48 NRC at 292.⁷

In addition, the State has not made a compelling showing that consideration of the other four factors set forth in 10 C.F.R. § 2.714(a)(1) support the late-filing of this contention, as is required by Commission practice. *See Mississippi Power & Light Co.* (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982).

Regarding factors two and four, the State's interest is not represented by existing parties with respect to the issues raised in late-filed Contention Utah PP, and other means are not available whereby the State's interest will be protected regarding such issues. While factors two and four weigh in the State's favor, they are less important than the other factors, and are entitled to less weight. *Comanche Peak*, CLI-92-12, 36 NRC at 74.

With respect to factor three, the State's participation cannot be expected to assist in developing a sound record for two reasons: First, neither of the State's consultants, Dr. Marvin Resnikoff and Mr. Matthew R. Lamb, claim to have any experience or training in railway bridge design or railcar design, or acceptable railcar loadings. *See State Request*

⁷ Nor does the DEIS support the State's apparent assumption that buffer cars would be placed between the loaded railcars. First, the DEIS was published in June 2000, three years after the submission of PFS' application and six months after issuance of ER Revision 6, in which PFS described the placement of buffer cars; the State had no reason to await the issuance of the DEIS to form an "assumption as to where buffer cars would be placed, nor did the State raise this issue in a timely manner following publication of the DEIS. Moreover, the DEIS does not indicate that buffer cars will be used to separate the loaded railcars. Rather, in describing the Staff's accident analysis, the DEIS describes the train configuration that might be expected, and states generally that buffer cars will "usually" be employed. *See* DEIS at 5-45. This language does not rule out adjacent cask-carrying cars in a single train. Further, while the DEIS description of the analysis performed for incident-free transportation states that "cask-carrying railcars probably would be separated by buffer cars," such that "each railcar becomes more of a separate radiation source" (*Id.* at 5-43; emphasis added), this statement was made only in passing, in describing the nature of the Staff's incident-free dose analysis. This statement did not indicate that loaded railcars would in fact be separated by buffer cars, nor is the Staff's incident-free dose analysis material to the purported rail safety/accident issues which the State apparently now seeks to raise.

at 9. Indeed, Mr. Lamb relies on a conversation with Mr. Gordon Davids, a Bridge Engineer at the Federal Railroad Administration ("FRA"), to establish a "general weight limit for tracks in the United States," and nowhere relies upon his own knowledge or expertise. See *id.* at 4. Thus, the State has not shown that it may contribute to the development of a sound record in connection with these assertions.

Further, in raising this contention, the State relies upon the 1958 version of a document entitled "Railway Line Clearances." That version of the document, however, has been superseded over time, most recently by the 2000-01 version.⁸ Indeed, Mr. Lamb was explicitly informed by Mr. Davids, in an E-mail message on October 25, 2000, that the 1958 version of this document -- relied upon by the State here -- is "totally obsolete."⁹ Accordingly, the State witnesses' proposed reliance on such out-of-date information -- particularly with knowledge that such information is "totally obsolete" -- cannot be said to assist in the development of a sound record in this proceeding. Accordingly, the third factor of the late-filing standards weighs against admission of Contention Utah PP.

⁸ A copy of the corresponding Table from the official 2000/2001 publication of the Railway Line Clearances document is attached hereto as "Attachment A." As indicated therein, the weight limit guidelines in the Table have increased substantially since the 1958 version of the document was published. Further, additional categories have been established for 6-axle rail cars -- which may weigh up to 472,500 lbs (over 236 tons) for certain axle journals, under controlled interchange conditions agreed to by participating railroads. *Id.* In this regard, PFS has indicated that its railcars will utilize either "3-axle trucks" or "double bolsters (two sets of 2-axle trucks)" -- *i.e.*, 6-axle or 8-axle railcars. See Safety Analysis Report, § 4.5.5.2, at 4.5.5. The use of 6-axle or 8-axle railcars is not addressed in the State's 1958 document.

⁹ E-mail record from G. Davids, FRA, to M. Lamb, Radioactive Waste Management Associates, dated October 25, 2000. This and other records of Mr. Lamb's telephone and E-mail communications with Mr. Davids has been obtained by Staff Counsel and are attached hereto as "Attachment B," along with an affidavit from Mr. William B. O'Sullivan (Mr. Davids' supervisor) attesting to the genuineness and authenticity of the documents. The railcar weights discussed in these communications appear to apply to 4-axle railcars, rather than the 6-axle or 8-axle railcars proposed for use by PFS. See n.8, *supra*.

With respect to the fifth factor of 10 C.F.R. § 2.714(a)(1), the admission of this contention will necessarily broaden the issues and result in delay in the proceeding. NEPA issues are included in Group III, which is scheduled for hearing in July 2001. Inclusion of this contention at this stage in the hearing process will require time for discovery, summary disposition motions, and the preparation of testimony, all of which would have to be accounted for in the litigation schedule. Thus, this factor weighs against the admission of this contention.

In sum, the Staff submits that the State has failed to establish good cause for the late filing of Contention Utah PP, inasmuch as the State could have framed it long ago. Further, the State's lack of good cause for filing this contention late is not overcome by a "compelling" showing that the other factors specified in 10 C.F.R. § 2.714(a)(1) favor its admission. *State of New Jersey* (Department of Law and Public Safety's Requests Dated October 8, 1993), CLI-93-25, 38 NRC 289, 296 (1993). For these reasons, the Staff submits that late-filed Contention Utah PP should be rejected.

III. Application of the Commission's Standards for Admission of Contentions.

A. Legal Standards for Admission of Contentions

In order for a contention to be admitted to a proceeding, the requirements of 10 C.F.R. § 2.714 must be met. *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 333 (1999); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248 (1996). A contention must meet the standards set forth in 10 C.F.R. § 2.714(b)(2), which provides that each contention must consist of a "specific statement of the issue of law or fact to be raised or controverted" and must be accompanied by:

- (i) A brief explanation of the bases of the contention;

- (ii) A concise statement of the alleged facts or expert opinion which supports the contention . . . together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion;
- (iii) Sufficient information . . . to show that a genuine dispute exists with the applicant on a material issue of law or fact.

10 C.F.R. § 2.714(b)(2). The failure of a contention to comply with any one of these requirements is grounds for dismissing the contention. *See* 10 C.F.R. § 2.714(d)(2)(i); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), CLI-91-12, 34 NRC 149, 155-56 (1991); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 178-181 (1998).

With respect to documentary or other factual information or expert opinion alleged to provide the basis for a contention, the Licensing Board is not to accept uncritically the assertion that a document or other factual information or an expert opinion supplies the basis for a contention. In the case of a document, the Board should review the information provided to ensure that it does indeed supply a basis for the contention. *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989); *vacated in part on other grounds and remanded*, CLI-90-4, 31 NRC 333 (1990); *see also Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 (1996) (a document put forth by an intervenor as the basis for a contention is subject to scrutiny both for what it does and does not show). Contentions that are not supported by some alleged fact or facts should not be admitted, nor should the full adjudicatory hearing process be triggered by contentions that lack a factual and legal foundation. *Oconee*, CLI-99-11, 49 NRC at 334-35, *citing Final Rule, "Rules of Practice for Domestic Licensing Proceedings -- Procedural Changes in the Hearing Process,"* 54 Fed. Reg. 33,168, 33,172 (1989).

Finally, a contention must show that a genuine dispute exists with the Applicant on a material issue of law or fact. 10 C.F.R. § 2.714(b)(2)(iii); *Oconee*, CLI-99-11, 49 NRC at 333-34. "The intervenor must "be able to identify some facts at the time it proposes a contention to indicate that a dispute exists between it and the applicant on a material issue." *Id.* at 335, *citing* 54 Fed. Reg. at 33,171.

**B. The State Has Not Met the Standards for an Admissible
Contention With Respect to Late-Filed Contention Utah PP.**

The State claims that the "elimination" of buffer cars between railcars carrying shipping casks loaded with SNF "has concentrated the overall weight of the rail shipment and thus increased the probability of bridge failure." State Request at 3. The State, however, analyzes single railcar weights only in comparison to the railcar weights listed in the Table in the 1958 Railway Line Clearances document (*id.* at 3-8), and does not in any way show that the loaded railcar weights proposed by PFS may result in bridge failures.¹⁰ Indeed, the State's submission makes it clear that the values set forth in the Table are only guidelines, and that railcar weights in excess of those values may be approved upon the railroad's conduct of a safety review and issuance of a "special clearance." See State Request at 4-5. Thus, a loaded railcar weight in excess of the weights stated in the Table does not establish that the railcar weight may result in an increase in accidents; indeed, to the contrary, the railroad's performance of a safety review prior to the issuance of a "Special Clearance" provides assurance of the safety of loaded railcars whose weights

¹⁰ The State attempts to support its argument by complaining that the transportation of 211 ton gross weight single railcars requires a "safety review" before proceeding. State Request at 4-5. This claim, however, does not support the contention in that even if it is true, the mere requirement for a safety review does not indicate that the use of approved railcars will make a bridge failure more probable. Moreover, the State itself makes no such claim, and acknowledges that the use of loaded railcars with weights exceeding those shown in the Table would not necessarily be prohibited. *Id.* at 4. Accordingly, the State has failed to establish that there is any material dispute with regard to this matter.

exceed the weights listed in the Table. Similarly, while the State argues that "many . . . railroad bridges . . . may be severely stressed by a short train consisting of 211-ton cars, with no buffer cars" (*Id.* at 7), it failed to provide any support for this assertion. Accordingly, these assertions lack the basis required by 10 C.F.R. § 2.714(b), and should be rejected.¹¹

CONCLUSION

Based upon the foregoing, the Staff submits that Contention Utah PP does not meet the standards for the admission of contentions set forth in 10 C.F.R. § 2.714(b), is untimely, and does not meet the standards for admission of late-filed contentions set forth in 10 C.F.R. § 2.714(a)(1). Accordingly, Late-Filed Contention Utah PP should be rejected.

Respectfully submitted,

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Robert M. Weisman
Catherine L. Marco
Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 9th day of November 2000

¹¹ The State also challenges (belatedly) the transportation accident dose analysis contained in the DEIS, stating as follows:

PFS's latest plan not to provide buffer cars between cask cars vitiates the Staff's conclusion in the DEIS that 'in an accident, all four casks would not be damaged to the extent that each one would release material and provide a source of radiation exposure to the public' because the Staff appears to rely on the erroneous fact that each cask will be widely separated by a buffer car. DEIS at 5-45, ln. 37-41.

State Request at 3. This assertion, however, rests upon an incorrect reading of the DEIS. In the cited statement, the Staff compared its transportation accident analysis assumptions to other, more realistic assumptions that could have been, but were not, used. The DEIS thus indicates that the Staff assumed that in an accident, "each of the four casks was damaged and released material to the same extent" -- thus maximizing the calculated accident dose. DEIS at 5-45, lines 26-29. Thus, the Staff's analysis utilized the same assumption that is advocated by the State in Contention Utah PP. Accordingly, the State has not established a dispute of material fact or law with respect to this issue.

"Attachment A"

Volume 210

Railway Line Clearances®



2000/2001
Annual Issue

Including
Weight
Limitations
of Railroads
in North
America

Railway Line Clearances®

Including Weight Limitations of Railroads in North America

2000/2001 Annual Issue
Volume 210

CONTENTS

III Participating Clearance Contacts

- 1 Railroad and Port Listings
- 2 Index of Railroads
- 3 Index of Ports
- 4 How to Use Railroad Listings
- 7 Clearance and Weight Limitations of Railroads in the United States, Canada and Mexico
- 60 How to Use Port Listings
- 61 Heavy Lift Facilities of Ports in the United States and Canada

Association of American Railroads

- 75 Recommended Procedures for Measuring Loads Which Exceed Published Railway Line Clearances
- 76 Plate B. Equipment Diagram for Unrestricted Interchange Service
- 78 Plate B-1. Maximum Width of Cars with Various Truck Centers
- 79 Plate C. Equipment Diagram for Limited Interchange Service
- 79 Plate C-1. Maximum Width of Cars with Various Truck Centers
- 80 Plate D. Method for Obtaining Maximum Allowable Width of Car, Other than at Centerline of Car, for Unrestricted (Plate B-1) & Limited (Plate C-1) Interchange Service
- 81 Plate E. Equipment Diagram for Limited Interchange Service
- 81 Plate F. Equipment Diagram for Limited Interchange Service
- 82 Plate H. Equipment Diagram for Double Stack Container Cars
- 83 Roads, or Certain Routes of Roads that will not clear "Outline Diagram for Single Loads, without End Overhang, on Open Top Cars"
- 83 Rule 91 of Field Manual of the A.A.R. Interchange Rules—Weight Limitations
- 84 Customer Service Operations Division Circular No. TD-3. Utilization of Heavy Capacity and Special Type Flat Cars
- 86 Circular No. OT-2-B. Recommended Operating Practices for "Schnabel" and Other Special Cars Equipped with Span Bolsters
- 86 Circular No. OT-26A. Handling Loads of Dimensions in Excess of Published Clearances

Other

- 87 Bibliography of Technical Literature on Railroad High and Wide Clearances
- 88 How to Calculate the Combined Center of Gravity
- 89 Comprehensive Clearance Contact Listings

All clearances, weight limitations and other data are published as received from participating railroads. Supplemental data is provided by the Association of American Railroads and other official sources.

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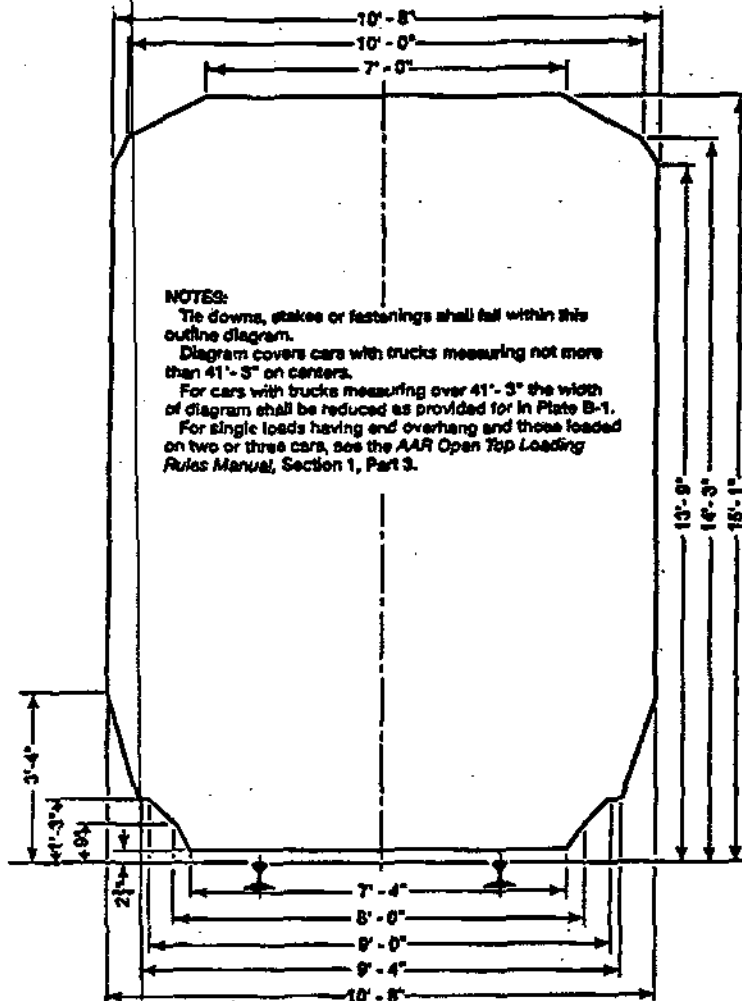
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Unrestricted on all roads except those shown below. For specific restricted areas on such roads, see "Railway Line Clearances." Shipments with measurements exceeding those shown in this diagram should be cleared for route in "Railway Line Clearances" or with the originating road haul carrier.

**NOTES:**

Tie downs, stakes or fastenings shall fall within this outline diagram.

Diagram covers cars with trucks measuring not more than 41'-3" on centers.

For cars with trucks measuring over 41'-3" the width of diagram shall be reduced as provided for in Plate B-1.

For single loads having end overhang and those loaded on two or three cars, see the AAR Open Top Loading Rules Manual, Section 1, Part 3.

**ROADS, OR CERTAIN ROUTES OF ROADS THAT WILL NOT CLEAR
"OUTLINE DIAGRAM FOR SINGLE LOADS WITHOUT END OVERHANG ON OPEN TOP CARS"**

Canadian National Railway
Central of Georgia Railroad
CSX Transportation

Detroit, Toledo and Ironton Railroad
Long Island Rail Road
Maryland & Pennsylvania Railroad

Norfolk Southern Railroad
Savannah Railroad Corporation
Union Pacific Railroad

RULE 91 OF FIELD MANUAL OF THE A.A.R. INTERCHANGE RULES — WEIGHT LIMITATIONS (Eff. 1/1/2000)

1. Cars must not be loaded in excess of total weight on rail limits, for applicable axle size, as shown below:

	Journal Size	Total Weight On Rail — 4 Axle Cars (lb)	Total Weight On Rail — 6 Axle Cars (lb)	Remarks
C	5 x 9	142,000	213,500	
D	5½ x 10	177,000	265,500	
E	6 x 11	220,000	330,500	
F	8½ x 12	262,000	394,500	
F	8½ x 12	264,000-266,000	Not Applicable	Cars must meet the requirements of AAR Office Manual Rule 80, Section C.2. Acceptance of such equipment is not mandatory.
F	6½ x 12	286,000	Not Applicable	Cars must meet AAR S-253. Acceptance of such equipment is not mandatory.
K	8½ x 9	286,000	Not Applicable	Cars must meet AAR S-253. Acceptance of such equipment is not mandatory.
G	7 x 12	315,000	472,500	Cars may be operated only under controlled interchange conditions, agreed to by participating railroads.

- The total allowable weight on rail is the weight of the car and loading, temporary fixtures, dunnage, fuel, etc.
- Weight of load (including loading, temporary fixtures, dunnage, fuel, etc.) must not exceed stenciled load limit, or reduced load limit as indicated by a star (*) symbol stenciled to the left of the "LD LMT."
- Stenciled load limit does not apply when weight must be reduced to comply with the General Rules of the AAR covering loading of commodities in closed or open top cars.
- Regulated commodities in tank cars are subject to limitations established by governmental agencies.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION"Attachment B"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))AFFIDAVIT OF WILLIAM B. O'SULLIVAN

I, William B. O'Sullivan, having first been duly sworn, do hereby state as follows:

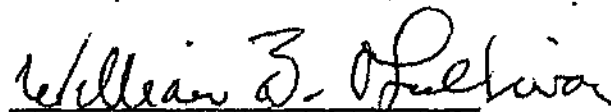
1. I am currently employed as Staff Director, Track Division, Office of Safety, Federal Railroad Administration ("FRA") in Washington, D.C.

2. I am personally acquainted with Mr. Gordon Davids, a Bridge Engineer in the Track Division, Office of Safety, FRA, who works under my direct supervision. Mr. Davids is currently away from the office on approved leave, and is unavailable to execute this affidavit.

3. The attached E-mail messages were provided to me by FRA Counsel, who received the messages from Mr. Davids. Based on my information and belief, the attached messages constitute actual records of messages that were transmitted between Mr. Davids and Mr. Matthew Lamb of Radioactive Waste Management Associates, on the dates indicated.

4. Based on my information and belief, and my discussions with FRA Counsel, I hereby confirm the genuineness and authenticity of the attached E-mail messages.

5. I hereby certify that the foregoing is true and correct to the best of my knowledge, information and belief.


William B. O'Sullivan

Sworn to before me this
9th day of November 2000


Notary Public

My commission expires: OCT 31 2004

From: Gordon Davids
To: "mrlamb@mindspring.com".gwhub.hubsmt
Date: 10/25/00 5:21PM
Subject: Follow-up on Friday Conversation Re: Bridge Load Limits

Matt -

The attached record of our conversation appears to be correct.. You did not mention to me the weight of the containers, however, and I did not speak in the context of 211 ton loads. Such a load will nearly always require a special clearance before a railroad will accept it in shipment.

The 1958 edition of Railway Line Clearances is totally obsolete. If I implied that load ratings have not increased since that time, I did not so intend. Most railroads didn't publish 263,000 loads in 1958 because those were not commonly operated at that time. If my memory serves me correctly, the maximum free-running load on four axles was 220,000 lbs. in 1958, and unless the railroad had a commercial reason to regularly handle the heavier cars, they would not have published that higher weight. The railroads have spent 42 years improving their bridges, and the major reason was to accommodate the heavier cars.

As one data point, the New York Central Railroad increased the published weight on their entire line between Boston and Chicago, with several others of their routes, to 315,000 pounds in 1963, give or take two years. They had a commercial reason to move cars of that weight, and they invested in bridge improvements to permit the operation.

Gordon Davids

>>> mrlamb@mindspring.com 2000-10-25 10:06:00 >>>

Mr. Davids:

Thank you very much for speaking with me on Friday regarding railroad track and bridge load limits. I found a copy of "Railway Line Clearances" at the New York Public Library, but unfortunately it was from 1958. From our conversation, I gather that most of the load limits have increased only slightly in the last 40 years. Most of the tracks listed in the document I looked at had load limits on the order of 200,000 to 250,000lbs, compared with the 263,000 lbs you said was general.

I wrote up notes of our conversation and wanted to make sure they accurately depict what we talked about. As I told you before, I am working on determining whether the heavy weight (211 tons) of spent nuclear fuel containers will require special safety considerations for railroad companies. I would greatly appreciate it if you looked over the following notes to make sure they are accurate. I do not want to misrepresent what you told me.

Again thank you for your time,

Matt

CC: Jackson, Inga; RRS-15; webing

From: mrlamb@mindspring.com
To: Davids, Gordon <FRA>
Date: 10/25/00 10:15AM
Subject: Follow-up on Friday Conversation Re: Bridge Load Limits

Mr. Davids:

Thank you very much for speaking with me on Friday regarding railroad track and bridge load limits. I found a copy of "Railway Line Clearances" at the New York Public Library, but unfortunately it was from 1958. From our conversation, I gather that most of the load limits have increased only slightly in the last 40 years. Most of the tracks listed in the document I looked at had load limits on the order of 200,000 to 250,000 lbs, compared with the 263,000 lbs you said was general.

I wrote up notes of our conversation and wanted to make sure they accurately depict what we talked about. As I told you before, I am working on determining whether the heavy weight (211 tons) of spent nuclear fuel containers will require special safety considerations for railroad companies. I would greatly appreciate it if you looked over the following notes to make sure they are accurate. I do not want to misrepresent what you told me.

Again thank you for your time,

Matt

Notes on 10/20/2000 telephone conversation with Gordon Davids of the Federal Railroad Administration regarding track and bridge weight limits

Matthew Lamb

Here are notes of a telephone conversation I had with Gordon Davids of the Track Division of the Federal Railroad Administration concerning load limits on tracks and bridges. Mr. Davids is the Bridge Engineer at the FRA's Office of Safety Assurance and Compliance.

Mr. Davids directed me to the Federal Register, August 30, 2000 (Volume 65 No. 169), "Policy on the Safety of Railroad Bridges," for the FRA's official position on railroad bridges. This policy statement is non-regulatory in nature.

Mr. Davids stated that each railroad owner determines the capacity of their tracks and bridges. The railroad industry annually publishes a document, "Railway Line Clearances," which lists general weight restrictions railway lines in the United States. Generally, train tracks are determined to have a train car + loading capacity of 263,000 lbs. These limits are not legal limits, but generally determine whether a given train loading can be transported on a track without having to do anything else. Load limits are listed for entire track segments, and are often based on the limits of the weakest part of that segment, which is usually a bridge.

Mr. Davids also told me that just because a posted maximum load limit is exceeded by a given shipment doesn't mean that the shipment cannot be shipped on that track. It is generally left to railroad engineers to determine whether a given shipment is safe. Rather, if a shipment meets the limits listed in "Railway Line Clearances," it is generally allowed to proceed without further investigation. If it doesn't, railroad owners generally determine whether a given shipment can be safely shipped on a given track, and whether special provisions should be made (such as axle configuration or placement of spacer cars) to enhance the safety of the shipment.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO STATE OF UTAH'S REQUEST FOR ADMISSION OF LATE-FILED CONTENTION UTAH PP," 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 9th day of November, 2000:

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