

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE 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 TO MODIFY THE BASES OF LATE-FILED
CONTENTION UTAH QQ IN RESPONSE TO FURTHER
REVISED CALCULATIONS FROM THE APPLICANT"

INTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c) and the Licensing Board's "Order (Schedule for Responsive Pleadings)" dated June 20, 2001, the NRC Staff ("Staff") hereby responds to the "State of Utah's Request to Modify the Bases of Late-Filed Contention Utah QQ in Response to Further Revised Calculations From the Applicant," dated June 19, 2001 ("Modification Request"). As set forth below, the Staff does not oppose the admission of certain portions of the proposed modification of late-filed Contention Utah QQ, but submits that other portions of the modification fail to satisfy the Commission's standards for late-filing and should be rejected.

BACKGROUND

On June 25, 1997, Private Fuel Storage, L.L.C. ("PFS" or "Applicant"), filed a license application ("LA") to possess and store spent nuclear fuel ("SNF") in an Independent Spent Fuel Storage Installation ("ISFSI") to be constructed and operated on the Reservation of the Skull Valley Band of Goshute Indians in Skull Valley, Utah. On or before November 24, 1997, numerous contentions were timely filed by the State of Utah ("State") and other petitioners for leave to intervene.

In a decision dated April 22, 1998, the Licensing Board found, *inter alia*, that the State and certain 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). Included among these contentions was Contention Utah L ("Geotechnical"),¹ which asserts as follows:

Utah L -- Geotechnical

CONTENTION: The Applicant has not demonstrated the suitability of the proposed ISFSI site because the License Application and SAR do not adequately address site and subsurface investigations necessary to determine geologic conditions, potential seismicity, ground motion, soil stability and foundation loading.

Id. at 253. The State provided four basis statements in support of this contention, concerning the following matters: (1) surface faulting (Utah Contentions at 80-82); (2) ground motion (*Id.* at 82-83); (3) characterization of subsurface soils, including subsurface investigations, sampling and analysis, and physical property testing for engineering analysis (*Id.* at 83-92); and (4) soil stability and foundation loading (*Id.* at 92-95). On December 30, 2000, PFS filed a motion for summary disposition of Contention Utah L, which motion is pending before the Licensing Board at this time.²

On April 2, 1999, PFS submitted a request for exemption from the seismic requirements of 10 C.F.R. Part 72, in order to utilize a probabilistic seismic hazard analysis ("PSHA") with a 2,000-year return period. On September 30, 2000, the Staff issued its Safety Evaluation Report ("SER") for the PFS facility,³ in which it, *inter alia*, concluded its review of geotechnical issues and determined to approve the Applicant's seismic exemption request (see SER, § 2.1.6).

¹ See "State of Utah's Contentions on the Construction and Operating License Application by Private Fuel Storage, LLC for an Independent Spent Fuel Storage Facility" ("Utah Contentions"), dated November 23, 1997, at 80-95.

² See "Applicant's Motion for Summary Disposition of Utah Contention L," dated December 30, 2000, as corrected January 2, 2001.

³ See letter from Mark S. Delligatti (NRC) to John D. Parkyn (PFS), dated September 29, 2000, enclosing "Safety Evaluation Report Concerning the Private Fuel Storage Facility."

On November 9, 2000, the State filed a request to modify Basis 2 of Contention Utah L, challenging the Applicant's seismic exemption request.⁴ On January 31, 2001, the Licensing Board ruled that portions of the State's proposed modification of Contention Utah L were admissible, and certified a question to the Commission as to whether the State's challenge to PFS's exemption request should be considered in this proceeding. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-3, 53 NRC 84, 101 (2001). On June 14, 2001, the Commission affirmed the Licensing Board's decision, in *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC ____ (2001); and on June 15, 2001, the Licensing Board issued an Order incorporating the State's modification as subpart "B" of Contention Utah L.⁵

On March 30, 2001, PFS submitted LA Amendment No. 22, in which it updated its safety analysis report ("SAR") and other licensing documents to reflect new information it had obtained regarding seismic ground motion, the seismic design of the facility, and other matters.⁶ Several calculation packages relating to this amendment were submitted by PFS in April 2001. On May 16, 2001, the State filed a request for admission of late-filed Contention Utah QQ, challenging the Applicant's revised use of soil cement at the PFSF site and the seismic design of the facility, based in part on the calculation packages submitted by PFS in April 2001.⁷ The State's request to admit Contention Utah QQ is presently pending before the Licensing Board.

On June 19, 2001, the State filed the instant request to modify late-filed Contention Utah QQ, based on PFS's revision, on May 31, 2001, of two calculation packages it had submitted

⁴ See "Request for Admission of Late-Filed Modification to Basis 2 of Contention Utah L," filed on November 9, 2000.

⁵ See "Memorandum and Order (Requesting Joint Scheduling Report and Delineating Contention Utah L)," dated June 15, 2001, at 2-3.

⁶ See letter from John D. Parkyn (PFS) to NRC Document Control Desk, dated March 30, 2001.

⁷ "State of Utah's Request for Admission of Late-Filed Contention Utah QQ (Seismic Stability)," dated May 16, 2001 ("Utah QQ Request").

in April 2001, in support of LA Amendment No. 22: (a) Calculation No. 05996.02-G(B)-04, Revision 8 ("Stability Analysis of Storage Pads"), and (b) Calculation No. 05996.02-G(B)-13, Revision 5 ("Stability Analysis of the Canister Transfer Building Supported on a Mat Foundation").⁸

As set forth below, the Staff does not oppose the modification of proposed Contention Utah QQ to the extent that it is based upon the revised calculations or other new information contained in the Applicant's May 31 submittal; however, the Staff submits that certain other portions of the State's modification should be rejected on the grounds that they are impermissibly late.

DISCUSSION

A. Legal Standards Governing the 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.

⁸ See Letter from John D. Parkyn (PFS) to Document Control Desk (NRC), dated May 31, 2001 ("Data Needed for NRC Review of License Amendment # 22"). In this submittal, PFS, *inter alia*, (a) provided information which the Staff had identified as necessary in its review of LA Amendment No. 22, and (b) submitted new information which PFS indicated would be reflected in a future amendment to the license application. See, e.g., *id.*, Enclosure 1, at 57-62; Enclosure 2 at 17 (discussing new and revised calculations).

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).⁹

B. The 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, 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).

⁹ With respect to documentary or other factual information or expert opinion alleged to provide the basis for a contention, the 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. 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 as the basis for a contention is subject to scrutiny both for what it does and does not show). The adjudicatory hearing process should not 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).

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 required 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, a petitioner must also meet the requirements for setting forth a valid contention, as stated in 10 C.F.R. § 2.714(d)(2).

C. The Timeliness of the State's Proposed Modification of Contention Utah QQ.

In Contention Utah QQ, filed on May 16, 2001, the State asserted that PFS's March 30 amendment of its license application is inadequate with respect to its proposed use of soil cement and its seismic design modifications. Contention Utah QQ asserted as follows:

CONTENTION QQ Seismic Stability

PFS's site specific investigations, laboratory analyses, characterization of seismic loading, and design calculations, including redesign of soil cement [footnote omitted], fail to demonstrate that a) the newly revised probabilistic seismic hazard design basis ground motions have been correctly and consistently applied to the Canister Transfer Building ("CTB"), storage pads, and their foundations; b) PFS's general design approach, including the redesign of soil cement, for the CTB, storage pads, or storage casks can safely withstand the effects of earthquakes; and c) the foundation design of the CTB, storage pads, and the underlying soils, or the stability of the storage casks, are adequate to safely withstand the newly revised probabilistic seismic hazard design basis ground motions. 10 CFR §§ 72.102(c), (d); 72.122(b).

The state identified four specific concerns in support of this contention, relating to the foundation design of the storage pads and the Canister Transfer Building (“CTB”).¹⁰

As the Staff observed in its response to the State’s request to admit late-filed Contention Utah QQ, much of the contention relates to the Applicant’s proposed use of soil cement under and around the storage pads, and around the CTB.¹¹ As the Staff further noted, PFS had “proposed the use of soil cement under and around the storage pads long ago, to assure stability against sliding,” and this proposed use of soil cement under and around the pads was evaluated in the

¹⁰ The following areas of concern were identified in this contention:

1. Application of the new design basis ground motions to the CTB and its foundation system (Utah QQ Request at 8-9);
2. Application of the new design basis ground motions to the storage casks and the storage pads (*Id.* at 9-11);
3. Survivability and durability of cement-treated soil for the redesigned CTB and storage pad foundation systems (*Id.* at 11-14), including:
 - (a) Overstressing and cracking due to dynamic bending, torsional, and beam shear stresses (*Id.* at 12);
 - (b) Delamination or debonding along a cement-treated soil lift interface (*Id.* at 12-13);
 - (c) Shrinkage cracking due to drying and curing (*Id.* at 13);
 - (d) Cracking due to vehicle loads (*Id.*);
 - (e) Long-term performance of cement-treated soil over a 40 year period (*Id.* at 13-14); and
4. Overestimation of the sliding resistance provided by the clayey-silt and silty-clay underlying the CTB and storage pads (*Id.* at 14-15).

¹¹ See “NRC Staff’s Response to ‘State of Utah’s Request for Admission of Late-Filed Contention Utah QQ (Seismic Stability),” dated May 30, 2001 (“Staff Response to Utah QQ”), at 4.

Staff's SER of September 2000.¹² Thus, while the Applicant revised its foundation design in LA Amendment No. 22, and included a new proposal to use soil-cement around the perimeter of the CTB to prevent sliding, LA Amendment No. 22 did not "constitute a wholly new concept."¹³

In the Applicant's May 31, 2001 response to concerns expressed by the Staff as to the completeness of LA Amendment No. 22, PFS provided additional information, as well as revisions to two calculation packages which it had previously submitted in support of LA Amendment No. 22. These were: (a) Calculation No. 05996.02-G(B)-04, Rev. 8 ("Stability Analysis of Storage Pads"), and (b) Calculation No. 05996.02-G(B)-13, Rev. 5 ("Stability Analysis of the Canister Transfer Building Supported on a Mat Foundation").

In its request to modify proposed Contention Utah QQ, the State identifies the following concern with respect to the two revised calculations:

Calculation No. 05996.02-G(B)-04, Revision 8, "Stability Analysis of Storage Pads" . . . and Calculation No. 05996.02-G(B)-13, Revision 5, "Stability Analysis of the Canister Transfer Building" . . . inaccurately conclude there are adequate factors of safety against sliding. PFS has failed to demonstrate that the shallow foundation system of the pads and CTB will support the inertial loads for the design basis ground motions at the ISFSI site. Thus, PFS's application does not support a finding that the ISFSI will satisfy the design bases with an adequate margin for safety. 10 CFR § 72.24(c)(3); *see also* 10 CFR §§ 72.102, 72.122(b)(2).

Modification Request, at 2. This request to modify Contention Utah QQ relates, in part, to PFS's recent revision of the two referenced calculations; however, in other respects, the modification relates to matters which could have been raised with respect to the Applicant's previous submittals. To the extent that the State's modification request relates to matters which arose for the first time in the Applicant's May 31, 2001 submittal, its proposed modification appears to be timely; in other

¹² Staff Response to Utah QQ, at 5, *citing* SER § 2.1.6.4, at 2-48 ("Stability of Cask-Storage Pad Foundation").

¹³ Staff Response to Utah QQ, at 5 (footnote omitted).

respects, the State's request is untimely and should be rejected, in that those matters could and should have been filed previously. The Staff's views of these matters are as follows.

1. Seismic Stability Analysis of the Storage Pads.

With respect to the foundation design for the concrete storage pads, PFS's May 31 submittal included Revision 8 to Calculation No. 05996.02-G(B)-04 ("Stability Analysis of Storage Pads"). The State raises four concerns with respect to the factors of safety against sliding in this calculation: (a) the accuracy of PFS's "analysis of the inertial forces acting on the pads"; (b) the use of an "inconsistent design approach with respect to the buttressing effect of cement-treated soil"; (c) "PFS's continued failure to address impacts that affect the adhesive strengths at various foundation interfaces"; and (d) the adequacy of PFS's "longitudinal analysis of the storage pads." Modification Request, at 3.

With respect to the first of these concerns (the accuracy of PFS's analysis of inertial forces acting on the pads), the State claims that Revision 8 "underestimate[s] the minimum shear strength required to resist dynamic forces by making erroneous and unconservative assumptions about the dynamic loads transferred to the native soil from the pad-cask system" (*Id.* at 4). Further, the State asserts that in the analytical case in which PFS ignores the buttressing effect, PFS failed to consider "the total combined mass of pad and the underlying cement-treated soil," which is inconsistent with its assumption that the cement pad and soil-cement will act as an integral block and transfer all inertial forces to the top of the underlying soil (*id.* at 4-5). This concern appears to be timely, in that this issue first arose in connection with Revision 8 of the calculation.¹⁴

¹⁴ The State also refers to the Staff's May 7, 2001 request for information and alleges that PFS "fails to address the NRC's request" (Modification Request, at 3); however, it nowhere identifies the information which it believes PFS has failed to provide. This assertion should therefore be rejected as failing to provide the necessary factual basis or sufficient information to show a genuine dispute of a material fact, as required under 10 C.F.R. § 2.714(b)(2)(ii)-(iii).

Accordingly, the Staff does not oppose the admission of this issue, in the event that the Board determines to admit Contention Utah QQ.

With respect to the second issue raised by the State (the use of an inconsistent design approach with respect to the buttressing effect of cement-treated soil, provided by passive pressures acting on the sides of the pad), the State asserts that Revision 8 of Calculation No. 05996.02-G(B)-04 “at times ignor[es] the buttressing effect of soil cement on the factor of safety against sliding, and at other times add[s] the buttressing effect back into its analysis” (Modification Request at 4). The State provides a detailed description of this matter (*id.* at 4-6). In brief, the State asserts that Revision 8 of the calculation introduced an inconsistency into PFS’s analyses. Previously, PFS relied upon the buttressing effect or passive resistance of soil-cement around the pads to provide the required margin of safety against sliding; in its May 31 submittal (including Revision 8 of this calculation), PFS indicated that it no longer relies upon this effect to provide horizontal resistance against sliding, provided the shear strength is at least 1.85 ksf at the base of the storage pad (*id.* at 4), but it still cites this effect as an added conservatism. To the extent that PFS continues to rely on this effect to provide added conservatism, the State’s concern that PFS’s analyses should be consistent appears to be timely.¹⁵ Accordingly, the Staff does not oppose the admission of this issue, in the event that the Board determines to admit Contention Utah QQ.

Notwithstanding this conclusion, the Staff notes that the State’s presentation of this concern introduces other issues which could and should have been raised previously. Thus, the State asserts that PFS may not claim any “beneficial effect” from the use of soil-cement under the pads without addressing “several possible failure mechanisms” regarding the soil-cement’s ability to

¹⁵ In contrast, any concern that PFS improperly relies upon this buttressing effect to provide stability against sliding is untimely, in that such a concern could and should have been raised in connection with PFS’s previous submittals which relied upon this buttressing effect. See discussion *infra*, at 10-11.

withstand dynamic bending, torsional, and beam shear stresses; its long-term durability without cracking or without significant shear strength degradation; and its interaction with soil chemistry” (Modification Request, at 6). In addition, the State asserts that “during deposition testimony in Utah L, one of PFS’s experts, admitted that he could not preclude the possibility that tensile stresses would occur in the soil cement mat, and he committed to consider tensile strength in the future” (*Id.*). These concerns are not related to Revision 8, however, but instead relate to PFS’s previous reliance on the underlying soil-cement to resist sliding. Indeed, the State concedes as much, stating that “Revision 8 still persists in using the same ‘beneficial effect’ without any analysis whatsoever of the tensile strength of the [soil-cement]” (*Id.*; emphasis added). These issues could and should have been presented previously and should therefore be rejected as untimely, without any showing of good cause for their late submission.

With respect to the third issue raised by the State (PFS’s “continued” failure to address impacts that affect the adhesive strengths at various foundation interfaces), the State asserts that while PFS assumes it can maintain a minimum factor of safety against sliding “when the static undrained strength of clayey soils is ‘fully engaged,’” this assumption is improper -- in that PFS’s Revision 8 “still” does not address “the impact of increased water content, disturbance and remolding to the strength of the partly saturated . . . soils beneath the [soil-cement], and, thus, PFS cannot take credit in its analysis for the static undrained strength of the clayey soils being ‘fully engaged’” (Modification Request at 6). This concern, however, did not arise as a result of the Applicant’s submission of Revision 8 of the calculation; rather, this is an issue that could and should have been raised in connection with the Applicant’s previous submittals.¹⁶ Accordingly, this issue should be rejected as untimely, without any showing of good cause for its late submission.

¹⁶ Indeed, the State’s concern as to potential weakening of the natural soil during construction due to “remolding” and water-content changes associated with construction was raised previously in Contention Utah QQ, Basis 4 (“overestimation of the sliding resistance provided by the clayey-silt and silty-clay underlying the CTB and storage pads”). See Staff Response to Utah QQ, at 14.

With respect to the fourth issue raised by the State (adequacy of PFS's longitudinal analysis of the storage pads), the State asserts that PFS's computation of the factor of safety against sliding of individual pads in the longitudinal (north - south) direction is incorrect (*Id.* at 7). In support of this assertion, the State claims that in the Revision 8 case analysis in which the soil-cement's passive resistance against sliding is ignored, PFS (a) overstated the factor of safety against sliding, as a result of omitting the mass of the soil-cement as part of the "inertial forces acting on the clayey soils" (*Id.*); and (b) used "an incorrect peak undrained strength to represent the soil's shear resistance for the high levels of inertial forces introduced by the new design basis ground motions" (*Id.*).

The first of these subissues (omission of the mass of the soil-cement in evaluating the lateral inertial forces that may act on the underlying soils) is raised twice in the State's submission (see discussion *supra*, at 9) -- as the State, itself, indicates (see Modification Request, at 7 ("as described above, . . .")). This subissue appears to be timely presented and adequately supported -- although it should not be admitted twice, in order to avoid unnecessary duplication. With respect to the second subissue (use of an incorrect peak undrained strength to represent the soil's shear resistance), the State presents a concern which is not prompted by Revision 8 of the calculation; rather, as the State concedes, "[t]his issue is a long-standing dispute between PFS and the State . . . and it still persists in Revision 8" (*Id.*). Accordingly, this subissue should be rejected as untimely, without any showing of good cause for its late submission.

Finally, the Staff notes that In summarizing its concerns, the State asserts that PFS "has taken credit in estimating the factor of safety against sliding for the beneficial effect of cement-treated soils around the pads without addressing all the attendant shortcoming that cement-treated soil presents," and that "PFS has erroneously assumed that the static undrained native soils will be fully engaged without analyzing the effects of an increase in water content, or a disturbance and remolding of those soils" (Modification Request at 8). As discussed *supra*, at 10-11, these

concerns do not arise as a result of PFS's May 31 submittal, and are not raised in a timely manner in the State's Modification Request. Accordingly, these concerns should be rejected.

2. Seismic Stability Analysis of the CTB

In its Modification Request, the State asserts that PFS's recent submission of Revision 5 of Calculation No. 05996.02-G(B)-13 ("Stability Analysis of the Canister Transfer Building") fails to correct errors which occur in previous versions of the calculation. Thus, the State asserts that "PFS still persists in assuming that the passive resistance of cement-treated soil around the CTB is available to resist sliding. PFS's analysis was unconservative and inaccurate in Revision 4 of Cal. G(B)-13, and it remains so in Revision 5 too" (Modification Request, at 8). The State then proceeds to describe these alleged errors in PFS's prior submission (Revision 4 of the calculation), and it explains why it believes these errors still exist in Revision 5 (*Id.* at 8-9).

The State's assertion of these concerns in its Modification Request are untimely, in that they could and should have been presented in Contention Utah QQ -- and, indeed, these concerns appear to have been raised in Contention Utah QQ. See n.10, *supra*. Accordingly, these concerns do not support the admission of the State's modification of proposed Contention Utah QQ.

D. Application of the Other Factors in 10 C.F.R. § 2.714 (a)(1).

The Staff's views with respect to the timeliness of the concerns presented in the State's modification of proposed Contention Utah QQ are set forth above. In sum, portions of the State's modification request appear to be timely, while other portions, as described above, could and should have been raised previously. Further, the State has failed to demonstrate good cause for the late filing of the untimely portions of its modification of proposed Contention Utah QQ, as required under 10 C.F.R. § 2.714(a)(1). 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.

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 the untimely portions of its

modification of proposed Contention Utah QQ. See, e.g., *Mississippi Power & Light Co.* (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982).

With respect to the third factor, the experts named by the State in Contention Utah QQ appear qualified to assist in the development of a sound record. However, the State has not identified their proposed testimony, beyond stating that its three experts and proposed witnesses “amongst themselves have expertise in the disciplines needed to challenge the seismic stability analyses of the pads and CTB,” and that one of those experts (Dr. Bartlett) “will testify consistent with his declaration” (Modification Request, at 11).¹⁷ In the Staff’s view, although Dr. Bartlett’s Declaration provides additional details regarding his views, this general statement fails to provide a “real clue about what [he] would say to support the contention beyond the minimal information [he] provide[s] for admitting the contention.” *PFS*, LBP-98-7, 47 NRC 142, 208-09 (1998). Accordingly, this factor weighs somewhat against the admission of these issues.

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 QQ, and other means are not available whereby the State’s interest will be protected regarding such issues. Accordingly, these factors weigh in the State’s favor, although they are less important than the other factors and are therefore entitled to less weight. *Comanche Peak*, CLI-92-12, 36 NRC at 74.¹⁸

With respect to the fifth factor of 10 C.F.R. § 2.714(a)(1), the admission of the State’s modification of proposed Contention Utah QQ will necessarily broaden the issues and result in

¹⁷ The State identified three experts in support of Contention Utah QQ (Drs. Bartlett, Ostadan, and Mitchell), but identified only one of those individuals (Dr. Bartlett) in support of the instant request to modify the contention.

¹⁸ The State asserts that its proposed modification should be admitted, in part, “because the Staff is likely to support the Applicant, [and] only by having the State’s experts participate in this proceeding will the Board be exposed to all sides of the issue” (Modification Request, at 12). The State provides no basis for this assertion -- and indeed, the State’s citation to the Staff’s correspondence to *PFS* (*Id.* at 3) to support its Modification Request belies this assertion.

delay in the proceeding. The Staff recognizes that it currently has the Applicant's revised seismic analyses and design under review, and some time will be required for the Staff to complete its review.¹⁹ Nonetheless, the admission 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 schedule. Thus, this factor appears to weigh somewhat against the admission of the State's modification of proposed Contention Utah QQ.

In sum, the Staff submits that the State has failed to establish good cause for the late filing of certain portions of its modification of Contention Utah QQ, as set forth above, in that the State could have framed those issues previously. Further, the State's lack of good cause for filing these concerns late is not overcome by a "compelling" showing that the other factors specified in 10 C.F.R. § 2.714(a)(1) favor their 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 the specified portions of the State's modification of late-filed Contention Utah QQ should be rejected.

CONCLUSION

For the reasons set forth above, the Staff submits that portions of the State's proposed modification of late-filed Contention Utah QQ, as set forth above, are untimely and do not meet the standards for late-filed contentions in 10 C.F.R. § 2.714(a)(1), and should be rejected. In other

¹⁹ As stated in a letter from Staff Counsel to the Licensing Board dated June 20, 2001, the Staff anticipates completing its review of geotechnical issues and issuing a Supplement to its Safety Evaluation Report on January 31, 2002.

respects, the Staff does not oppose the admission of the State's modification of this proposed contention, to the extent that the Licensing Board determines that the contention, itself, should be admitted.

Respectfully submitted,

/RA/

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 3rd day of July 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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Fuel Storage Installation))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO "STATE OF UTAH'S REQUEST TO MODIFY THE BASES OF LATE-FILED CONTENTION UTAH QQ IN RESPONSE TO FURTHER REVISED CALCULATIONS FROM THE APPLICANT" 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 3rd day of July, 2001:

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