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NUCLEAR REGULATORY COMMISSION
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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

March 19, 2004

Emile L. Julian, Esq.
Rulemakings and Adjudications Staff
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

Dear Mr. Julian:

On March 18, 2004, I filed and served the "NRC Staff's Brief in Response to 'State of Utah's Brief on the Commission's Review of Contentions Utah U Basis 2, Utah CC and Utah SS.'" Upon review thereof, I have determined that certain statements contained in the first paragraph on page 9 of the Staff's Brief were expressed incorrectly and should be revised. A revised page 9 is enclosed herewith and should be inserted in place of page 9 of the Staff's Brief as originally filed.

I regret any inconvenience which this error may have caused.

Sincerely,

Sherwin E. Turk
Counsel for NRC Staff

Enclosure: As stated

cc w/Encl.: Service List

sabotage.” LBP-98-7, 47 NRC at 199 (referred to in CLI-04-04, slip op. at 7). In this regard, the State had asserted in Contention Utah J (which was “incorporated by reference” in Contention Utah U Basis 2) that NRC regulations require the construction of a hot cell at the PFS Facility; then, in Contention Utah U, Basis 2, the State asserted that the environmental impacts of operating without such a “required” hot cell must be considered in the ER. These two contentions were explicitly linked by the State, and the State’s claims in Utah U, Basis 2, therefore appeared to suggest that PFS was required to discuss the environmental impacts of hot cell operations; but this would be litigable only if the State was correct in asserting that PFS was required by Commission regulations to construct such a hot cell at its Facility. In contrast, if hot cell is not required under NRC safety regulations, PFS would not incorporate such a hot cell in its facility -- and there would be no need to consider the environmental impacts of a hypothetical design feature like a hot cell that would not be present at the facility. *See Peach Bottom, supra*, 8 AEC at 20-21 (a contention must be rejected if “it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question” or if it “seeks to raise an issue which is not concrete or litigable.”). Accordingly, the Licensing Board correctly determined that this aspect of the Basis statement must be rejected, as it involved an impermissible challenge to NRC regulations or rulemaking-associated generic determinations.

In CLI-04-04, the Commission observed that “whether or not NRC safety regulations impose certain requirements does not resolve the question whether there are potential environmental consequences that should be discussed under NEPA.” CLI-04-04, slip op. at 7. The Staff respectfully submits that the Licensing Board’s ruling does not run afoul of the principle stated by the Commission, in that the Board did not suggest that NRC safety regulations limit the potential environmental consequences that must be evaluated under NEPA. Rather, read in context, this aspect of the Board’s decision should be understood to mean that the State was incorrect in asserting that Commission regulations require a hot cell to be installed at the PFS Facility -- and as a result, a hot cell will not be installed at the PFS Facility and the environmental consequences