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Consideration of Environmental Impacts on Temporary Storage of Spent Fuel After Cessation of Reactor Operation

Comment On: NRC-2012-0246-0361

Waste Confidence - Continued Storage of Spent Nuclear Fuel

Document: NRC-2012-0246-DRAFT-1050

Comment on FR Doc # 2013-21708

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Government Agency Type: State

Government Agency: Utah Office of the Attorney General

General Comment

See attached file(s)

Attachments

Utah Waste Conf GEIS Cmnts & Cvr Lt 12-18-13



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Amanda Smith
Executive Director

Brad T Johnson
Deputy Director

December 18, 2013

Transmitted via email to: Rulemaking.Comments@nrc.gov

Secretary
U.S. Nuclear Regulatory Commission
Washington DC 20555-0001

Attention: Rulemakings and Adjudications Staff

Dear Secretary:

Re: State of Utah Comments on the Waste Confidence Generic Environmental Impact Statement, Draft Report, NUREG-2157
Docket ID NRC-2012-0246, Consideration of Environmental Impacts on Temporary Storage of Spent Nuclear Fuel after Cessation of Reactor Operation Waste Confidence-Continued Storage of Spent Nuclear Fuel

On September 13, 2013, the NRC published a proposed rule revising its generic determination on the environmental impacts of continued storage of spent nuclear fuel beyond a reactor's licensed life for operation and prior to ultimate disposal for public comments. 78 Fed. Reg. 56,776 (September 13, 2013); 78 Fed. Reg. 66,858 (November 7, 2013), extension of comment period to December 20, 2013. In response, the state of Utah submits the attached comments regarding the Waste Confidence Generic Environmental Impact Statement, Draft Report, NUREG-2157.

If you have any questions, please contact Connie Nakahara at 801-536-0285.

Regards,

Amanda Smith
Executive Director

cc: Connie Nakahara

State of Utah Comments on Waste Confidence Generic Environmental Impact Statement, Draft Report, NUREG-2157

The State of Utah ("Utah") files the following comments regarding the September 13, 2013, Waste Confidence Generic Environmental Impact Statement, Draft Report, NUREG-2157 ("Draft GEIS"), Docket ID NRC-2012-0246, Consideration of Environmental Impacts on Temporary Storage of Spent Nuclear Fuel After Cessation of Reactor Operation. See 78 Fed. Reg. 56,776 (Sept. 13, 2013) Waste Confidence-Continued Storage of Spent Nuclear Fuel; 78 Fed. Reg. 66,858 (Nov. 7, 2013) Waste Confidence-Continued Storage of Spent Nuclear Fuel (extension of comment period). Many issues are interrelated and commonly impact or encompass other issues. Thus, it is urged that the issues should not be narrowly construed or evaluated. If additional information or clarification is needed, please contact:

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1. First, the opening statement in the Draft GEIS demonstrates a bias towards licensing a storage or disposal facility. NRC states: "Since the inception of nuclear power, the U.S. Nuclear Regulatory Commission (NRC) (including its predecessor, the Atomic Energy Commission) has worked to find a disposal solution for spent nuclear fuel ... generated by commercial nuclear power reactors."¹ Congress granted NRC "all the licensing and related regulatory functions of the AEC [Atomic Energy Commission]."² Given its safety and regulatory obligations, it is essential that NRC not engage in the search for a site specific disposal or storage solution. If NRC is to perform its statutory duties to protect public health and safety, it is critical that NRC's licensing and regulatory evaluations be clearly independent, objective and not biased towards finding a disposal solution. The Blue Ribbon Commission on America's Nuclear Future ("BRC") similarly emphasized that "clearly independent, competent regulators [are] essential" in the evaluation of storage and disposal facilities.³

Utah appreciates and acknowledges Chairman Allison M. Macfarlane's recognition that "NRC is not the responsible Government authority in leading or

¹Draft GEIS at 1-1.

²P.L. 93-438 § 201(f).

³*The Blue Ribbon Commission on America's Nuclear Future, Report to the Secretary of Energy (BRC Report)*, January 2012, at x; see also at 62 (expressing that accountability is effective with independent regulatory oversight); 66 (independent radiological health and safety).

making decisions on national policy in the back end of the nuclear fuel cycle" and the need for NRC to remain independent of site selection to protect public health, safety, and the environment.⁴ The State of Utah urges Chairman Macfarlane to reflect her position in the final GEIS. Utah further notes, in an apparent contradiction to NRC staff engaging in a clearly independent manner, staff, apparently on its own initiative, aided Private Fuel Storage, LLC ("PFS") in retaining its storage license, notwithstanding PFS had earlier requested to terminate its license due to a lack of funds.⁵ Subsequently, staff reversed an earlier decision and waived all PFS annual licensing fees.⁶

2. The stated purpose of the Draft GEIS is to generically analyze environmental impacts of spent nuclear fuel storage so that the NRC may revise its waste confidence rule, 10 C.F.R. § 51.23, to eliminate the need to conduct NEPA analyses for continued storage during future reactor and spent fuel facility licensing actions.⁷ To justify the implementation of the waste confidence rule, the Draft GEIS states that implementing the waste confidence findings as a GEIS only alternative or as a policy statement "could result in the considerable expenditure of public, NRC, and applicant resources" and that "licensing boards could be required to hear nearly identical contentions [] on generic issues."⁸ The desire to improve the efficiency of NRC's licensing process by generically addressing environmental impacts is laudable. Nevertheless, irrespective of the amount of resources expended, it is NRC's statutory obligation to consider the environmental, safety and licensing aspects of individual storage proposals.

⁴NRC Notation Vote, SECY-13-0061-Proposed Rule: Waste Confidence-Continued Storage of Spent Nuclear Fuel (RIN 3150-AJ20), Chairman Allison M. Macfarlane (July 12, 2013) at 2.

⁵In 2006, the NRC issued the only away-from-reactor, dry storage license to PFS for a facility to be located in the State of Utah on the Skull Valley Indian Reservation. Staff document that "[s]ince it had taken a considerable amount of effort and resources to license the PFS [], the NRC thought it prudent to notify PFS of [the potential to be classified as a small entity] in light of the decision by the Department of Energy to site an Interim Storage Facility." *NRC Conversation Record between Terry Pikens and Chris Allen, dated February 6, 2013.*

⁶Notwithstanding almost a year prior NRC staff determined that waiving PFS licensing fees was not in the public interest, on September 27, 2013, Mr. James Dyer reversed his prior decision and granted PFS a full exemption from all annual fees, retroactive to January 1, 2013. In direct contradiction to his earlier reasoning, Mr. Dyer determined that it is "unfair" that the Department of Interior has not issued necessary approvals given the district court overturned Interior's decisions to deny the PFS lease agreement and the requested rights-of-way. In making his decision, Mr. Dyer failed to recognize or acknowledge that the district court held that Interior could in fact disapprove the lease agreement and deny the right-of-way requests but such denials must be made in a manner consistent with the ruling. See *Skull Valley Band of Goshute Indians v. Davis*, 728 F. Supp. 2d 1287 (D. Utah 2010).

⁷Draft GEIS at 1-5.

⁸Draft GEIS at 1-7.

Moreover, affected parties must have an the opportunity to participate in site specific licensing proceedings. Based on our experience in the PFS licensing matter, Utah recommends that the Commission take substantial precautions in determining what environmental impacts, if any, are eliminated from future consideration in site specific reviews. Therefore, Utah strongly recommends that the Commission proceed according to the Draft GEIS proposed "policy alternative" - by issuing a policy statement that the finding of the GEIS could be incorporated into the environmental reviews of future licensing actions. Staff acknowledges that If the matter is truly a generic issue that the GEIS has adequately addressed, then, the GEIS could be incorporated into a site specific licensing proceeding.⁹ By proceeding with a policy statement, instead of a rule, the decision whether an environmental impact is truly generic will consider site specific licensing facts. While a party with standing may still file a contention raising a generic issue, Commission and licensing board case law and precedence would eliminate the rehearing of truly generic issues. Importantly, whether an issue is in fact generic would be considered along with site specific information and not be presupposed years, if not decades, in advance. Under a policy alternative, the Commission, indeed, will still achieve its desired goal of improving the efficiency of licensing proceedings if the issues are truly generic.

3. Next, if future stakeholders may be precluded from raising site specific issues, it is essential that the Draft GEIS relies on sufficient data and analysis to support its conclusions. However, NRC staff indiscriminately adopts many of the findings from the *Final 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*, NUREG-1714, December 2001 ("PFS FEIS").¹⁰ In general, notwithstanding whether Utah agrees with the analysis and conclusion included in the PFS FEIS, barring an adequate explanation of its basis, it is wholly inappropriate to incorporate the site specific details of the PFS FEIS into a generic EIS. Moreover, an earlier version of the waste confidence rule prevented the consideration of any environmental impacts for continued storage beyond the storage licencing period in the PFS FEIS. Now, after the U.S. Court of Appeals, District of Columbia, vacated the waste confidence rule, staff rely, in part, on findings in the PFS FEIS when it did not consider the impacts of continued storage. Without an adequate explanation for the basis of incorporating portions of the PFS FEIS findings into the final GEIS, it is circular logic to rely on an analysis that did not consider the impacts of continued storage when the stated purpose of the Draft GEIS is to "address[] the environmental impacts of continuing to store spent fuel ... at an away-from-reactor storage

⁹Draft GEIS at 1-6.

¹⁰Utah participated in the NRC licensing proceedings for the PFS facility and is intimately familiar with the PFS proposal.

facility, after the end of a reactor's licensed life for operation until final disposition in a geologic repository ("continued storage")."¹¹

4. The Draft GEIS states that the socioeconomic analysis was limited to where spent fuel storage employees and their families reside, spend their income, and use their benefits. However, nuclear waste facilities may negatively impact regional and state economics, separate and apart from Environmental Justice issues; consequently, NRC should acknowledge that such impacts will be evaluated on a site specific basis.
5. Utah agrees and appreciates that the Draft GEIS states NRC will prepare a site-specific environmental analysis prior to "any future NRC licensing action."¹²
6. Staff recognize that environmental impacts of constructing and operating an away-from-reactor ISFSI would be evaluated in more detail during a site-specific licensing proceeding. The final GEIS should clarify what potential impacts will not be considered in a site-specific evaluation.
7. The Draft GEIS finds that the socioeconomic benefits for an away-from-reactor storage facility are large. The BRC recommended a transparent, consent-based siting process which would allow affected communities an opportunity to accept siting decisions.¹³ In direct response to the BRC Report, the bipartisan Senate Bill 1240, "allows affected communities to decide whether, and on what terms, the affected community will host a nuclear waste facility."¹⁴ As a potential host community has yet to negotiate the terms of an agreement, this generic EIS cannot support a conclusion that the socioeconomic benefits at an unknown site are large.
8. Staff also states that it "assumes" the site selection of an away-from-reactor storage facility would be "adjusted to minimize impacts on local resources, including historic and cultural resources and special status species and habitats" but NRC also acknowledges "that in some cases avoiding impacts may not be possible."¹⁵ If staff recognize that it is unknown whether impacts may be avoided, then staff cannot make any generic findings regarding impacts to local resources.

¹¹Draft GEIS at 1-1.

¹²Draft GEIS at 3-10.

¹³BRC Report at 47.

¹⁴Senate Bill 1240, Sec. 304.(1).

¹⁵Draft GEIS at 5-3.

9. Staff acknowledges that NEPA requires NRC to "analyze the impacts of continued storage at the facility until ultimate disposal for the spent fuel is available."¹⁶ Nevertheless, NRC prohibited the evaluation of the environmental and safety impacts of continued storage at the proposed PFS facility. For example, because of the Commission's pronouncement in its waste confidence decision that spent fuel can be safely stored without significant environmental impact for "at least" 100 years, the NRC, Atomic Safety and Licensing Board rejected a contention that the "repository's inability to absorb the PFS stored fuel until 'at least' the last quarter of the twenty-first century increases fuel removal and decommissioning costs, extends environmental impacts, and may cause funding shortfall-related safety problems."¹⁷ Continued storage impacts were not considered in the PFS evaluation.

Also, as the lead agency in the preparation of the final EIS for the PFS facility, NRC restricted other cooperating agencies, such as the U.S. Bureau of Indian Affairs ("BIA") from considering environmental impacts from the ultimate disposition of the spent fuel. The PFS FEIS states "BIA's NEPA review is limited to the scope of the proposed lease negotiated between the parties, not evaluation of actions outside the lease (e.g., ultimate disposition of the SNF [or spent nuclear fuel])."¹⁸ Because of the inability to address impacts from continued storage, the BIA disapproved the PFS lease agreement, in part, as a result of their concern that "years-long delays in construction of a permanent SNF repository, reflected in the Waste Confidence Decisions of the NRC, provides no firm basis to determine when and under what circumstances SNF might be taken away from trust land if the proposed ISFSI is built."¹⁹ BIA was further concerned that the PFS EIS "fails to adequately address the impacts of transportation of SNF away from the PFS facility."²⁰ The BIA ROD disapproving the PFS lease agreement was vacated and remanded back to BIA.²¹ Notwithstanding that the BIA decision was overturned, impacts from continued spent fuel storage were not addressed for the PFS facility.

¹⁶Draft GEIS at 1-4.

¹⁷*In the Matter of Private Fuel Storage*, LBP-98-07 at xiii.

¹⁸PFS FEIS at 1-17.

¹⁹U.S. Bureau of Indian Affairs, *Record of Decision for the Construction and Operation of an Independent Spent Fuel Storage Installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians (Band) in Tooele County, Utah (BIA ROD)*, September 7, 2006, at 19.

²⁰*Id.* at 21.

²¹*Skull Valley Band of Goshute Indians v. Davis*, 728 F. Supp. 2d 1287 (D. Utah 2010) (holding that the Records of Decision for the U.S. Bureau of Indian Affairs and the U.S. Bureau of Land Management be vacated and remanded back to the agencies, but the court stated that the agencies could deny the lease agreement and the right-of-way requests if performed in manner consistent with the decision).

10. The Draft GEIS incorporates many of the findings of the 2001 PFS FEIS without adequate support or justification.
- a. The Draft GEIS states that the NRC concluded that the PFS storage facility would provide large benefits to the Skull Valley Band of Goshute Indians ("Band") and the local county - Tooele County. The Draft GEIS assumes that local and state agencies would receive tax payments from the storage licensee. Staff then conclude that local impacts on the economy would be significant and beneficial.²²
 - i. As mentioned above, the Draft GEIS fails to consider negative impacts on the local or state economy, such as the real, not merely speculative, impacts from a community losing economic development projects due to the stigma associated with nuclear waste.
 - ii. Depending upon the owner of the property and the facility (e.g., Native American or federal), local and state property taxes, or payment in lieu of taxes may not be assessed.
 - iii. Furthermore, the Draft GEIS states that the PFS FEIS designated proposed payments made by PFS to the Band and to Tooele County as a large benefit. The Draft GEIS fails to discuss the agreements with PFS and why the PFS FEIS found those agreements to be beneficial. In addition, there is no discussion nor supporting documentation that DOE would enter a consent agreement with a local community in the amounts purported to be paid by PFS to the Band. Nor is there any support provided that DOE would agree to similar terms with a local government for law enforcement as that agreed to by PFS and Tooele County.
 - b. Based on the PFS FEIS, NRC concludes that a generic facility would have a small impact on public services.²³ Staff assume that all storage facilities would be sited in a "sparse population," similar to the PFS facility where only 30 individuals live on the Reservation near the facility.²⁴ Staff fail to support its assumption beyond mere speculation. For example, staff make no effort to compare the PFS

²²Draft GEIS at 5-9.

²³Draft GEIS at 5-9.

²⁴*Id.*

demographics to G.E. Morris or proposed storage sites. Additionally, although the Draft GEIS assumes there would be a small impact on public services, staff fail to discuss the anticipated impact by the proposed PFS storage facility in an area where the availability of law enforcement and emergency services are limited as in Skull Valley. Additionally, while the *BIA ROD* was vacated, BIA's denial was in part based on the limited law enforcement available at the proposed facility.²⁵

- c. The Draft GEIS fails to mention potential impacts on local and state infrastructure which must be assessed in a site specific analysis.
- d. The Draft GEIS states "[i]t is likely than an away-from-reactor storage facility [like PFS] would also be located in an area away from sensitive perennial and wetland habitats to satisfy laws such as the Endangered Species Act (ESA) and the Clean Water Act (for wetlands)," but that "in some locations sensitive terrestrial features may be unavoidably affected."²⁶ The Draft GEIS fails to acknowledge that the intermodal storage facility for PFS was proposed to be located within two miles of the 1440-acre Timpie Springs Wildlife Management Area and the Great Salt Lake where thousands of birds migrate each year.²⁷ Although vacated, the U.S. Bureau of Land Management denied the PFS request for a right-of-way near the Timpie Springs Wildlife Management Area.²⁸

Staff then mention the impacts to terrestrial resources at the PFS facility were determined to be small.²⁹ Then staff concluded that the impacts at a storage site would be also small to moderate, "based primarily on the potential impacts of construction activities."³⁰ It is mere speculation that an away-from-reactor storage facility would be located in an environment similar to the PFS facility - arid desert but with facilities near a wildlife

²⁵ See *Skull Valley Band of Goshute Indians v. Davis*, 728 F. Supp. 2d 1287 (D. Utah 2010).

²⁶ Draft GEIS at 5-26, 27.

²⁷ See <http://publiclands.org/explore/site.php?id=1401>.

²⁸ U.S. Bureau of Land Management, *Record of Decision Addressing Right-of-Way Applications U 76985 and U 76986 To Transport Spent Nuclear Fuel to the Reservation of the Skull Valley Band of Goshute Indians* (September 7, 2006).

²⁹ Draft GEIS at 5-27.

³⁰ *Id.*

management area and wetlands. NRC cannot support any generic conclusion for terrestrial impacts.

- e. The Draft GEIS notes that the PFS FEIS determined the aesthetic impacts to be small to moderate and similarly concludes that the impacts at an away-from-reactor ISFSI would also be small to moderate.³¹ Again, whether aesthetic impacts are small or large is site dependent. For example, local researchers raised substantial concerns that light pollution from the PFS facility would destroy their research, having a substantial aesthetic impact.
- f. The Draft GEIS notes that during construction the impacts at the PFS facility were determined to be small to moderate and concludes that impacts due to transportation, mostly traffic, would be also be small to moderate for an away-from-reactor site.³² The Draft GEIS only discusses impacts due to congestion and accidents. However, the Draft GEIS does not address transportation impacts on the infrastructure or safety related to the infrastructure. Utah State Route 196 (SR-196) is a narrow, shoulder less, undivided two lane highway. The Draft GEIS does not discuss the impacts from heavy construction vehicles and heavy haul trucks traveling on SR-196. For example, the Draft GEIS does not address accident conditions when an oversized, heavy haul truck is traveling 20 miles per hour on the narrow, undivided highway. Nor does the Draft GEIS address local impacts to maintaining the highway due to the excessive vehicular and cask weights.

³¹Draft GEIS at 5-41.

³²Draft GEIS at 5-46 to -48.