

Analysis Report].” 45 Fed. Reg. 74,693 at 74,964 (November 12, 1980). The Commission went on to explain:

The single license granted under Part 72 prior to the start of construction requires considerable detail in the license application, particularly in the SAR. There must be sufficient detail to: (1) Support the findings enumerated in § 72.31 [renumbered as § 72.40] for the issuance of a license, and (2) Serve as the bases for both the license conditions applicable to design and construction and the license conditions, including technical specifications, applicable to operations.

Id. at 74,695.

As to the scope of the Environmental Report, the Commission directed that it is "an evaluation of the environmental impact of the ISFSI on the region in which it is located, including the transportation that is involved." Id.

Given this direction by the Commission, the NRC staff should not be hesitant in rejecting PFS's application if it does not contain sufficient detail about ISFSI design, construction, technical specifications, and operations, and the regional effects, including transportation, of activities relating to the ISFSI. This 2.206 petition points out some obvious deficiencies in PFS's application. However, the petition does not purport to be a compilation of all the deficiencies in PFS's application.

1. Corporate Information

First of all, who is Private Fuel Storage, LLC? The License Application (LA) mentions that it is "a limited liability company owned by eight U.S. utilities." LA p. 1-3. Those utilities are unnamed; however, PFS lists individuals from seven nuclear power utilities as directors of PFS. LA p. 1-10. PFS states that each member utility selects one member of the Board of Managers. SAR p. 9.1-1. Even reading between the lines one cannot ascertain the name of the eighth utility member of the consortium -- or are there now only seven members? While there is a general discussion about staffing positions and such unsupported statements as "[t]he Board will ensure the appropriate financial stability is maintained on an operating basis" (SAR p. 9.1-3), there is no description of the assets of the limited liability company nor is there mention or copy of a limited liability company agreement.

2. Financial Information

The submittal is as equally devoid of specifics about financial information as it is about the underlying corporation. For example, the License Application estimates total construction costs at \$100 million, "including site preparation; construction of the access road, administration building, visitors center, security and health physics building, operations and maintenance building, canister transfer building and storage pads; procurement of canister transfer and transport equipment; and transportation corridor construction." LA p. 1-5. Construction costs are meaningless and cannot be evaluated unless each portion of the construction costs is specified and the basis for each cost estimate is provided.

The application does not demonstrate that PFS "either possesses the necessary funds, or ... has reasonable assurance of obtaining the necessary funds" as required by 10 CFR § 72.22(e). The applicant indicates that it plans for each of the eight consortium members to contribute an additional \$6 million, *i.e.* a total of \$48 million. LA p. 1-5. However, the application does not include pertinent portions of subscription agreements or other legally binding commitments to give any assurance of obtaining necessary funds.

The amount of equity contributions is dependent upon the number of PFS members; thus the amount of available funds is affected by any withdrawing utility member. In fact, the number of member utilities has already decreased since the formation of the consortium. PFS was initially organized with eleven utility members. At this time, eight (or maybe seven) utilities remain. Without adequate documentation, PFS has not shown it either possesses the necessary funds or has reasonable assurance of obtaining the funds.

PFS also plans to raise additional capital through "Service Agreements" with customers. LA p. 1-5. Based on PFS's own estimates, at a minimum it must raise an additional \$52 million to complete construction. PFS must demonstrate "reasonable assurance of obtaining the necessary funds" not simply a mechanism for obtaining funds. Furthermore, the terms of the service agreements are not even provided, including items such as costs, periodic terms, liability, performance, and breach clauses.

To show it has reasonable assurances of obtaining funds, PFS should document an existing market and the commitment of a sufficient number of service agreements to fully fund

construction of the facility. The applicant implies that 15,000 MTU of storage commitments would be adequate to fund construction. LA p. 1-5. The applicant has not substantiated how storage commitments for 15,000 MTUs would be adequate. In addition, there must also be sufficient funds committed for operation, decommissioning, and contingencies for the number of casks contracted to fund construction.

PFS mentions an option to finance construction costs through debt financing secured by service agreements. LA p. 1-6. Similarly, debt financing will not be viable until a minimum value of service agreements is committed.

The license applicant must show that it has the necessary funds to cover the "[e]stimated operating costs over the planned life of the ISFSI." 10 CFR 72.22(e)(2). PFS aggregates all direct costs into one lump sum of \$100 million for "initial costs to site the facility, the costs to engineer and construct the facility and annual costs associated with the Tribal lease, maintenance, operation, transportation, security, license fees, and taxes." ER p. 7.3-1. PFS lists total life cycle cost for the facility and its operation at \$1.526 billion (40 year life) or \$1.125 billion (20 year life). Id.

The gross direct costs listed by PFS are meaningless and impossible to evaluate and must be broken out into categories that are capable of evaluation. For example, there is no mention of the cost to lease land for the site or any other payments to the Indian tribe for allowing the siting of the ISFSI on its reservation. PFS states that an indirect benefit of the ISFSI "include payments to Tooele County as cask surcharges." ER p. 7.2-3. How much does PFS anticipate that it must pay as cask surcharges? Are there other payments to State or local governmental entities that PFS will make as part of its expense to operate the ISFSI, such as emergency services and other infrastructure needs? What are the transportation costs? Again, a meaningful review of financial assurance cannot begin unless all expenses are adequately described.

A Part 72 license application must include a proposed decommissioning plan that also contains a decommissioning funding plan. 10 CFR § 72.30(a),(b). The decommissioning plan "must include a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning ..., including means of adjusting cost estimates and associated funding levels periodically over the life of the ISFSI." 10 CFR § 72.30(b). A cost estimate, method of funding, and method of adjusting cost estimates are specified in the license application. L.A. pp. 1-7,8. However, the application does not provide adequate

information to evaluate or substantiate the cost estimate, funding method, or method of adjusting. Nor does the application describe how it will comply with NRC Regulatory Guide 3.66.

The license application does not provide any financial information beyond mere hypothetical scenarios to substantiate that PFS "possesses the necessary funds" or "reasonable assurance of obtaining the necessary funds" to warrant the NRC accepting the license application for review.

3. Legal Right to Use or Control Land

Another obvious and fundamental question not addressed in the submittal is what legal right does PFS have to use and control the land on which it intends to conduct activities relating to the storage facility. There is no discussion or documentation about PFS's right to use land for the facility site, the transfer point, road widening or construction of a railroad spur.

There is a passing reference to a lease between PFS and the Skull Valley Band of Goshutes; however, a copy of the lease is not provided. The application is devoid of any documentation showing that PFS has legal authority to use the site for the term of the license. It is useless for PFS to address facility construction, restricted areas, access roads etc., if it cannot demonstrate that it has a property right to conduct or control these activities. Such a glaring omission raises questions such as: What are the terms of the lease? Under what conditions can the lease be terminated? As the landowner of the ISFSI site, should the Skull Valley Band of Goshutes be required to be joined with PFS as the licensee?

PFS merely states that the intermodal transfer point will be located at the Union Pacific Railroad mainline and Interstate 80. There is no discussion about the right to construct and use any of the land at the transfer point. It appears that Union Pacific may have a 100 foot right-of-way parallel to the mainline (see 43 USC § 934); however, from the enclosed plat map, it can be seen that the major landowner around Timpie junction is Cargill Inc. Exh 1. What legal arrangements, if any, has PFS made to use land to construct a transfer facility?

PFS cavalierly states that it may construct a rail spur parallel to the existing Skull Valley Road. ER p. 3.2-5. There is absolutely no discussion about PFS's right to use any property for such an undertaking. Nor is there any discussion of PFS's

legal right to undertake the required widening of Skull Valley Road to accommodate heavy haul truck transportation of the casks. The loaded haul trucks are expected to weigh 142 tons and are twelve feet wide. SAR p. 4.5-4. The existing Skull Valley Road pavement is 22-24 feet wide. ER p. 3.2-5.

From the plat map it can be seen that the rail line is on the north side of Interstate 80--the proposed ISFSI would be 24 miles to the south along Skull Valley Road. By necessity, any rail spur would have to be built over or under Interstate 80. The existing underpass is controlled by the State of Utah. Moreover, the underpass is restricted in size and would need to be modified to accommodate rail tracks or road widening. Exh. 2. Any modification to the underpass requires the permission of the State and the Federal Highway Administration. The application is devoid of any meaningful discussion of these fundamental facts. If PFS can overcome the constraints of moving the casks from the mainline off-loading point north of Interstate 80 to the south side of the freeway, it must then demonstrate that it has permission to use the land parallel to Skull Valley Road to construct the 24 mile long rail spur to the ISFSI.

The ER suggests that the rail spur would be six feet from the existing Skull Valley Road. See e.g., ER p. 3.2-6. While the description in the ER is incomplete, one assumes that PFS intends to use property under the control of the governmental entity that has jurisdiction over Skull Valley Road. Again, the application is deficient not only in adequately describing the size of any right-of-way associated with the public road, but also in providing information about PFS's legal right to use the property. Even if PFS obtained approval from the governmental entity for such a use, PFS has not demonstrated that building a rail spur in that area is permissible. If Skull Valley Road and any rights-of-way were established by easement or other permissive use, the construction of a rail spur would be outside the scope of established permissive uses and an infringement on existing property rights.

The following statement in the Environmental Report is an excellent example of the applicant's inability to submit a complete and meaningful application:

An analysis to evaluate two transportation corridor alternatives (Intermodal transfer point/Skull Valley Road improvements and railroad spur) for transporting the shipping casks from the railroad mainline to PFSF will be prepared.

ER p. 9.5-1 (see also SAR p. 1.4-1). There is silence on the part of the applicant as to when the analysis will be done.

Understanding how PFS is going to transport the spent fuel casks from the mainline at Timpie junction to the facility is an integral piece of the license application and is required by 10 CFR § 72.108. Unlike nuclear power plant licenses that require a license for both construction and operation, NRC has chosen to make an ISFSI Part 72 license a "one step licensing procedure." Furthermore, the Commission agreed with comments to Part 72 rulemaking that "the transportation involved in fuel shipments to an ISFSI could be an important consideration in an evaluation of site suitability. This might be particularly true of a large installation." 45 Fed. Reg. 74,693 at 74,698 (1980). The PFS application is for storage of 4,000 spent fuel casks, which is indeed a very large installation. Neither NRC nor the public can begin to evaluate the health, safety and environmental effects of transportation of the casks from the railroad mainline to the proposed facility without a more meaningful description from the applicant.

4. The Transfer Point

In addition to failing to document that it has the legal right to use land at Timpie junction to construct a transfer building (as depicted in ER, Fig. 3.2-1), PFS has offered no discussion whatsoever about how it will handle off-loading casks from railcar to truck. PFS brushes over the issue by stating: "At the intermodal transfer point will be a short rail siding and a pre-engineered metal building, which will house a gantry crane for cask transfer." ER p. 3.2-5. The SAR 4.5.4.1 also glosses over intermodal transfer.

The applicant cannot satisfy 10 CFR § 51.45, § 72.32 or § 72.108 without addressing cask handling at the intermodal transfer point. Some obvious unanswered questions are: How many casks will be shipped in each shipment and what is the shipment frequency (the applicant's anticipated yearly shipment of 100-200 casks is too vague to evaluate health, safety and environmental concerns). What steps are involved in transferring the casks from railbed to heavy haul truck? What personnel are involved in intermodal transfer? What emergency plans are associated with the transfer facility? What emergency equipment will be located on site? How long will the casks be located at the transfer point? Where will the casks be stored while awaiting transfer? What physical structures will be built to maintain security of the casks at the transfer point? What security personnel and

procedures will PFS provide to protect the casks at the transfer point? Will the transfer facility require a separate NRC license?

PFS has failed to document how it can build a rail spur to the ISFSI and has also failed to document the functioning of the intermodal transfer point. Taken together, these two factors alone should be sufficient for NRC to reject PFS's application.

5. Contingency Measures

On cask receipt, PFS states it will conduct contamination surveys after removing the shipping cask lid but before removing the canister from the shipping cask. LA, App. A, p. TS-19. If contamination is found, PFS proposes to return the canister and shipping cask to the generating reactor for decontamination. The accessible external surfaces of the canister with just lid removal will be limited and not all contamination may be detected. Thus, it is possible that PFS may accept contaminated canisters for storage.

Id.

PFS has not provided procedures for returning casks to the generating reactor. The SAR indicates that the casks will be inspected for damage prior to accepting the cask and before it enters the Restricted Area. SAR p. 5.1-4. If the casks are damaged or do not meet the criteria specified in LA App. A, p. TS-19, where will the casks be housed prior shipment? How will PFS determine appropriate handling and preparation for shipment? By what transportation mode will the cask be shipped? Will emergency response personnel escort the leaking cask back to the reactor?

PFS has not discussed what measures it will take if casks leak or contamination otherwise appears during the 20 or 40 year storage period. Sending such casks back to the reactor may not be an option for several reasons, such as: PFS does not have the facilities to repackage contaminated canisters, the casks may be too contaminated to transport, or the nuclear power plant from which the fuel originated may have been decommissioned.

Part of PFS's justification for the need for the facility (ER 1.2) and the facility's direct benefits (ER 7.2.1) is that reactors that have reached the end of their operating life may be completely decommissioned if spent fuel could be shipped off-site. See also ER p. 8.1-2,3. Accepting fuel rods from fully decommissioned reactors enhances the need for PFS to adequately

describe how it will deal with contaminated casks over the life of the storage facility.

Another glaring omission from the submittal is the lack of contingency measures if, for some reason, the lease is terminated before the expiration of the license (failure to disclose lease termination conditions is yet another reason necessitating public scrutiny of the lease). This situation would be critical if the nuclear power plant where the fuel originated was decommissioned and a permanent repository was not available.

ACTION REQUESTED:

The State of Utah requests NRC to not accept the PFS Part 72 licence submittal because of its gross deficiencies and incompleteness.

The reasons stated above do not attempt to point out all the deficiencies in the PFS submittal, however, they do show:

- (1) PFS has failed to submit adequate corporate or financial information;
- (2) PFS has not shown that it has the legal right to use land for construction of the ISFSI or intermodal transfer facility.
- (3) PFS has not shown that it has a legal right to modify to Skull Valley Road to accommodate its heavy haul trucks or use of the public right-of-way to construct a rail spur.
- (4) PFS completely fails to address how it will build a rail spur connecting the mainline on the north side of I-80 to Skull Valley Road on the south side of I-80 and PFS also fails to address details about the intermodal transfer option.
- (5) PFS has failed to develop any contingency measures for casks that may become contaminated during storage and it has not addressed what measures it will take if its lease with the the Indian tribe prematurely or unexpectedly terminates before a permanent repository is available or when the generating reactor has been decommissioned.

The application is often simply a restatement of the NRC regulations with a general commitment to meet those requirements

at some unspecified future date. It is a waste of NRC, State of Utah and the public's resources to review and comment on an application that lacks even the basic details required by Part 72. The Commission has directed that NRC's one stop licensing procedure requires "considerable detail." The PFS submittal falls woefully short of considerable detail and should not be accepted and docketed by NRC staff.

DATED this _____ day of _____, 1997

Respectfully submitted,

STATE OF UTAH BY AND THROUGH THE UTAH
DEPARTMENT OF ENVIRONMENTAL QUALITY

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CERTIFICATE OF MAILING

This is to certify that the original of this 2.206 petition was mailed, Federal Express, to:

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and that copies of this petition were mailed, first class postage prepaid to the following:

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DATED this _____ day of _____, 1997.
