

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, LLC)	
(Independent Spent Fuel)	ASLBP No. 97-732-02-ISFSI
Storage Installation))	October 10, 2001

**STATE OF UTAH'S REQUEST FOR ADMISSION OF LATE-FILED
CONTENTION UTAH RR (Suicide Mission Terrorism and Sabotage)**

September 11, 2001 has created a new and imminent threat of terrorism and sabotage that previously was unimaginable. As the agency with the overriding responsibility for assuring the public health and safety in the operation of nuclear facilities, the Nuclear Regulatory Commission has advised that “[t]he agency continues to monitor the situation, and is prepared to make any adjustments to security measures as may be deemed appropriate.” *See* Exhibit 1, NRC Press Release No. 01-112, “NRC Reacts to Terrorist Attacks” dated September 21, 2001. Moreover, “in view of the recent unprecedented events, Chairman Richard A. Meserve, with the full support of the Commission, has directed the staff to review the NRC’s security regulations and procedures.” *Id.*

The State hereby seeks the admission of late-filed Contention Utah RR in light of the unprecedented events that occurred on September 11, 2001. Utah RR challenges the failure of Private Fuel Storage, LLC’s (“PFS’s”) Safety Analysis Report (“SAR”), PFS’s Environmental Report (“ER”), the Safety Evaluation Report, September 2000 (“SER”), and the draft Environmental Impact Statement¹ (“DEIS”) to assess the impacts from suicide mission

¹ 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*

terrorism and sabotage that could occur at the PFS proposed facility and related activities.

The State meets the late-filed factors and, for the reasons stated below, the State requests the Board to admit Utah Contention RR. This contention is supported by the Declaration of Marvin Resnikoff, Ph.D., attached hereto as Exhibit 2.

BACKGROUND

As part of its original contentions, the State filed Contention Utah K, Inadequate Consideration of Credible Accidents, which, with some minor exceptions, was admitted by the Board. *See* LBP-98-7, 47 NRC 142, 190-91, 234-35, 247-48 (1998), *aff'd on other grounds*, CLI-98-13, 48 NRC 26 (1998). Contention Utah K challenges PFS's risk assessment of an accidental mishap occurring at the PFS facility involving military aircraft, commercial aircraft and activities related to the use of the Utah Test and Training Range. The Board denied, in part, PFS's Motion for Summary Disposition. *See* LBP-01-19. Unlike Contention K, Utah RR addresses suicidal attacks on the PFS facility, the intermodal transfer facility, or while spent nuclear fuel ("SNF") is in transit to the PFS facility.

The State also filed Utah Security G (Terrorism and Sabotage)² but the Board denied its admission.³ Contention Utah Security G does not address suicidal terrorism and

Tooele County, Utah, June 2000.

²The Contention stated: "The Applicant has failed to adequately assess and describe procedures that will protect spent fuel from unauthorized access or activities, such as terrorism and sabotage, as required by 10 CFR §§ 73.25, 73.45, and Part 73 App. C." LPB-98-13, 47 NRC 360, 372 (1998); *see also* Board's July 7, 1998 Order (making publicly available its decision on Utah's physical security plan contentions).

³The Board ruled: "Inadmissible in that the contention and its supporting bases lack materiality; impermissibly challenge the Commission's regulations or generic rulemaking -associated determinations, including 10 C.F.R. § 72.184(a) concerning the submission of procedures and 10 C.F.R. Parts 71, 72, and 73 as they govern physical security for the off-site transportation of spent fuel; lack adequate factual support; and/or fail properly to challenge the PFS application." 47 NRC at 372.

sabotage. Neither Utah K nor Utah Security G raised the issues presented in Utah RR.

CONTENTION RR. Suicide Mission Terrorism or Sabotage

The Applicant, in its Safety Analysis Report, and the Staff, in its Safety Evaluation Report, have failed to identify and adequately evaluate design basis external man-induced events such as suicide mission terrorism and sabotage, “based on the current state of knowledge about such events” as required by 10 CFR § 72.94 (*emphasis added*). In addition, the scope of the Applicant’s Environmental Report and the Staff’s Draft Environmental Impact Statement is too limited to comply with the National Environmental Policy Act and 10 CFR §§ 72.34, 51.45, 51.61 and 51.71 because they do not adequately identify and evaluate any adverse environmental effects which cannot be avoided from attacks by suicide mission terrorism or sabotage.

BASES:

A. The Current State of Knowledge of Terrorism Changed on the Morning of September 11, 2001.

The horrific terrorism events of September 11, 2001, commonly referred to as the “Attack on America,” created a sea change that profoundly affects the NRC’s historic judgment and experience of what constitutes a terrorist attack. Now a suicide mission to crash a hijacked commercial airliner loaded with jet fuel into a nuclear facility is a reasonably foreseeable event.

Several knowledgeable sources voiced a call for increased security and enhanced efforts to protect nuclear facilities. At the International Atomic Energy Agency (“IAEA”) conference in Vienna, IAEA Director General, Mohamed ElBaradei, said: “The tragic terrorist attacks on the United States were a wake up call to us all. We can not be complacent. We have to and will increase our efforts on all fronts. . . . Unanimously, Member States at this General Conference called on the Agency to embark on a thorough review of its programmes to see what we can do to enhance security of nuclear material and

facilities.” See attached Exhibit 3, IAEA Press Release 2001/21, September 21, 2001.

Addressing the IAEA conference, U.S. Secretary of Energy Spencer Abraham warned:

“Clearly, terrorist will attack any target, so no one will be immune. And clearly terrorists will use any method. . . The terrible events of last week demonstrate in the clearest possible fashion the importance of maintaining the highest levels of security over nuclear materials.”⁴

Closer to home, the Department of Energy in response to the terrorists attacks, halted cross-country shipments of nuclear fuel, including a 40 ton rail shipment from West Valley, New York to Idaho. Exhibit 5, The DesMoines Register, *Nuclear waste cargo halted*, (Sept. 25, 2001).

The Commission was also quick to react to the September 11 terrorists attacks. Immediately after the attacks the NRC advised nuclear power plants to go to the highest level of security, and in monitoring the situation, NRC is “prepared to make any adjustments to security measures as may be deemed appropriate.” Exh. 1. Further, Chairman Meserve has “directed the staff to review the NRC’s security regulations and procedures.” Id.

Clearly, a new day has dawned, and the safety measures proposed for the PFS facility have, to date, been evaluated under the old perceptions of terrorism. With this new day must come a required new evaluation of the design basis external man-induced events from suicidal terrorism and sabotage, as required by 10 CFR §§ 72.34, 72.94, 51.45(b)(1)& (2).

B. In Light of the September 11th Terrorists Attacks, NRC’s Previous Position on Design Basis External Man-induced Events Cannot Support the Required Finding of Reasonable Assurance of Adequate Protection of the Health and Safety of the Public in Licensing the PFS Project.

For PFS to be granted an ISFSI license, the Commission must make a finding that,

⁴See Exhibit 4, The Guardian, Special Report: *Sellafield nuclear plant could be prime target for terrorists* (Sept. 18, 2001).

inter alia, “[t]he activities authorized by the license can be conducted without endangering the health and safety of the public. . .” 10 CFR § 72.40(13)(i). The Commission “has long interpreted this provision [AEA § 182(a), 42 USC § 2232(a)] as a demand for ‘reasonable assurance’ of that protection.” Nader v. NRC, 513 F.2d 1045, 1052 (DC Cir. 1975). In the wake of the September 11th terrorist attacks, the Commission will be unable to make the required finding of reasonable assurance with respect to the public health and safety if the Staff’s review of the PFS license application is under the old notions of what constitutes design basis external man-induced events. The State is not challenging existing regulations. Rather, given the events of September 11th, the State submits that it would be an abrogation of NRC’s statutory mandate to continue its review of the PFS license application under its past notions of design basis external man-induced events siting factors.

In the PFS case, evaluation of siting factors, including examination of design basis external man-induced events, are required elements of the license application process. PFS must show that it meets the regulatory requirements of 10 CFR § 72.94 and NEPA. Section 72.94 requires an examination of activities that might endanger the ISFSI; identification of important man-induced events that affect the ISFSI design; collection and evaluation of information concerning the potential occurrence and severity of such events; and adoption of appropriate methods for evaluation of “the design basis external man-induced events, based on the current state of knowledge about such events.” To comply with NEPA, the scope of PFS’s ER and the Staff’s DEIS must consider adverse environmental effects that cannot be avoided and analysis of the costs and benefits of the proposed action. 10 CFR §§ 72.34, 51.45, and 51.61. The events of September 11th and their aftermath require a change

in scope of the ER and DEIS to include an analysis “of Federal policy, including factors not related to environmental quality ... [that] are relevant to the consideration of environmental effects of the proposed action.” 10 CFR § 51.71(d).

Evaluation of whether PFS meets those requirements directly affects the licensability of the proposed ISFSI. The Commission, in this proceeding, has made a distinction between the licensing process and an already licensed facility. *See* CLI-01-12, 53 NRC 459, slip op at 9 (2001). In this changing environment, where NRC is reviewing its safeguards regulations, where new anti-terrorism legislation is being introduced in Congress, and where there is a heightened state of alert around nuclear facilities and nuclear materials shipments, the review in the licensing process must, by necessity, be part of the national strategy to defeat terrorism and protect public health and safety.⁵ Accordingly, Utah RR does not challenge NRC regulations but demands that existing siting regulations and the scope of the ER and DEIS be evaluated in light of the recent terrorists attacks and threats.

a. NRC’s Old Notions of Terrorism Are Still Evident even after September 11th

Pursuant to 10 CFR § 72.180 PFS must establish that it will comply with the physical protection requirements of 10 CFR § 73.51. The Staff must review and approve an applicant’s design criteria for physical protection of the ISFSI from sabotage including “[t]he design bases and the relation of the design bases to the design criteria....” 10 CFR § 72.182.

In reviewing a petition for emergency safeguard measures, the Commission

⁵ Prior to September 11, the NRC already had an established role in contingency response planning and coordination with the FBI in dealing with terrorists’ threats; in radiological emergency response planning with FEMA; and in detecting and measuring radioactivity with DOE. *See Preliminary Questions for the Hearing on U.S. Federal Efforts to Combat Terrorism*, Hearing before the Committee on Appropriations (May 8, 2001) (hereinafter “Preliminary Questions for May 8, 2001 Hearing”), Response, in part, to Question No. 2.

considered safeguards policy matters, starting with the premise that “specific threat levels are not defined in NRC regulations.” NRC (Licensees Authorized to Possess or Transport Strategic Quantities of Special Nuclear Materials), CLI-77-3, 5 NRC 16, 24 (1977). Based on Staff practice, the Commission stated that safeguards systems under NRC regulations will protect against a minimum of “three well-armed, well-trained outside attackers, who might possess inside knowledge or assistance.” Id. The Commission based its position on “judgment and experience” supported by “historical evidence on the size and character of groups involved in incidents of terrorism”; its relationship with other federal agencies with expertise on terrorism; and its record review “of the types of actual and threatened violence in the commercial nuclear industry.” Id. The Commission concluded, “No NRC-licensed nuclear facility or activity has even been subjected to armed attack, and we have no evidence suggesting that such attack is likely.” Id. (*emphasis added*).⁶

The CLI-77-3 decision occurred in 1977. Yet today, the NRC Staff is still operating as if there is no evidence of a likely terrorist attack. In the Duke Cogema Stone & Webster Mixed Oxide Fuel Fabrication Facility licensing proceeding, the Staff, on September 12, 2001, argued: “GANE [petitioners] provides no support for its general assertion [] that ‘malevolent acts must be analyzed as a foreseeable environmental impact under NEPA . . . and GANE does not establish that terrorist acts (involving the proposed MOX Facility or related materials) fall with the realm of ‘reasonably foreseeable’ events.’”⁷

⁶ In May 2001 the Commission still held that there was a low terrorism threat to nuclear facilities and material. *See* “Preliminary Questions for May 8, 2001 Hearing” Response to Question No. 5 where NRC stated, in part: “While the consensus in the U.S. government is that the threat of terrorism and weapons of mass destruction worldwide has increased, threats to NRC-licensed facilities and materials have been low.”

⁷“NRC Staff’s Response to Contentions Submitted by Donald Moniak,” et. al (September 12, 2001), at 22,

b. New Measures Contemplated

In response to the terrorist attacks on the World Trade Center and the Pentagon, the NRC initially played down the chance that a jetliner could destroy a nuclear power plant.⁸ Now, however, the Commission is planning to study whether a plant could survive such a disaster.⁹ As PFS is in the process of demonstrating the licensability of its facility, and activities related thereto, it is only reasonable to evaluate whether the PFS facility could withstand the crash of a jetliner into the Canister Transfer Building (“CTB”), into the storage casks stored on the pad, or into fuel being transported to PFS.

Congress has reacted swiftly to the threat of terrorist attacks at nuclear facilities and in the transportation of nuclear material by introducing amendments to the Atomic Energy Act (“AEA”). See attached Exhibit 7, *Markey.077, Atomic Energy Act Hearing before the House Energy and Commerce Committee*, 107th Congress (2001) (adding a new Section 170C, “Design Basis Threat” to AEA which would require NRC to issue regulations that, *inter alia*, shall take into account the events of September 11, 2001; the potential for suicide attacks; air-based threats; threats of fires, especially fires of long duration; and protection of dry cask storage).¹⁰

Docket No. 070-03909, Duke Cogema Stone & Webster Mixed Oxide Fuel Fabrication Facility (Construction Authorization Request).

⁸An NRC-issued statement reassured the public by claiming “prestressed concrete containments -- typically 4 to 5 feet thick -- are so robust that it is unlikely that a jumbo jet could penetrate the containment structure.” San Francisco Chronicle, *Survivability of nuclear plants to be re-examined* (October 5, 2001), attached Exhibit 6.

⁹Id. Also of concern is that in recent simulated mock exercises at nuclear power plants, the NRC found that had such event been real there could have been a credible impact on safety. Id.

¹⁰See also Markey.079, Sec. 4 Transportation of Nuclear Materials (need for security background checks of individual driving or traveling with any vehicle transporting nuclear materials), and Markey.080, Sec. 4 Defense of Facilities (in state of war or national emergency, the President may deploy U.S. Armed Forces or National Guard to defend facilities licensed by NRC).

In the wake of these rapidly evolving legal and policy changes to guard against terrorist threats and attacks after the events of September 11th, it is obvious that evaluation of the design basis threat and scope of the DEIS in the PFS licensing process cannot rest on old assumptions. Such design basis threats create a new state of knowledge about design basis external man-induced events and appropriate methods must be adopted for evaluating those events. 10 CFR § 72.94(c). The PFS facility is not designed to withstand such events.

C. The PFS ISFSI Site and its Related Activities Present an Opportune Terrorist Target

The location of the proposed PFS facility, in the middle of Skull Valley,¹¹ surrounded by critical military installations vital to national security -- installations such as the Utah Test and Training Range, Dugway Proving Ground, Deseret Chemical Depot, and the Tooele Army Depot¹² -- and near commercial jetways presents an opportune target for suicide mission terrorism. The transportation of SNF to the proposed ISFSI and casks stored at the Intermodal Transfer Facility (“ITF”) also present exposed terrorist targets.¹³

Under the PFS proposal, the entire current United States inventory of commercial SNF, 40,000 metric tons, potentially will be concentrated in one location in dry storage casks. Four thousand HI-STORM 100 casks will be stored out in the open on concrete pads

¹¹The PFS site is surrounded by unimproved rangeland. ER (Rev. 1) at 2.1-2. The unfenced two mile access road from Skull Valley Road leads to a simple barbed wire range fence enclosing the 820 acre area leased by PFS from the Skull Valley Band of Goshutes. DEIS at 2-3. The 99 acre owner-controlled area is enclosed by two security chain link fences. Id.

¹²*See e.g.*, Utah’s request for admission of late-filed Utah Contention KK (Potential Impacts to Military Training and Testing and State Economy) (July 27, 2000) at 2; State’s Contentions (November 27, 1997) at 74 and 145.

¹³From the main line rail, casks will be transported to the ISFSI either via a 32 mile rail line that PFS intends to build on public lands in Skull Valley or via a 26 mile route by heavy haul truck from a transfer facility located adjacent to Interstate 80. DEIS at 2-12 and 2-34.

over a 99 acre area. The casks are approximately twenty feet high and eleven feet in diameter (DEIS at Table 2.6), and the mass accumulation of these casks would be easily visible from the air, from Skull Valley Road, and from other unimproved roads near the site. No other nuclear facility currently amasses this enormous volume of SNF above ground in one location.¹⁴ Such a massive target located near critical military installations would present a desirable terrorist target.

The likely mode of SNF transportation will be along a PFS-constructed rail corridor in an uninhabited area of Skull Valley, where dirt roads crisscross the proposed rail line. Again, this would present an ideal terrorist target. The ISFSI site is approximately 45 miles from a large metropolitan area and 50 miles from Salt Lake International Airport. Significantly, the ISFSI is located only 6 to 12 miles from existing commercial jetways.¹⁵ The ITF is directly under a jetway. Thus, it would take only minutes or seconds for a jetliner to veer off an existing jetway and reach the ISFSI or ITF. Moreover, at the ITF, casks waiting shipment to PFS will be in plain view from the important Interstate 80 commercial corridor.

As Energy Secretary Abraham warned: terrorists will attack any target, use any method, and the terrible events of September 11th demonstrate the importance of maintaining the highest levels of security over nuclear materials. *See* Exhibit 4. Furthermore, Attorney General Ashcroft stated, “The president’s (*sic*) clearly stated that he thinks we

¹⁴Most nuclear facilities store spent fuel in a storage pool protected by a building and some facilities also store a small quantity of fuel in dry casks almost exclusively at the reactor sites. DEIS at 1-7.

¹⁵ The proposed ISFSI is located 6.9 statute miles from the nearest edge of commercial Airway J-56 and 12.6 statute miles from the nearest edge of commercial Airway V-257. Aircraft Crash Report at 62 and 66, and approximately 24 statute miles from the edge of commercial Airway V32-200. *See* portion of IFR Enroute Low Altitude - U.S., United States Government Flight Information Publication, attached hereto as Exhibit 8.

should have a heightened awareness.... On September the 10th, we didn't have an understanding of how high the risk factors were. We need to be prepared and we need to understand that there is a possibility of additional activity, and act accordingly.” See attached Exhibit 9, Attorney General Ashcroft Press Conference, October 2, 2001, at 3. To maintain the highest levels of security over nuclear materials, the Staff must re-evaluate the siting criteria factors for the PFS ISFSI and redefine the scope of its NEPA analysis. In today's explosive environment, to foreclose this application of NRC's existing regulations would result in a failure of NRC to fulfil its mission of protecting public health and safety in the licensing and operation of nuclear facilities.

D. The PFS Facility Is Vulnerable to a September 11th Type Attack.

In the September 11th attack, terrorists intentionally crashed four commercial airliners, three of which hit their intended targets. Terrorists not only sacrificed innocent lives but their own to attain their goal of destruction and mayhem. Neither the SAR nor the SER identify or adequately evaluate design basis external man-induced events as a result of a September 11th type terrorist attack. See 10 CFR § 72.94. The ER and DEIS suffer the same inadequacies – they do not adequately identify and evaluate adverse environmental impacts from suicide mission terrorist attacks. 10 CFR §§ 72.34; 51.45, 51.61 and 51.71.

1. A Boeing 757 or Heavier Aircraft Will Penetrate A HI-STORM 100 Cask. PFS plans to store SNF in Holtec International HI-STORM 100 casks.¹⁶ SAR, Rev. 17 at 4-1.1. The HI-STORM is designed to only withstand a tornado missile impact of a 1,800 kg (3,968

¹⁶A HI-STORM cask consists of 26.75 inches of concrete and a combined 2.75 inches of steel. Resnikoff Dec. at ¶ 9. The PFS is further encased in a 0.5 inch thick steel HI-STAR canister. Id.

lb) car moving at a speed of 126 mph. SAR, Rev 17 § 8-2.2.2. Nevertheless, a Boeing 757 commercial airliner, such as that used in the September 11th attack, traveling at 480 mph or greater will penetrate the HI-STORM cask and canister.¹⁷ Resnikoff Dec. at ¶ 10. Other commercial airliners with heavier engines than a Boeing 757 will also penetrate the HI-STORM cask and canister. Id. at ¶ 11.

2. A Holtec HI-STAR Shipping Cask Will Not Withstand a Commercial Airliner Crash. PFS plans to transport SNF in a Holtec International HI-STAR 100 shipping cask. SAR, Rev 0 at 4.7-16. The HI-STAR is only designed to withstand a 30 mile per hour drop onto an unyielding surface (10 C.F.R. § 71(c)(1)), not to withstand a 255,000 pound Boeing 757¹⁸ traveling 500 miles per hour. Resnikoff Dec. at ¶ 26.

3. The CTB and ITF Will Not Withstand a Commercial Airliner Crash. The CTB, where the transfer of PFS canisters from shipping casks to storage casks will occur, has two foot thick walls and an eight inch thick roof (SAR, Rev. 21 at 4.7-6c), and is designed to only withstand a 3,990 pound car moving at 91 mph (SAR, Rev. 9 at § 3.2.8.4). However, a Boeing 757 aircraft will penetrate over two feet of concrete and easily penetrate the CTB. Resnikoff Dec. at ¶ 12. In addition, PFS's proposed ITF, located 1.8 miles west of Rowley Junction, SAR, Rev. 17 at 4.5-2, will consist of a pre-engineered metal shell to provide weather protection. ER, Rev. 13 at 3.2-5. The ITF shell will not provide any substantive protection for the shipping casks from a commercial airliner. Resnikoff Dec. at ¶ 13.

¹⁷The September 11th airliners crashed at estimated speeds of 500 mph. Resnikoff Dec. at ¶ 11.

¹⁸A Boeing 757-200 may weigh up to 255,500 pounds at take off. *See* Boeing 757-200 specifications, Resnikoff Dec., Exhibit E. Other commercial airliners such as Boeing 757-300, 767s, and 777s are heavier. *See id.*

4. PFS Operations Are Not Designed to Withstand a September 11th Type Jet Fuel Fire. Four commercial airliners (two Boeing 757s and two Boeing 767s) fully loaded with jet fuel were used in the September 11th terrorist attacks. Resnikoff Dec. at ¶ 7. Boeing 757s carry up to 11,466 gallons of jet fuel and Boeing 767s carry up to 31,000 gallons of jet fuel. Id. at ¶ 14. Significantly, jet fuel burns at an average temperature of 1,850 °F. Id. at ¶ 19. Additionally, following the September 11th attacks, the north tower of the World Trade Center burned approximately 1.75 hours. Id., Exhibit F.

Like the World Trade Center towers, HI-STORM casks will not endure a September 11th type inferno because they are designed to only withstand a 1,475 °F fire for 15 minutes. Id. at ¶ 15. Similarly, the integrity of HI-STAR shipping casks, HI-TRAC transfer casks, and the CTB will not withstand the intensity and duration of a September 11th type attack fire. A HI-STAR shipping cask is designed to only withstand a fire of 1,475 °F for 30 minutes. Id. at ¶ 18. The HI-TRAC transfer cask is limited to a 50 gallon diesel fuel fire for 4.775 minutes (id. at ¶ 17). The CTB is designed to withstand a 300 gallon diesel fuel fire for 16 minutes and it unlikely that the ITF metal shell will withstand such a fire. Id. at ¶ 16.

5. Release of Radioactive Material After September 11th Type Attack. Radiation released from a HI-STORM storage system caused by the impact of a 2,000 pound, inert MK-84 bomb will exceed the 5 rem standard set in 10 CFR § 72.106. Id. at ¶ 22. Thus, it is reasonable to expect that a breach of a HI-STORM storage system, HI-STAR cask, ITF, or CTB caused by a substantially heavier commercial airliner traveling at higher speeds will release amounts of cesium and Chalk River Unidentified Deposits (“CRUD”) greater than that projected for the MK-84 bomb and greatly exceed the 5 rem standard. Id. at ¶ 23.

E. Other Types of Terrorist Attacks Are Now Reasonably Foreseeable

Chairman Meserve acknowledged that NRC's "across-the-board" review of security measures should "not focus solely on the aircraft threat."¹⁹ The SAR, ER, SER, and DEIS all fail to adequately identify possible terrorist assaults and the consequent impact to safety and the environment. At a minimum, the impacts of terrorist threats such as truck bombs, present day weapons (*e.g.*, tow anti-tank and armor piercing weapons), multi-member, inter-coordinated attacks, and transportation routes should be identified and adequately evaluated.

LATE FILED FACTORS: The State meets the 10 CFR § 2.714(a) late filed factors for proposing its Contention Utah RR.

Good Cause: The State has good cause for late filing Utah RR. The horrific September 11, 2001 attack on America demonstrates that a new level of terrorism and sabotage are now reasonably foreseeable. Moreover, Chairman Meserve stated "[w]e have never had reason to examine the fact that someone would use a large commercial airliner and deal with the threat it might present if it came in at high speed." Exh. 10. As a result of the September 11th attacks, Chairman Meserve directed the staff to review security procedures. *See* Exh. 1. Now, however, the events of September 11th have introduced the need to evaluate design basis external man-induced events from suicide mission terrorism and sabotage. The State has filed this contention within 30 days of the terrifying events of September 11th and thus, has met the good cause standard.

Development of a Sound Record: Utah RR is supported by Marvin Resnikoff, Ph.D. He has extensive experience in performing radiological risk assessments and analyzing

¹⁹*Nuclear Plants' Security Increased*, Las Vegas Sun (September 25, 2001), attached hereto as Exhibit 10.

PFS storage and transportation systems. Based on his calculations and analysis, Dr. Resnikoff's testimony would address how PFS's current designs would fail under a September 11th type attack. To the State's knowledge, PFS and Staff have failed to perform such calculations or analyses. Thus, barring the admittance of this contention and the testimony of Dr. Resnikoff, the record would be devoid of such critical analysis.

Availability of Other Means for Protecting The State's Interests: The State has simultaneously filed Petition for Immediate Relief Suspending Licensing Proceedings with the Commission to address terrorism and sabotage threats. If the State's petition is denied, the State has no alternative means, other than this proceeding, to assure that reasonably foreseeable September 11th type attacks have been considered. Moreover, given the Staff's post-September 11th representation in the MOX hearing that a terrorist attack is not reasonably foreseeable, the State's interests cannot be left to the judgment of the Staff.

Representation by Another Party: The State's position will not be represented by any other party; no other party in this proceeding has a contention relating to terrorism.

Broadening of Issues or Delay of the Proceeding: The admission of Utah RR could broaden and delay the proceeding. However, the substantives issues raised in Utah RR are imperative to ensuring public safety and compliance with NEPA.

CONCLUSION: For the foregoing reasons, Utah RR should be admitted.

DATED this 10th day of October 2001.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S REQUEST FOR ADMISSION OF LATE-FILED CONTENTION UTAH RR (Suicide Mission Terrorism and Sabotage) was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 10th day of October, 2001:

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In addition, a copy of STATE OF UTAH'S REQUEST FOR ADMISSION OF LATE-FILED CONTENTION UTAH RR (Suicide Mission Terrorism and Sabotage) is also being served this 10th day of October, 2001 on the Commissioners as referred to in State of Utah's Petition for Immediate Relief Suspending Licensing Proceedings (October 10, 2001), as follows:

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