December 23, 1997

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S RESPONSE TO THE SUPPLEMENTAL MEMORANDUM FILED BY THE CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION AND DAVID PETE IN SUPPORT OF THEIR PETITION TO INTERVENE

INTRODUCTION

On October 15, 1997, the Confederated Tribes of the Goshute Reservation (the "Confederated Tribes") and David Pete filed a supplement to their initial petition to intervene, in which they provided further information concerning their standing to intervene in this matter.[1] In accordance with the Licensing Board's "Memorandum and Order (Schedule for Prehearing Conference/Site Visit and Responses to Supplemental Petition)" dated October 24, 1997, the NRC Staff ("Staff") hereby responds to that Supplemental Memorandum. For the reasons set

[1] *See* "Supplemental Memorandum in Support of the Petition of the Confederated Tribes of the Goshute Reservation and David Pete to Intervene and for a Hearing," dated October 15, 1997 ("Supplemental Memorandum"); and "Request for Hearing and Petition to Intervene of the Confederated Tribes of the Goshute Reservation and David Pete," dated August 29, 1997 ("Initial Petition").

forth below and in the Staff's response to the Petitioners' initial petition for leave to intervene,[2] the Staff submits that the Confederated Tribes have not established their standing to intervene in this matter, and are not eligible to participate as an interested governmental entity pursuant to 10 C.F.R. § 2.715(c).

DISCUSSION

I. The Confederated Tribes' Standing to Intervene.

On August 29, 1997, the Confederated Tribes and David Pete filed their Initial Petition, seeking leave to intervene in this proceeding. While their Initial Petition generally described the nature and location of the Confederated Tribes and Mr. Pete's activities and properties, it failed to demonstrate that those Petitioners would suffer injury in fact by the licensing of this facility, given (a) the geographic distance from their properties and activities to the proposed site of the facility, (b) their failure to specify the precise locations of their property or activities, or the frequency of Tribal activities that they claim would be harmed by the proposed licensing of the ISFSI, and (c) their failure to show how the Tribe's and Mr. Pete's present-day activities or interests would be affected by the proposed licensing of this facility. Accordingly, in the Staff's response to their Initial Petition, the Staff expressed its view that the Confederated Tribes and Mr. Pete had failed to establish their standing to intervene in this proceeding. Staff Response, at 8-12.

On October 15, 1997, the Confederated Tribes and David Pete filed their Supplemental Memorandum, in an effort to provide additional information to establish their standing to

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[2] *See* "NRC Staff's Response to Request for Hearing and Petition to Intervene Filed by the Confederated Tribes of the Goshute Reservation and David Pete" ("Staff Response"), dated September 18, 1997.

intervene (Supplemental Memorandum, at 1-2).[3] Therein, they assert, *inter alia*, that members of the Confederated Tribes "visit the Skull Valley Reservation on a regular and frequent basis for a wide variety of family, cultural, religious, and social reasons." *Id.* at 2. Further, they assert that some (unspecified) members of the Confederated Tribes "reside and work only a few miles north of the Skull Valley Reservation on a neighboring ranch," and that "the burial ground located on the Skull Valley Reservation is the final resting place for a number of" their members and relatives. *Id.* at 2-3. Finally, they assert that "the potential contamination of the Skull Valley Reservation area in the event of a release of radioactive material would have a direct and substantial impact on numerous members of the [Confederated Tribes]." *Id.* at 3.[4] Attached to the Confederated Tribes' Supplemental Memorandum were the affidavits of two individuals -- Chissandra Reed and Genevieve Fields -- in which those persons (a) described their contacts, and the contacts of other tribal members, with the Skull Valley Reservation, and (b) authorized the Confederated Tribes to represent them in this proceeding.

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[3] The Confederated Tribes also argued that they should be admitted as an interested municipality, pursuant to 10 C.F.R. § 2.715(c). *See* discussion *infra* at 9-12.

[4] The Confederated Tribes also reiterate their historical interest in the entire "aboriginal" Goshute area, which includes the Skull Valley Reservation. Supplemental Memorandum at 3-5. However, this assertion appears to constitute an historical claim rather than the assertion of a current legally cognizable interest in the lands comprising the Skull Valley Reservation -- which the Confederated Tribes concede were awarded by the Indian Claims Commission to the separate Skull Valley Band of Goshutes (*Id.* at 5) -- and it therefore appears to be insufficient to support a claim that the licensing of this facility will cause them to suffer injury in fact, as required for standing to intervene. *See generally,* F. Cohen, Handbook of Federal Indian Law (1982 ed.), at 491-92 (aboriginal Indian title requires a showing of actual and continuous possession to the exclusion of other Indian groups; such title may be extinguished by the United States, with or without compensation).

In her Affidavit, Ms. Reed states, *inter alia*, that "many members of the [Confederated Tribes] have visited and continue to visit the Skull Valley Reservation on a regular and recurring basis" -- in support of which she cites her own practice of taking her granddaughter to that Reservation "approximately every other week," and she asserts that her granddaughter plays, drinks water, and eats foods gathered in the Skull Valley area. Reed Affidavit at 2. She further asserts that she visits her cousins at the Skull Valley Reservation "on a regular basis," as do other members of the Confederated Tribes; that such visits include "family gatherings, parties, and other events on the Skull Valley Reservation"; and that members of the Confederated Tribes eat the food of Skull Valley members, which "includes natural foods gathered in the Skull Valley area." *Id.* In addition, Ms. Reed asserts that she "regularly visits" the cemetery on the Skull Valley Reservation, as does another member of the Confederated Tribes (Ethelyn Murphy). *Id.* at 3. She also asserts that three named individuals and other members of the Confederated Tribes attend religious ceremonies on the Skull Valley Reservation, and that she and other persons have attended those ceremonies in the past. *Id.* at 3-4. Ms. Reed asserts that a release of radioactive material at the proposed facility could have an adverse impact on her health and safety, on burial sites which are sacred to her, on her culture and on her cultural and family activities, as well as on similar interests possessed by other members of the Confederated Tribes. *Id.* at 4-5. Finally, Ms. Reed authorizes the Confederated Tribes and David Pete to represent "her and her family" in this proceeding. *Id.* at 5.

For her part, Ms. Fields makes similar representations concerning the contacts which members of the Confederated Tribes have with the Skull Valley Reservation, although few of those contacts are particularized. Ms. Fields states that her sister (Kathryn) resides on a ranch

located four miles north of the Skull Valley Reservation and regularly visits the cemetery located on that Reservation, but she does not say whether she, herself, visits her sister at that location or has any other regular or frequent personal contacts with the site of the proposed facility. Similarly, while Ms. Fields states that her niece (Lorraine Pete) frequently visits with her relatives at Skull Valley, she does not indicate that she, herself, does so. *See* Fields Affidavit at 2-3. Likewise, while Ms. Fields states that she visits the cemetery on the Skull Valley Reservation, she does not describe the frequency or regularity of those visits; and while she asserts that she and other members of the Confederated Tribes "regularly visit and participate in ceremonies . . . and regularly and frequently participate in family activities on the Skull Valley Reservation," she does not describe or specify the frequency or regularity of those activities. *Id.* at 4.

In proceedings such as this, where there is no presumption of standing based upon geographic proximity of a petitioner's residence to a nuclear power reactor, standing to intervene will depend upon the nexus shown between the petitioner's activities and the proposed facility. Significantly, a petitioner's contacts with the proposed facility must be shown to be "regular" or "frequent."[5] Thus, standing has been found where a petitioner "daily 'drives by'" a nonpower reactor, so as to be "presumed to frequent regularly a geographic area potentially at some risk of radiation releases." *Georgia Institute of Technology* (Georgia Tech Research

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[5] To be sure, in some earlier proceedings involving nuclear power plants, standing was found to exist where petitioners alleged that they recreated in the vicinity of a plant, apparently without requiring a showing of the frequency or regularity of those activities. *See, e.g.*, *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-73-10, 6 AEC 173 (1973) (recreational activities); *Virginia Electric and Power Co.* (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979) (recreational canoeing in general vicinity of plant).

Reactor), CLI-95-12, 42 NRC 111, 117 (1995). Similarly, standing was found where a petitioner "regularly commutes" one or two times per week past the entrance of a nuclear facility to be decommissioned, placing her in close proximity to the plant "on a regular basis." *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 45 (1990). Standing has likewise been found where a petitioner showed "everyday use" of the area near a facility, including roads and waterways. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248 (1996), *aff'g* LBP-96-2, 43 NRC 61, 69-70 (1996). Similarly, the Commission has observed that standing may be found where a petitioner shows "frequent contacts in the area near a nuclear power plant." *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 (1994).

For the same reason, standing has been denied, in reactor proceedings, where the petitioner's nexus to the site was not shown to be regular or frequent, or where impacts upon its interests were speculative in nature. Thus, standing was found to be absent where it was premised on the "possibility" that the petitioner might consume produce, meat products, or fish originating within 50 miles of the site, or where the petitioner made only "an occasional trip" or "occasional visits" to a farm he owned and rented out, located 10 to 15 miles from the site. *Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 336, 338 (1979);[6] *accord, Philadelphia Electric Co.* (Limerick Generating Station, Units 1

[6] The Licensing Board in *WPPSS* noted that the petitioner there had specifically recited only six visits to the vicinity of the site, and concluded that "[i]ntermittent visits to the area do not show an interest sufficient to require granting intervenor status." LBP-79-7, *supra,* 9 NRC at 338.

and 2), LBP-82-43A, 15 NRC 1423, 1447, 1449 (1982).[7] As discussed *infra* at 8-9, these decisions warrant a finding that the Confederated Tribes lack standing to intervene in this proceeding.

An application of these principles to the Supplemental Memorandum and the affidavits attached thereto leads the Staff to conclude that the Confederated Tribes -- in the absence of the additional information which has now been provided by the Applicant (*see* discussion *infra* at 8) -- might have (albeit marginally) established their standing to intervene in this proceeding.[8] In particular, Ms. Reed's representation that she drives "to the Skull Valley Reservation approximately every other week" (Reed Affidavit at 2) could be viewed as sufficient to establish standing for her -- and representational standing for the Confederated Tribes.[9] While Ms. Reed's travel to the Reservation does not appear to be particularly frequent, these visits would appear to be sufficient to establish Ms. Reed's standing (and thus the representational

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[7] In *Limerick*, the Licensing Board noted, *inter alia*, that while the petitioner asserted the possibility that he might consume food grown close to the plant, he had not shown any reason why contaminated food would "end up on his table." LBP-82-43A, 15 NRC at 1149.

[8] No demonstration of standing was made, however, by David Pete, in that there is no indication that Mr. Pete has regular or substantial contacts with the Skull Valley site. Accordingly, Mr. Pete's petition to intervene, in his individual capacity, should be denied.

[9] Apart from these twice-monthly visits, no specificity is provided in Ms. Reed's Affidavit to provide the necessary support for her assertions that she "regularly" visits the Skull Valley Reservation. Thus, although she states that her paternal aunt (Stella Murphy Black Bear) and two children of another paternal aunt (Ethelyn Murphy, whom she identifies as a member of the Confederated Tribes), are buried at the Skull Valley Reservation cemetery (Reed Affidavit at 3), and states that she "regularly" visits that cemetery, she fails to specify the frequency of those visits. Also, while Ms. Reed indicates that Ms. Murphy visits the cemetery, that statement does not support the Confederated Tribes' standing to intervene, inasmuch as the frequency of those visits is not specified and Ms. Murphy has not authorized the Confederated Tribes to represent her in this proceeding. Similarly, Ms. Fields' assertion that she has "regular" contacts with the Skull Valley Reservation fail to provide sufficient detail to support that claim, and fails to establish her standing to participate in this proceeding.

standing of the Confederated Tribes) to intervene in this matter.[10] Accordingly, based on Ms. Reed's affidavit, alone, the Staff would have been prepared to withdraw its opposition to the Confederated Tribes' petition for leave to intervene in this proceeding.

However, following the Staff's receipt of Ms. Reed's affidavit, the Staff has had occasion to reconsider its views with respect to this matter. On December 12, 1997, the Applicant filed its response to the Confederated Tribes' Supplemental Memorandum, to which it attached the "Declaration of Arlene Walsh." Therein, Ms. Walsh indicates that she is Ms. Reed's cousin at Skull Valley Reservation and is the person with whom Ms. Reed leaves her granddaughter; further, she indicates that when Ms. Reed drops off and picks up her granddaughter, she usually does so at a location 25 miles distant from the Reservation; and she states that Ms. Reed seldom ("usually no more than once per year") visits with her and others on the Reservation.

These statements, certified by Ms. Walsh to be true and correct, appear to eviscerate any basis for Ms. Reed's standing to intervene in this proceeding. In light of Ms. Walsh's Declaration, Ms. Reed's trips and visits to the Skull Valley Reservation must be viewed to be no more than "occasional" and "intermittent." Accordingly, those trips and visits do not support her standing (or the representational standing of the Confederated Tribes) to intervene in this

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[10] While Ms. Reed asserts that her granddaughter visits with relatives at the Skull Valley Reservation and consumes water and food there (Reed Affidavit at 2), she does not state that the granddaughter is a minor child for whom she serves as a legal guardian or custodian -- such that her granddaughter's interest could be imputed to her. Accordingly, these assertions do not confer imputed standing upon Ms. Reed; and, in the absence of an affidavit from the granddaughter's guardian or custodian, they fail to establish representational standing for the Confederated Tribes. *See Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 387 (mother could not assert the rights of her son attending medical school near a proposed facility). Similarly, Ms. Field's assertions that her sister and niece have certain contacts with the site (Fields Affidavit at 2, 3) do not confer standing upon Ms. Fields or the Confederated Tribes to intervene in this proceeding.

proceeding. *See WPPSS, supra,* LBP-79-7, 9 NRC at 336, 338; *Limerick, supra,* LBP-82-43A, 15 NRC at 1447, 1449. Further, no dispute of fact is presented by Ms. Walsh's affidavit, in that she does not dispute the facts stated by Ms. Reed, but only adds necessary detail that was missing from Ms. Reed's affidavit until now.

For the reasons set forth above and in the Staff's response to the Confederated Tribes' Initial Petition, the Staff submits that the Confederated Tribes have not established their standing to intervene in this proceeding.[11]

II. Participation as an Interested Governmental Entity.

In their Initial Petition (at 6), the Confederated Tribes asserted that they should be allowed to participate as an interested governmental entity, pursuant to 10 C.F.R. § 2.715(c). In the Staff's response to that assertion, which is hereby incorporated by reference herein, the Staff expressed its view that § 2.715(c) specifically applies to States, counties, municipalities, and agencies thereof, but does not appear to apply to Indian tribes (Staff Response, at 14-17). Now, in their Supplemental Memorandum, the Confederated Tribes assert that they should be allowed to participate under 10 C.F.R. § 2.715(c) on the grounds that they constitute a "municipality" (*Id.* at 6) -- in support of which they cite *Black's Law Dictionary,* which defines a "municipality" as "a legally incorporated or duly authorized association of inhabitants of

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[11] The Staff notes that the Licensing Board is authorized to afford a petitioner "discretionary intervention," where the petitioner has not demonstrated that it is entitled to intervene as of right. *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976). Such a determination would be based upon whether the petitioner has demonstrated a favorable balancing of relevant factors set forth in 10 C.F.R. § 2.714(a)(1) and (d); and of these, the most significant factor to be considered is the extent to which the petitioner may be expected to contribute to the development of a sound record. *Id.* However, where, as here, no showing has been made that the pertinent factors favor the granting of a petition, discretionary intervention should properly be denied.

limited area for local governmental or other public purposes." The Staff believes this assertion is without merit.

Although the *Black's Law Dictionary* definition appears, on its face, to be broad enough to include Indian tribes as municipalities, it fails to establish such status for an Indian tribe here. First, the *Black's* summary of pertinent case law indicates that the term generally applies to cities, townships and other entities whose political authority is derived from and subordinate to the authority of a State -- and would thus be inapplicable to an Indian nation or tribe. In this regard, the definition of a "municipality" in *Black's* continues as follows:

> A body politic created by the incorporation of the people of a prescribed locality invested with subordinate powers of legislation to assist in the civil government of the state and to regulate and administer local and internal affairs of the community.

Black's Law Dictionary (Rev'd 4th Ed. 1968), at 1170 ("Municipality").

Second, while it is true that Indian tribes generally exercise powers similar to those exercised by municipalities,[12] their authority differs from that of municipal entities. Thus, Indian tribes have been recognized to exercise powers of self-government as "distinct, independent political communities" by virtue of their original tribal sovereignty. F. Cohen, Handbook of Federal Indian Law (1982 ed.), at 232, *citing United States v. Wheeler,* 435 U.S. 313, 323-24 (1978). The extent of Indian tribal authority has been summarized as follows:

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[12] For example, Indian tribes have been described as "municipalities" and therefore exempt from suit without their consent. *See e.g., Namekagon Development Co. v. Bois Forte Reservation Housing Authority*, 395 F.Supp. 23, 28 (D. Minn. 1974). In addition, it has been observed that Indian tribes carry out "typical municipal powers" (including police powers, regulatory powers and fiscal powers), and municipal functions approved and mandated by Congress. *See, e.g., Merrion v. Jicarilla Apache Tribe*, 617 F.2d 537, 550 (10th Cir. 1980).

> [T]ribal powers of self-government are limited by federal statutes, by the terms of treaties with the federal government, and by restraints implicit in the protectorate relationship itself. In all other respects the tribes remain independent and self-governing political communities.

Cohen, supra, at 235.

Moreover, the meaning of a term used in a statute or regulation may vary, and therefore must be determined by examination of the statute or regulation and/or the statutory or regulatory history thereof. Any determination as to whether the term "municipality" includes Indian tribes must be resolved in the first instance by examination of the pertinent legislative or regulatory language. In this regard, it should be noted that while Congress has, in various environmental statutes, specifically included Indian tribes in the definition of a "municipality," in other environmental statutes it has excluded Indian tribes from this term.[13]

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[13] *See, e.g., Backcountry Against Dumps v. EPA,* 100 F.3d 147, 149, 150 (D.C. Cir. 1996) (noting that Indian tribes are defined as "municipalities" in the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6903(13) -- and that when Congress wants to treat Indian tribes as States, it does so in clear and precise language, as in the Clean Air Act); *Blue Legs v. Bureau of Indian Affairs,* 867 F.2d 1094, 1097 (8th Cir. 1989) (Indian tribes are subject to citizen suits as "municipalities" under RCRA); *Phillips Petroleum Co. v. EPA,* 803 F.2d 545, 548 (10th Cir. 1986) (noting that Indian tribal organizations were initially included in the definition of a "municipality" in the Safe Drinking Water Act of 1974, 42 U.S.C. 300f(10), before the Act was amended to treat Indian tribes as States); *Atlantic States Legal Foundation v. Salt River Pima-Maricopa Indian Community*, 827 F.Supp. 608, 609 (D. Ariz. 1993) (Indian tribes and authorized Indian tribal organizations are included in the definition of "municipality" in the Clean Water Act, 33 U.S.C. 1362(4)); *Northern States Power Co. v. Prairie Island Mdewakanton Sioux Indian Community,* 991 F.2d 458, 463 (8th Cir. 1993) (Indian tribes are treated like States in the Hazardous Materials Transportation Act, 49 U.S.C. §1811, in contrast to RCRA); *City of New York v. Exxon Corp.*, 932 F.2d 1020,1025 (2d Cir. 1991) (States and Indian tribes -- but not municipalities -- may maintain suits under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*).

A review of the Atomic Energy Act of 1954, as amended, fails to disclose whether Indian tribes are to be treated as municipalities here. The Act does not define the term "municipality," nor does it indicate whether an Indian tribe is included within this term.

Similarly, while 10 C.F.R. § 2.715(c) provides that the Presiding Officer "will afford representatives of an interested State, county, municipality, and/or agencies thereof, a reasonable opportunity to participate," the term "municipality" appears in the regulation without definition. Moreover, no guidance is apparent in the regulatory history of § 2.715(c), and the Commission's intent with respect to Indian tribes, in adopting (and later amending) the regulation, is unclear. Thus, while the Commission sought to afford representatives of interested States -- and, later, representatives of interested "counties, cities and agencies thereof"[14] -- an opportunity to participate in Commission adjudicatory proceedings without having to satisfy the requirements for intervention, no mention was made of Indian tribes, and there is no indication that the Commission either sought to exclude or to include Indian tribes within the term "municipality."[15]

In sum, in the absence of any clear Commission intent, it must be concluded that an Indian tribe is not clearly eligible to participate in Commission adjudicatory proceedings as a "municipality" or other interested governmental entity under the provisions of 10 C.F.R.

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[14] *See* Proposed Rule, "Miscellaneous Amendments," 42 Fed. Reg. 22168, 22169 (May 2, 1977); Statement of Consideration, "Miscellaneous Amendments," 43 Fed. Reg. 17798, 17800 (April 26, 1978); "Rules of Practice," 27 Fed. Reg. 377 (Jan. 13, 1962).

[15] In contrast, as set forth in the Staff's response to the Confederated Tribe's Initial Petition, the Commission has specifically addressed the standing of affected Indian tribes to participate in certain other types of proceedings, not applicable here (*i.e.*, high level waste proceedings conducted under 10 C.F.R. Part 60). *See* Staff Response, at 16-17.

§ 2.715(c).[16] Accordingly, for the reasons set forth herein and in the Staff's Response to the Confederated Tribes' Initial Petition (at 14-17), the Staff opposes the Confederated Tribes' participation in this proceeding as an interested governmental entity under 10 C.F.R. § 2.715(c).[17]

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[16] *See generally, Northern States Power Co.* (Independent Spent Fuel Storage Installation), LBP-96-22, 44 NRC 138, 140, 141 (1996) (allowing a State agency to participate as an interested governmental entity under 10 C.F.R. § 2.715(c), but requiring an Indian tribe to demonstrate its standing to intervene pursuant to 10 C.F.R. § 2.714(a) without discussing whether the tribe could participate under § 2.715(c)).

[17] Notwithstanding this conclusion, as the Staff has noted previously, support for an Indian tribe's participation as an interested governmental entity in NRC proceedings may be found in an Executive Memorandum dated April 29, 1994, directing executive departments and agencies to engage in "government-to-government relations" with Native American tribes. *See* Staff Response at 17 n.14, and Attachment 2 thereto. The Commission has followed the Executive Memorandum in its relations with Indian tribes; and the NRC Executive Director for Operations has observed that the Commission "directed the staff to continue to implement the spirit and letter" of the Memorandum, "to ensure that the rights of sovereign Tribal governments are fully respected and to operate within a government-to-government relationship with Federally recognized Native American tribes." Letter from James M. Taylor (EDO) to Curtis Campbell, Sr., President, Prairie Island Indian Community, dated December 2, 1996. *See also Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-13, 40 NRC 78, 80 n.4 (1994) (noting that the Executive Memorandum seeks "to ensure that tribal rights and concerns are considered"). Inasmuch as the Commission's policy does not address directly the applicability of § 2.715(c) to Indian tribes, and in view of the Commission's action specifically affording affected Indian tribes an opportunity to participate in proceedings conducted under 10 C.F.R. Part 60 without resolving the question of whether § 2.715(c) applies to Indian tribes (*see* n. 15, *supra,* and Staff Response at 16-17), the Licensing Board could choose to certify this issue to the Commission pursuant to 10 C.F.R. § 2.718(i).

CONCLUSION

For the reasons set forth above, the Staff submits that the Confederated Tribes of the Goshute Reservation and David Pete have not established their standing to intervene in this proceeding, and that the Confederated Tribes are not eligible to participate as an interested governmental entity pursuant to 10 C.F.R. § 2.715(c).

Respectfully submitted,

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 23rd day of December 1997

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PRIVATE FUEL STORAGE, LLC	)	Docket No. 72-22-ISFSI
	)	
(Independent Spent Fuel Storage Installation)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO THE SUPPLEMENTAL MEMORANDUM FILED BY THE CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION AND DAVID PETE IN SUPPORT OF THEIR PETITION TO INTERVENE" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the United States mail, first class, as indicated by an asterisk, with copies by electronic mail as indicated, this 23rd day of December, 1997:

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