

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

Private Fuel Storage, a
Limited Liability Company;

(Independent Spent Fuel
Storage Installation).

Docket No. 72-22 ISFSI
ASLBP No. 97-732-02
ISFSI

January 16th, 1998

OGD'S RESPONSE TO MEMORANDUM AND ORDER DATED 1/6/98 GRANTING
LEAVE TO FILE REPLY PLEADING AND REQUESTING
INFORMATION

Pursuant to the order of the Licensing Board dated January 6th, 1998 Petitioner Ohngo Gaudadeh Devia (OGD), by and through their counsel, Jean Belille, 2260 Baseline Road, Suite 200, Boulder CO 80302, responds to the following requests: 1. OGD should indicate whether they object to the PFS suggestion for redrafting their contentions to include subcontentions; and 2. OGD should classify each of the contentions they proposed ab initio under one of the four categories specified in the order of January 6th 1998. OGD hereby submits the following:

1. REDRAFTING OF CONTENTIONS TO INCLUDE SUBCONTENTIONS

OGD objects to any suggestions for redrafting their contentions to the extent that proposed redrafting could have the effect of narrowing the scope of those contentions. Because of the lack of substantive detail and vagueness in the license application any attempt to narrow the scope of our contentions is unfair. If the applicant later submits information, OGD bear the burden of

filing late contentions. This information may not fit within the proposed narrowed scope of OGD's subcontentions. Until all of the concerns regarding the scope and detail of the license application have been fully resolved, OGD will continue to stand by its original contentions.

If, however OGD is made to conform to the filing of subcontentions, we would suggest the following language:

- A. The license application poses undue risk to the public health and safety because it lacks sufficient provisions for prevention of and recovery from accidents during storage resulting from such causes as sabotage, fire, cask drop and bend, lid drop damage and/or improper welds.
 - 1. The license application does not address the full range of accidents which could occur.
 - 2. The license application does not adequately address the impacts of human error or intentional human actions.
 - 3. The license application does not include a "hot cell" and the associated remote fuel handling equipment to safely unload, replace or reload a damaged fuel canister.
 - 4. The ever present risk of accidents will adversely impact members of OGD.
- B. The license application, specifically the emergency plan submitted with the license application fails to address the safety provisions made for those individuals living outside of the facility within a five mile radius of the facility. The emergency plan addresses only those measures that pertain to employees and have not addressed the provisions that would apply to those people living around the facility. The emergency plan does not address a warning system such as would be implemented to put the residents on notice of an accident.
 - 1. Adequate backup means for offsite communication for notification of emergencies or requests for assistance

are not included in the license application.

2. Means for compliance with the Emergency Planning and Community Right-To-Know Act of 1986, Title III, Pub. L. 99-499 is lacking in the license application.
3. The license application fails to meet all of the requirements of 10 C.F.R. §72.32 (8).

C. The license application poses undue risk to public health and safety because it lacks sufficient provisions for protection against transportation accidents, including a criticality accident.

1. The license application fails to provide sufficient protection against transportation accidents because of the design of the shipping cask.
2. The license application lacks sufficient measures for protection of casks during harsh summers and sub-zero temperatures of winter.
3. The license application fails to consider the historical record and consequences of spent nuclear fuel transportation accidents and incidents as well as the number of incidents that might occur given that record.
4. The license application fails to provide sufficient information to fully evaluate the impacts and risks of spent nuclear fuel transportation to PFS.
5. The license application fails to provide sufficient detail about the anticipated shipment characteristics necessary for evaluation of transportation impacts and risks.

6. The license application ignores the potentially severe consequences of a successful terrorist attack against a spent fuel shipping case using a high energy explosive device or an anti-tank weapon.
 7. The license application ignores the significant radiation exposures which member of OGD and other residents of Skull Valley may receive as a result of gridlock traffic incidents and other routine transportation activities.
- D. The license application poses undue risk to public health and safety because it 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 AP.A,p. TS-19 there is no provision for housing the casks prior to shipping the cask back to the generating reactor.
1. OGD hereby incorporates the discussions regarding possible accidents and the mitigation measures in both contention A and C and the relevant subcontentions in this contention.
- E. The license application poses undue risk to the public health and safety because it fails to provide information and a plan to deal with casks that may leak or become contaminated during the 20 to 40 year storage period. Sending such casks back to the generating 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, and there are no assurances that the storage will only be "interim". The license application provides no assurance that there will be an alternative location to which canisters and/or casks can be shipped if they become defective while in storage at PFS.
1. The license application provides very little procedure

for dealing with defective canisters and/or casks.

2. No alternative location is designated in the license application should a canister become defective while in storage especially if the reactors that originally shipped the canister is decommissioned.
 3. The license application does not adequately address the uncertainties about the suitability of Yucca Mountain as a repository site, and if ever, spent fuel stored at PFS could be shipped to Yucca Mountain.
- F. The license application fails to make clear provisions for funding of estimated construction costs, operating costs, and decommissioning costs. It also fails to make clear as part of the construction costs who the contractors will be.
1. The license application does not demonstrate that PFS "either possesses the necessary funds, or...has reasonable assurance of obtaining the necessary funds" as required by 10 C.F.R. §72.22 (e).
- G. The license application poses undue risk to public health and safety because it fails to provide for adequate radiation monitoring to protect the health of the public and workers. It also fails to provide for adequate radiation monitoring necessary to facilitate radiation detection, event classification, emergency planning and notification.
1. The license application does not meet the requirements of 10 C.F.R. §72.32 (6).
 2. The license application does not address releases outside of the ISFSI site.
- H. The license application poses undue risk to public health and safety because it fails to provide adequate protection of the

ISFSI against intruders. The site is in such a remote area that it would take at least two (2) hours for access to the sight to be made by emergency personnel.

1. The license application fails to address the vulnerability of the casks to terrorist attack.

I. The license application poses undue risk to public health and safety because it calls for use of a cask whose design is unsafe and untested for long periods of time and which has not been certified for either transportation or long term storage.

1. The license application fails to meet the requirements of 10 C.F.R. §72.22 (e) because the cask design is not certified.
2. No meaningful EIS under NEPA can be completed until the cask design is certified.

J. The license application violates NRC regulation because the ER fails to address the status of compliance with all permits, licenses and approvals required for the facility.

1. The license application fails to address the certifications and permits required for water and storm discharges, erosion and sediment control for prevention of pollution of water; air quality requirements and the construction of a stationary source permit.
2. The license application fails to provide adequate protection of the land and water of the Goshute Reservation and Goshute people from harm.
3. Contention A and applicable subcontentions are hereby incorporated in this contention, regarding relevant accident discussion.

K. The license application poses undue risk to the public health and safety because it does not address how the facility will deal with paying for or returning casks that may prove unsafe should the generating reactor have been decommissioned.

1. The license application does not contain enough information for an informed determination to be made about the financial capability of the existing generating facilities who are a part of PFS.
2. No assurances are present in the licensing application that other generating facilities will not be allowed to use the facility. Financial information about other possible users is lacking in the license application.

L. The license application poses undue risk to the public health and safety because it provides that operators will not be trained for the specific job when hired and that operators will undergo on-the-job training, and classroom training leading to certification. The license application states that "of necessity, the first individuals certified may have to improvise in certain situations to complete the practical factors". See, License Application, LA Chapter 7 p. 7.1. This doesn't protect the public health and safety in any manner.

1. The license application does not meet the requirements of 10 C.F.R. §72.32 (7) by failing to provide an adequate description of the responsibilities of licensee personnel should an accident occur.

M. The license application poses undue risks to the public health and safety because it makes no provisions for transportation accidents that might occur.

1. The license application does not adequately address the requirements of 10 C.F.R. §72.32 (2) by failing to

address transportation accidents near the site.

- N. The license application poses undue risk to public health and safety because it fails to address the possibility of a leak occurring that might contaminate the present water system that members of the community rely on. The application admits that several wells are going to have to be built to meet the demand that will be presented by the facility. Neither contingency discuss contamination nor lowering of the present water table.

1. Discussion of Contention J and any relevant subcontentions are hereby incorporated in this contention, especially those addressing protection of natural resources.

- O. The license application poses undue risk to public health and safety because it fails to address environmental justice issues. In, Executive Order 12898, 3 C.F.R. 859 (1995) issued February 11, 1994, President Clinton directed that each Federal agency,

shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations in the United States.

It is not just and fair that this community be made to suffer more environmental degradation at the hands of the NRC. Presently, the area is surrounded by a ring of environmentally harmful companies and facilities. Within a radius of thirty-five (35) miles the members of OGD and the Goshute reservation are inundated with hazardous waste from: Dugway Proving Ground, Utah Test and Training Range South, Deseret Chemical Depot, Tooele Army Depot, Envirocare Mixed Waste storage facility, Aptus Hazardous Waste Incinerator, Grassy Mountain Hazardous Waste Landfill and Utah Test and Training Range North.

1. The license application does not address the fact that the proposed plant will have negative economic and sociological impacts on the Native community of Goshute

Indians and OGD members who live very close to the proposed site.

2. The license application does not address indirect and direct costs of the project to the Skull Valley Band of Goshutes.
3. The license application does not address the benefit-cost analysis of leaving waste on-site at present facilities.
4. The described need for the ISFSI site is inadequate in the license application.
5. The disproportionate adverse health or environmental effects on a minority population is not discussed in the licensing application.
6. The licensing application fails to look at the affect that the siting of this facility will have on subjecting the persons and populations in the area to discrimination because of their race, color or national origin.
7. The license application fails to address the effect that the facility will have on the property that is owned by members of OGD or by others living in and around the area of the proposed ISFSI site.

P. The ability of OGD members to pursue the traditional Goshute lifestyle will be adversely impacted by the routine operations at the storage facility. Obvious impacts resulting from the physical presence of the facility are; visual intrusion, noise, worker and visitor traffic to and from the storage site, and presence of strangers in the community. Those impacts that are not as obvious but nonetheless serious are; individual and collective social, psychological, and cultural

impacts such as a sense of loss of well-being because of the dangerous wastes that are being stored near their homes, in their community, and on their ancestral lands. The ability of OGD members to pursue a traditional Goshute life style will be adversely affected by routine transportation operations of spent nuclear fuel and/or the presence of trucks, especially very large heavy haul trucks. The other obvious and other effects include the same kinds of effects that are listed above, included fear that a transportation accident might happen, fear of acts of terrorism or sabotage which could expose members of OGD and their families, their homes, the community and their ancestral land.

1. The license application fails to meet all of the requirements of 10 C.F.R. §72.32 (5) regarding mitigation of consequences of each type of accident.
2. OGD hereby incorporates by reference the discussion of accidents and mitigation of those accidents found in Contentions A and C and the related subcontentions, in light of the requirement to restore the facility to a safe condition after an accident.

OGD hereby reiterates the objection previously made regarding any redrafting of its contentions to the extent that such redrafting has the effect of narrowing the scope of its original contentions.

2. CLASSIFICATION OF EACH CONTENTION FILED

- A. Lack of sufficient provisions for prevention of and recovery from accidents. This contention potentially impacts each of the following categories: Emergency Planning, Environmental, Safety and Other.
- B. Emergency plan fails to address the safety of those living outside of the facility. This contention potentially impacts

Emergency Planning, Environmental and Other.

- C. License Application lacks sufficient provisions for protection against transportation accidents. This contention potentially impacts each of the following categories: Emergency Planning, Environmental, and Other.
- D. License Application lacks procedures for returning damaged casks to the generating reactor. This contention potentially impacts each of the following categories: Emergency Planning, Environmental, Safety and Other.
- E. License Application fails to provide information and a plan to deal with casks that may leak or become contaminated during the 20 to 40 year storage period. This contention potentially impacts each of the following categories: Emergency Planning, Safety and Other.
- F. The License application fails to make clear provisions for funding of estimated construction costs, operating costs, and decommissioning costs. This contention potentially impacts each of the following categories: Environmental and Safety.
- G. The license application fails to provide for adequate radiation monitoring. This contention potentially impacts each of the following categories: Emergency Planning, Environmental, Safety and Other.
- H. The license application poses undue risk to public health and safety because it fails to provide adequate protection of the site against intruders. This contention potentially impacts each of the following categories: Emergency Planning, Safety.

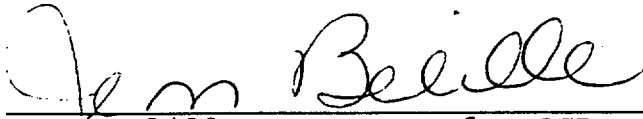
- I. The cask design is unsafe and untested for long periods of time. This contention potentially impacts each of the following categories: Emergency Planning, Environmental, Safety and Other.
- J. The license application fails to address the status of compliance with all permits, licenses and approvals required for the facility. This contention potentially impacts each of the following categories: Emergency Planning, Environmental, and Other.
- K. There are no provisions for paying for casks that may need to be returned to the generating facility. This contention potentially impacts each of the following categories: Environmental, Safety and Other.
- L. Operators will not be trained for the specific job when hired and operators will undergo on-the-job training. This contention potentially impacts each of the following categories: Emergency Planning, Environmental, Safety.
- M. No provisions for transportation accidents are made. This contention potentially impacts each of the following categories: Emergency Planning, Environmental and Other.
- N. There may be a leak that contaminates the present water system. This contention potentially impacts each of the following categories: Emergency Planning, Environmental, and Other.
- O. Environmental Justice Issues are not addressed. This contention potentially impacts each of the following

categories: Emergency Planning, Environmental, Safety and Other.

P. Members of OGD will be adversely impacted by routine operations of the proposed storage facility and its associated transportation activities. This contention potentially impacts each of the following categories: Environmental, Safety and Other.

Dated this 16th day of January, 1998.

Respectfully submitted,



Jean Belille, Attorney for OGD

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby Certify that copies of the foregoing RESPONSE TO MEMORANDUM AND ORDER DATED 1/6/98 GRANTING LEAVE TO FILE REPLY PLEADING AND REQUESTING INFORMATION, were served on the persons listed below (unless otherwise noted) by facsimile with conforming copies by US mail, first class, postage prepaid, this 16th day of January 1998.

G. Paul Bollwerk, III, Chairman
Administrative Judge
Atomic Safety and Licensing Bd.
U.S. NRC
Washington, D.C. 20555-0001

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing
Board
U.S. NRC
Washington, DC 20555-0001

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Bd.
U.S. NRC
Washington, D.C. 20555-0001

Office of the Secretary
Attn: Rulemakings &
Adjudications Staff
U.S. NRC
Washington, D.C. 20555-0001
(Original and two copies)

*Charles J. Haughney
Acting Director, Spent Fuel
Project Office
Office of Nuclear Material
Safety and Safeguards
U.S. NRC
Washington, DC 20555

John Paul Kennedy, Sr., Esq.
Confederated Tribes of Goshute
and David Pete
1385 Yale Avenue
Salt Lake City, UT 84105

Denise Chancellor, Esq.
Assistant Attorney General
Utah Attorney General Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, UT 84114-0873

Diane Curran, Esq.
Harmon, Curran & Spielberg
2001 S Steet, NW, Suite 430
Washington DC 20009

Clayton J. Parr, Esq.
Parr, Waddoups, Brown, Gee &
Loveless
185 S. State Street, Suite 1300
P.O. Box 11019
Salt Lake City, UT 84147-0019

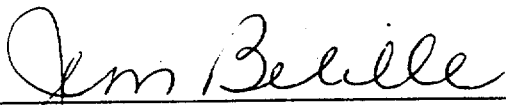
Jay E. Silberg, Esq.
Shaw, Pittman, Potts &
Trowbridge
2300 N. Street, N.W.
Washington, D.C. 20037-8007

*Adjudicatory File
Atomic Safety and Licensing
Board Panel
U.S. NRC
Washington, D.C. 20555

Danny Quintana, Esq.
Danny Quintana & Associates
Skull Valley Band of Goshutes
50 West Broadway, 4th Floor
Salt Lake City, UT 84101

Catherine L. Marco, Esq.
Sherwin E. Turk, Esq.
Office of the General Counsel
Mail Stop 0-15 B18
U.S. NRC
Washington, D.C. 20555

Dated this 15th day of December, 1997.



Jean M. Belille

* Sent by US mail only.