September 18, 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)	)	

NRC STAFF'S RESPONSE TO REQUEST FOR HEARING AND PETITION TO INTERVENE FILED BY THE CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION AND DAVID PETE

INTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c), the staff of the Nuclear Regulatory Commission ("Staff") hereby responds to the August 29, 1997, request for hearing and petition to intervene filed by the Confederated Tribes of the Goshute Reservation ("Confederated Tribes" or "Tribe") and David Pete, an individual identified as Chairman of the Tribe.[1] For the reasons set forth below, the Staff submits that as of this time, the Confederated Tribes and David Pete have not demonstrated their standing to intervene in this matter, as required by 10 C.F.R. § 2.714; accordingly, in the absence of any further information, their petition for leave to intervene should be denied. Further, for the reasons set forth below, the Staff opposes the Confederated Tribe's request that it be permitted to participate as an interested governmental entity, pursuant

[1] *See* "Request for Hearing and Petition to Intervene of the Confederated Tribes of the Goshute Reservation and David Pete" ("Petition"), dated August 29, 1997.

to 10 C.F.R. § 2.715(c), in that the Tribe has not adequately shown that it is eligible to participate as an interested governmental entity in this proceeding.

BACKGROUND

On June 20, 1997, Private Fuel Storage L.L.C. ("PFS") applied for a license, pursuant to 10 C.F.R. Part 72, to receive, transfer and possess power reactor spent fuel and other radioactive material associated with spent fuel storage in an independent spent fuel storage installation (ISFSI), to be constructed and operated on the Skull Valley Indian Reservation in Tooele County, Utah.[2] On July 31, 1997, the Commission published a "Notice of Consideration of Issuance of a Materials License for the Storage of Spent Fuel and Notice of Opportunity for a Hearing," concerning the PFS application. 62 Fed. Reg. 41,099 (July 31, 1997). The Notice stated that the license, if granted, will authorize PFS to store spent fuel in dry storage cask systems at the ISFSI that PFS proposes to construct and operate on the Skull Valley Goshute Indian Reservation, for a license term of 20 years. *Id.* The Notice further provided that by September 15, 1997, "any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the subject materials license in accordance with the provisions of 10 C.F.R. 2.714." *Id.* On August 29, 1997, the Confederated Tribes and David Pete filed their Petition, pursuant to 10 C.F.R. §§ 2.714 and 2.715(c).

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[2] *See* Letter from John D. Parkyn, Chairman of the Board, Private Fuel Storage L.L.C., to Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, dated June 20, 1997.

DISCUSSION

As noted above, the Confederated Tribes and David Pete filed their Petition pursuant to both 10 C.F.R. §§ 2.714 and 2.715(c). An interested governmental entities may choose to participate in Commission proceedings either as a party under 10 C.F.R. § 2.714, or as a non-party under 10 C.F.R. § 2.715(c). *See, e.g., Exxon Nuclear Co.* (Nuclear Fuel Recovery and Recycling Center), ALAB-447, 6 NRC 873, 876, 879 (1977). If a governmental entity chooses to petition to intervene under § 2.714, it, like other petitioners, must satisfy the established standards for intervention. *Nuclear Fuel Services, Inc.* (West Valley Reprocessing Plant), ALAB-263, 1 NRC 208, 216 n.14 (1975) (the Commission's regulations do not warrant treating the intervention petition of a government body differently from that of a private person). Accordingly, the Confederated Tribes' Petition must be evaluated in accordance with the Commission's established principles governing the filing of intervention petitions in NRC adjudicatory proceedings. For the reasons set forth herein, the Staff submits that the Confederated Tribes and David Pete's petition to intervene does not satisfy 10 C.F.R. § 2.714.

A. Legal Requirements for Intervention.

It is fundamental that any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that it has standing to do so. Section 189a(1) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2239(a) ("the Act" or "AEA"), provides:

> In any proceeding under this Act, for the granting, suspending, or amending of any license . . ., the Commission shall grant a hearing upon the request of *any person whose interest may be affected by the proceeding,* and shall admit any such person as a party to such proceeding."

Id.; emphasis added.

The Commission's regulations in 10 C.F.R. § 2.714(a)(2) provide that a petition to intervene, *inter alia*, "shall set forth with particularity the interest of the petitioner in the proceeding, [and] how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors set forth in [§ 2.714(d)(1)]." Pursuant to 10 C.F.R. § 2.714(d)(1), in ruling on a petition for leave to intervene or a request for hearing, the presiding officer or Licensing Board is to consider:

> (i) The nature of the petitioner's right under the Act to be made a party to the proceeding.
>
> (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
>
> (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

Finally, a petition for leave to intervene must set forth "the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene," 10 C.F.R. § 2.714(a)(2); and a petitioner must advance at least one admissible contention in order to be permitted to intervene in a proceeding. 10 C.F.R. § 2.714(b).

In determining whether a petitioner has established the requisite interest, the Commission has traditionally applied contemporaneous judicial concepts of standing. *See, e.g., Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 47 (1994); *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993); *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992), *review denied sub nom. Environmental & Resources Conservation Organization v. NRC,* 996 F.2d 1224 (9th Cir. 1993).

In order to establish standing, a petitioner must show that the proposed action will cause "injury in fact" to the petitioner's interest and that the injury is arguably within the "zone of interests" protected by the statutes governing the proceeding. *See, e.g., Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993); *Public Service Co. of New Hampshire* (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 266 (1991), *citing Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983). In Commission proceedings, the injury must fall within the zone of interests sought to be protected by the AEA or the National Environmental Policy Act. *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 316 (1985). To establish injury in fact and standing, the petitioner must establish (a) that he personally has suffered or will suffer a "distinct and palpable" harm that constitutes injury in fact; (b) that the injury can fairly be traced to the challenged action; and (c) that the injury is likely to be redressed by a favorable decision in the proceeding. *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988); *Vogtle, supra*, 38 NRC at 32; *Babcock and Wilcox* (Apollo, PA Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 81 (1993). A determination that the injury is fairly traceable to the challenged action does not depend "on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible." *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 (1994). Finally, it must be likely, rather than speculative, that a favorable decision will redress the injury. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 561; (1992); *Sequoyah Fuels*, 40 NRC at 71-72.

The injury must be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife, supra,* 504 U.S. at 560. A

petitioner must have a "real stake" in the outcome of the proceeding to establish injury in fact for standing. *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-48, *aff'd*, ALAB-549, 9 NRC 644 (1979). While the petitioner's stake need not be a "substantial" one, it must be "actual," "direct" or "genuine." *Id.* at 448. A mere academic interest in the outcome of a proceeding or an interest in the litigation is insufficient to confer standing; the requestor must allege some injury that will occur as a result of the action taken. *Puget Sound Power and Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 983 (1982), *citing Allied General Nuclear Services* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976); *Puget Sound Power & Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-26, 15 NRC 742, 743 (1982). Similarly, an abstract, hypothetical injury is insufficient to establish standing to intervene. *Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), LBP-91-38, 34 NRC 229, 252 (1991), *aff'd in part on other grounds,* CLI-92-11, 36 NRC 47 (1992).

It is axiomatic that a person may obtain a hearing or intervene as of right on his own behalf but not on behalf of other persons whom he has not been authorized to represent. *See, e.g., Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) (individual could not represent plant workers without their express authorization); *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977) (mother could not represent son attending university unless he is a minor or under legal disability); *Combustion Engineering, Inc.* (Hematite Fuel Fabrication Facility), LBP-89-23, 30 NRC 140, 145 (1989) (legislator lacks standing to intervene on behalf of his constituents).

In order for an organization to establish standing, it must either demonstrate standing in its own right or claim standing through one or more individual members who have standing. *See Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995). Thus, an organization may meet the injury in fact test either (1) by showing an effect upon its organizational interests, or (2) by showing that at least one of its members would suffer injury as a result of the challenged action, sufficient to confer upon it "derivative" or "representational" standing. *Houston Lighting and Power Co.* (South Texas Project Units 1 and 2), ALAB-549, 9 NRC 644, 646-47 (1979), *aff'g* LBP-79-10, 9 NRC 439, 447-48 (1979). An organization seeking to intervene in its own right must demonstrate a palpable injury in fact to its organizational interests that is within the zone of interests protected by the Atomic Energy Act or the National Environmental Policy Act. *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 528-30 1991). Where the organization relies upon the interests of its members to confer standing upon it, the organization must show that at least one member who would possess standing in his individual capacity has authorized the organization to represent him. *Georgia Institute of Technology, supra,* 42 NRC at 115; *Turkey Point, supra; Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-94, 396 (1979); *Babcock and Wilcox Co.* (Pennsylvania Nuclear Services Operations, Parks Township, PA), LBP-94-4, 39 NRC 47, 50 (1994).[3]

[3] It has also been held that the alleged injury-in-fact to the member must fall within the purposes of the organization. *Curators of the University of Missouri* (TRUMP-S Project), LBP-90-18, 31 NRC 559, 565 (1990).

B. The Confederated Tribes and David Pete Have Failed to Establish Standing to Intervene.

An application of these concepts to the Petition filed by the Confederated Tribes and David Pete demonstrates that they have not established their standing to intervene in this proceeding, in that they have not shown an "injury in fact" to their interests that is fairly traceable to the licensing of the PFS facility at the Skull Valley Goshute Reservation site. As discussed below, the Petitioners set forth certain information pertaining to the composition of the Confederated Tribes, the activities of Tribal members and a general description of the geographic area in which they are located -- but they fail to note that the Confederated Tribes' Reservation is located approximately 65 miles south-west of the Skull Valley Goshute Reservation.[4] Further, the Petitioners fail 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 thus fail to demonstrate that any alleged harm to their interests is traceable to the proposed ISFSI. In the absence of such information, it is impossible to conclude that the construction and operation of this facility will cause them a "distinct and palpable" harm that constitutes injury in fact. Accordingly, their Petition should be denied at this time.[5]

In their Petition, the Confederated Tribes generally allege that they and their members would be harmed by the instant amendment. *See, e.g.,* Petition at 6-7. In support of their Petition, the Confederated Tribes attached the affidavit of the Chairman of the Tribe, David

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[4] *See* Official Highway Map of the State of Utah, Utah Department of Transportation (1995) (Attachment 1 hereto).

[5] The Staff notes that the Confederated Tribes and Mr. Pete appear to have satisfied the Commission's requirements regarding the specification of aspects of the subject matter as to which they seek to intervene, in accordance with 10 C.F.R. § 2.714(a)(2). *See* Petition at 10-13.

Pete. Mr. Pete's affidavit states, *inter alia*, that he is a member of the Tribe and Chairman of its Business Council, and that the Tribe's attorney, John Paul Kennedy, is authorized to represent the Tribe and Mr. Pete in this proceeding. Affidavit at ¶¶ 2-4. Mr. Pete also seeks intervention in his individual capacity, and the Petition and affidavit address his individual claim.

The Confederated Tribes and Mr. Pete state that the Tribe is located "on the west side of Tooele County" (Petition at 2); that the Tribe is comprised of approximately 450 individual members, about half of whom reside on the Reservation and "most" of the remaining members reside in "surrounding communities" (*Id.*); that "the Tribe's headquarters is located within Tooele County" and employs about 25 Tribal members (*Id.* at 4); that the Tribe owns a welding fabrication shop located nearby (although it is presently closed), and that Tribal children attend school in Ibapah and Wendover, Utah (*Id.*). The Petition further states that the Tribe and its members "depend heavily upon ranching for employment and income," and lease Tribal land for livestock grazing, that they operate a big-game hunting enterprise (primarily involving elk) "on the Reservation," that the natural ranging area of the elk extends off the Reservation "toward Dugway and Skull Valley," that "much of the area" is used for recreational purposes by Tribal members, and that the Tribe is developing an off-road tourism business which would allow vehicles to access "certain parts" of the Reservation from areas on "the Skull Valley side of the Reservation." (*Id.*). In addition, the Petition states that Tribal members, including Mr. Pete, hunt, fish, and gather food within an historic aboriginal area consisting of 7.2 million acres, including "the vicinity of the Skull Valley Reservation" as well as "all of Tooele County and much of the lands surrounding," from Salt Lake City in the East to the Ruby Mountains in Nevada (*Id.* at 3 and n.1); that the proposed ISFSI is located within this same aboriginal area

(*Id.* at 3); and that Tribal members including Mr. Pete "regard ancient burial sites located within the aboriginal area (including Skull Valley) as sacred places, and from time to time, visit such sites to honor deceased ancestors and relatives" (*Id.*).

Notwithstanding these assertions, the Confederated Tribes and Mr. Pete fail to establish their standing to intervene in this proceeding. As the Confederated Tribes and Mr. Pete recognize, Tooele County "is geographically large" (Petition at 2). The Confederated Tribes' Reservation is located on the far west side of Tooele County (approximately 65 miles from the Skull Valley Goshute Reservation), and extends half-way into Nevada. Ibapah and Wendover, identified as the locations where Tribal children attend school, are located over sixty miles west from the Skull Valley Goshute Reservation. No specific location is identified for the Tribal headquarters or welding shop, but presumably these are located near the Reservation, approximately 65 miles from the proposed Skull Valley site. Similarly, the location of Mr. Pete's residence has not been specified, nor is the distance from any Tribal member's residence to the proposed ISFSI site specified.

Similarly, while the Petition alleges various activities as occurring "in the vicinity of" or within the "same aboriginal area as" the proposed site, the Petitioners did not specify how frequent these contacts are or where the activities take place, nor did they specify the distances from these sites to the proposed location of the ISFSI in Skull Valley. Moreover, as recognized by the Petitioners, the alleged "aboriginal area" consisted of a huge area, totaling 7.2 million acres. *See* Petition at 3 n.1. Likewise, while it was alleged that the natural range of elk hunted by the Tribe extends off the Reservation "toward Dugway and Skull Valley," and that "much of the area" is used for recreational purposes by Tribal members, no attempt was made to state

how close the elk range or recreational areas are in relation to the proposed ISFSI site, or where Tribal recreational activities take place given the presence of two large military test sites located between the two reservations.[6] Absent any assertion as to specific locations within the claimed aboriginal area in which the various activities occur or burial sites are present, the potential impact upon Petitioners' interests cannot be ascertained.

In this regard, it is well established that generalized claims of occasional contacts within this area are not sufficient to establish injury in fact. *See Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-396, 5 NRC 1141, 1150 (1977) (occasional trips from residence to areas within 23 miles of the site and "other unspecified communities asserted to be near the site" was insufficient to demonstrate injury in fact to confer standing); *Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 337-38 (1979) (in operating license proceeding, "an occasional trip (unspecified)" to owner's farm located 10-15 miles from the site is insufficient to support a belief that health and safety would be endangered).

Absent a more particular showing of where the Tribe's and Mr. Pete's activities are conducted, and how the Tribe's and Mr. Pete's present-day activities would be affected by the proposed licensing action, the Petitioners cannot show that they would suffer a "distinct and palpable" or "concrete" injury, that is "traceable" to the proposed construction and operation of the ISFSI. Therefore, the Petition does not demonstrate the requisite injury in fact, because their contacts with the proposed site are either too remote or unspecified.

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[6] The Confederated Tribes' Reservation and the Skull Valley Indian Reservation are separated by the Deseret Test Center and the Dugway Proving Grounds. These areas, which are marked "No Public Access" on the Official Highway Map, extend over forty miles.

Apart from their failure to particularize the location of their activities and properties, the Petitioners have not shown any mechanism by which their interests could be affected by the instant licensing action. In this regard, the Petitioners allege various health and property impacts from accidental releases caused by a transportation accident, design or manufacturing flaw in the casks, explosions, or sabotage (Petition at 7). These include assertions that "[a]n accidental release could contaminate the air, ground, and surface water, the land, and the surrounding people, animals, and plants"; would contaminate and destroy areas used by the Tribe for "grazing, forage, hunting, fishing, and gathering"; would cause illness or death among members of the Tribe due to "high-level radiation exposure"; "would place a burden on limited Tribal resources in an effort by the Tribe to provide [health] care"; would cause "significant adverse economic consequences as well as endangerment of the area's livestock and agricultural base"; and could lead to "increased cancer and leukemia rates or cellular and genetic defects many years into the future" (Petition at 7).[7] However, while these claims of injury are of the type that fall within the zone of interests sought to be protected by the AEA and/or NEPA, no basis has been provided to support these generalized assertions of potential harm or to link them to the proposed licensing action -- nor is any basis for such assertions readily apparent.

In Commission proceedings involving initial power reactor licensing, a showing of geographic proximity within about 50 miles of the reactor has been presumed sufficient to satisfy the injury in fact requirement. *See, e.g., Tennessee Valley Authority* (Watts Bar Nuclear Plant,

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[7] Mr. Pete, in his individual capacity, states similar concerns regarding alleged injury in fact to his interests, including adverse impacts to hunting, fishing, gathering of foods, and visiting "shrines scattered throughout the area"; health effects; loss of income derived from ranching on the Reservation; and a potential that he may be forced "to relocate from his ancestral area" (Petition at 9).

Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 n.21 (1977). In some materials licensing cases, injury in fact based upon close geographic proximity may be presumed where "the potential for offsite consequences is obvious." *Armed Forces Radiobiology Institute* (Cobalt-60 Storage Facility), ALAB-682, 16 NRC 150, 154 (1982). Generally, however, in materials licensing cases, standing will depend upon an analysis of the particular material at issue in the proceeding and the specific circumstances alleged by each petitioner. *See generally,* Statement of Consideration, "Informal Hearing Procedures for Materials Licensing Adjudications," 54 Fed. Reg. 8269, 8272 (Feb. 28, 1989); Proposed Rule, "Informal Hearing Procedures for Materials Licensing Adjudications," 52 Fed. Reg. 20089, 20090 (May 29, 1987). Similarly, in power reactor operating license proceedings, as well as in non-power reactor proceedings, it has been held that a determination of how close a petitioner must live or engage in activities relative to the source of radioactivity to establish standing depends on the nature of the proposed action and the significance of the radioactive source.[8]

In the instant proceeding involving a proposed ISFSI, there is no basis to apply a 50-mile or similar geographic distance presumption for standing. Significantly, the Commission has recognized that the consequences of a "postulated worst-case accident involving an ISFSI is

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[8] *Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 116-17 (1995) (in a non-power reactor proceeding, a presumption based on geographical proximity "albeit at distances much closer than 50 miles" may be applied where "the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences"); *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989) (petition for leave to intervene denied where no "obvious potential for offsite consequences" was alleged to result from the licensing action at issue in the proceeding).

insignificant in terms of public health and safety."[9] Accordingly, the Commission has concluded that offsite emergency preparedness is not necessary for dry cask spent fuel storage, because the calculated releases and doses from spent fuel storage accidents in dry casks are below the EPA's protective action guides for taking protective actions after an accident. Thus, notwithstanding the Petitioners' various assertions of potential harm, there is no "obvious potential for offsite consequences" associated with operation of the ISFSI. Moreover, as discussed above, the Petitioners have not shown that the proposed ISFSI has obvious potential for offsite consequences that could affect them at distances approximately 65 miles away. The Petitioners have not specified close, regular, frequent contacts in the immediate area where the ISFSI is to be located. Their claim of occasional activities in unspecified locations is insufficient to confer standing, and the distance of 65 miles from the Goshute reservation to the Skull Valley reservation at which the proposed ISFSI would be built is too remote to support standing. Thus, the Petitioners have not shown that they would suffer any injury in fact that is "fairly traceable to the proposed action," and their petition to intervene pursuant to 10 C.F.R. § 2.714 should therefore be denied.

C. The Confederated Tribes Have Not Established Their Right to Participate As an Interested Governmental Entity Under 10 C.F.R. § 2.715(c).

Pursuant to 10 C.F.R. § 2.715(c), presiding officers are to "afford representatives of an interested State, county, municipality, and/or agencies thereof, a reasonable opportunity to

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[9] Statement of Consideration, "Emergency Planning Licensing Requirements for Independent Spent Fuel Storage Installation (ISFSI) and Monitored Retrieval Storage Facilities (MRS)," 60 Fed. Reg. 32430 (1995) (emphasis added). *See also* NUREG-1140, "A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees" (1991), at 61-63.

participate" in NRC adjudicatory proceedings. The regulation does not specify the necessary showing which must be made for a State or other governmental entity to establish its status as an "interested" governmental entity or otherwise define that term, nor has the Staff succeeded in locating any guidance in this regard in Commission case law or in the regulatory history of § 2.715(c). *See, e.g.*, Statement of Consideration, 27 Fed. Reg. 377 (Jan. 13, 1962). Thus, it is unclear whether a governmental entity must show that it has a cognizable legal "interest" in the proceeding, or whether it is sufficient for it to be generally "interested" in the subject matter of the proceeding.[10]

Further, while § 2.715(c) affords an opportunity for participation by an "interested State, county, municipality, and/or agencies thereof," the rule is silent with respect to the rights of other governmental entities, such as Native American tribes or foreign governments such as Mexico or Canada, to participate in agency proceedings in this manner.[11] In this regard, the

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[10] Some support for the view that States need not identify a legally cognizable interest in a proceeding in order to participate under § 2.715(c), may be found in the fact that States can not obtain a hearing as of right under this provision. *See Northern States Power Co.* (Tyrone Energy Park, Unit 1), CLI-80-36, 12 NRC 523, 527 (1980) (a request by a state or state agency under § 2.715(c) to participate in licensing hearings does not itself trigger a hearing). Further, "interested persons" are routinely invited to comment on proposed rulemaking, pursuant to 10 C.F.R. § 2.805, for which the showing of a legally cognizable interest is not required. At the same time, it must be noted that the right to participate in any adjudicatory proceeding, with its concomitant ability to affect the outcome of the proceeding, is normally limited by the doctrine of standing to those persons who are able to show a legally cognizable interest therein.

[11] Initially, section 2.715(c) authorized non-party participation by interested States alone. *See* "Rules of Practice," 27 Fed. Reg. 377 (Jan. 13, 1962). This provision was expanded by the Commission in 1977, in the belief that "[t]his type of cooperation could be extended to other units of government which also have an interest in the licensing proceeding," so as to allow participation by "interested States, counties, cities, and agencies thereof." *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).

Staff notes that while Indian tribes have participated in numerous NRC proceedings under 10 C.F.R. § 2.714, no cases have been found in which Indian tribes participated as a non-party under § 2.715(c).

The lack of clarity in this regard was noted by the Commission, when it adopted regulations governing the conduct of high level waste proceedings in 10 C.F.R. Part 60. In 10 C.F.R. § 60.63, the Commission authorized "affected Indian tribes" (as specifically defined in 10 C.F.R. § 60.2)[12] to participate in high level waste proceedings conducted under 10 C.F.R. Part 2, Subpart G, in the same manner as State and local governments. The Commission noted that "States and arguably affected Indian Tribes can participate under 10 C.F.R. 2.715" -- but adopted the new Part 60 rules to "assure[] that host States and affected Indian Tribes will be permitted to intervene."[13] This statement, and the adoption of § 60.63(a) suggests that Indian

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[12] An "Affected Indian Tribe" is carefully defined in 10 C.F.R. § 60.2 as:

> [A]ny Indian Tribe (1) within whose reservation boundaries a repository for high-level radioactive waste or spent fuel is proposed to be located; or (2) whose Federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of Congressionally ratified treaties or other federal law may be substantially and adversely affected by the locating of such a facility; *Provided*, That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the Tribe, that such effects are both substantial and adverse to the Tribe.

This definition only affects an Indian Tribe's right to participate in certain types of NRC adjudicatory proceedings, as specifically set forth in the Commission's regulations. *See, e.g.*, 10 C.F.R. § 60.63.

[13] Statement of Consideration, "Disposal of High-Level Radioactive Wastes in Geologic Repositories: Amendments to Licensing Procedures," 51 Fed. Reg. 27158, 27160 (July 30, 1986) (emphasis added).

tribes may not be eligible for non-party participation under 10 C.F.R. § 2.715(c) in non-high level waste proceedings such as this.[14]

Moreover, in light of the Commission's adoption of § 60.63, an anomalous result would occur if Indian Tribes were required to show a "substantial and adverse" effect upon Tribal interests in order to participate in high-level waste proceedings, but were allowed to participate under § 2.715(c) in other types of proceedings (many of which could be far more benign than a high level waste proceeding), without having to make any comparable showing of adverse impact upon Tribal interests. In any event, in the instant proceeding, where the Confederated Tribes have not shown a potential "injury in fact" to any Tribal interests sufficient to support their standing to intervene, no grounds have been shown to exist which would support their participation as a non-party under § 2.715(c).

CONCLUSION

For the reasons set forth above, the Confederated Tribes and David Pete's intervention petition fails to satisfy the requirements of 10 C.F.R. § 2.714. Further, the Confederated Tribes have not shown that they are entitled to participate in the proceeding as an interested governmental entity pursuant to 10 C.F.R. § 2.715(c), in lieu of intervening under § 2.714.

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[14] Notwithstanding the above conclusions, some support for an Indian Tribe's participation as an interested governmental entity in NRC adjudicatory 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* Attachment 2 hereto.

Accordingly, in the absence of any further information, the Staff opposes the Petition filed by the Confederated Tribes and David Pete, and recommends that it be denied.

Respectfully submitted,

Sherwin E. Turk
Counsel for NRC Staff

Catherine L. Marco
Counsel for NRC Staff

Dated at Rockville, Maryland
this 18th day of September 1997

ATTACHMENT 1

Utah

OFFICIAL HIGHWAY MAP
UTAH DEPARTMENT OF TRANSPORTATION

Executive Director ..... Thomas R. Warne
Deputy Director ..... Clinton D Topham

Scale: One inch = approximately 16 miles / 1 mile = 1.6 km

INFORMATION

The Utah telephone area code is 801.
Toll-free telephone numbers are designated by 800.

UT = Utah UTC = UT Travel Council SLC = Salt Lake City

ROAD & WEATHER INFORMATION

EMERGENCY 911
HIGHWAY CONDITIONS ..... (801) 964-6000
WEATHER ..... (801) 524-5133

HIGHWAY WELCOME CENTERS

I-15 near Brigham City ■ I-80 near Echo Junction
I-15 near St. George ■ I-70 near Thompson Springs
UT Field House of Natural History, Vernal

VISITOR INFORMATION

UTAH TRAVEL COUNCIL
Council Hall
Salt Lake City, UT 84114
(801) 538-1030 or (801) 538-1467
http://www.netpub.com/utah/

The UT Travel Council and UT Tourism and Recreation Information Center are located in Council Hall, across the street from the UT State Capitol Building on the corner of State Street and 300 North in Salt Lake City.

SALT LAKE CONVENTION & VISITORS BUREAU
180 South West Temple
Salt Lake City, UT 84101
(801) 521-2868

Escalante ..... (801) 826-5499
755 W. Main, Escalante, UT 84726
Hanksville ..... (801) 542-3461
406 So. 100 W., Hanksville, UT 84734
Logan ..... (800) 882-4433
160 North Main Street, Logan, UT 84321
Moab ..... (800) 635-6622
Center and Main, Moab, UT 84532
Monticello ..... (800) 574-4386
117 So. Main, Monticello, UT 84535
Ogden ..... (800) 255-8824
2501 Wall Ave., Ogden, UT 84401
Park City ..... (800) 453-1360
1910 Prospector Ave., Park City, UT 84060
Price ..... (800) 842-0789
625 E. 100 No., Price, UT 84501
Provo ..... (801) 377-2262
2545 No. Canyon Road, Provo, UT 84604
Richfield ..... (800) 748-4361
220 No. 600 W., Richfield, UT 84701
St. George ..... (800) 233-8824
906 No. 1400 W., St. George, UT 84770
Tooele ..... (800) 378-0690
201 No. Main St., Tooele, UT 84074
Vernal ..... (800) 477-5558
25 E. Main St., Vernal, UT 84078

NATIONAL PARKS

NP = National Park NM = Nat'l Monument
NRA = Nat'l Recreation Area NHS = Nat'l Historic Site

Arches NP ..... (801) 259-8161
P.O. Box 907, Moab, UT 84532
Bryce Canyon NP ..... (801) 834-5322
Bryce Canyon, UT 84717
Canyonlands NP ..... (801) 259-7164
Moab, UT 84532
Capitol Reef NP ..... (801) 425-3791
HC-70 Box 15, Torrey, UT 84775
Zion NP ..... (801) 772-3256
P.O. Box 1099, Springdale, UT 84767
Cedar Breaks NM ..... (801) 586-9451
82 N. 100 E., Cedar City, UT 84720
Dinosaur NM ..... (303) 374-3000
4545 Hwy. 40, Dinosaur, CO 81610
Quarry Visitor Center ..... (801) 789-2115
Natural Bridges NM ..... (801) 692-1234
P.O. Box 1, Lake Powell, UT 84533
Rainbow Bridge NM ..... (520) 608-6404
P.O. Box 1507, Page, AZ 86040
Hovenweep NM ..... (303) 749-0510
McElmo Rt., Cortez, CO 81321
or Mesa Verde NP, CO 81330 ..... (303) 529-4461
Timpanogos Cave NM ..... (801) 756-5238
Route 3, Box 200, American Fork, UT 84003
Flaming Gorge NRA ..... (801) 784-3445
P.O. Box 275, Manila, UT 84046
Glen Canyon NRA ..... (520) 608-6404
P.O. Box 1507, Page, AZ 86040
Golden Spike NHS ..... (801) 471-2209
P.O. Box 897, Brigham City, UT 84302

U.S. FOREST SERVICE

CAMPING RESERVATIONS: (800) 280-2267

U.S. Forest Service
Federal Bldg. Rm. 8301
125 South State Street
SLC, UT 84138
(801) 524-5030

U.S. Forest Service
Intermountain Region
2501 Wall Avenue
Ogden, UT 84401
(801) 625-5306

BUREAU OF LAND MANAGEMENT (BLM)

Utah State Office
324 So. State St., Suite 400
SLC, UT 84111
(801) 539-4001

UTAH STATE AGENCIES

UT Dept. of Transportation ..... (801) 965-4000
4501 So. 2700 W., SLC, UT 84119
UT Arts Council ..... (801) 533-5895
617 E. So. Temple, SLC, UT 84102
UT Centennial Commission ..... (801) 531-1996
324 So. State St., Suite 234, SLC, UT 84111
UT Film Commission ..... (801) 538-8740
324 So. State St., Suite 500, SLC, UT 84111
UT Historical Society ..... (801) 533-3500
300 Rio Grande, SLC, UT 84101
UT Museum Services ..... (801) 533-3247
324 So. State St., Suite 500, SLC, UT 84111
UT Parks and Recreation ..... (801) 538-7220
1636 W. N. Temple, Suite 116, SLC, UT 84116
Camping Reservations ..... (800) 322-3770
Off-Highway Vehicles ..... (801) 538-7320
UT Div. of Wildlife Resources ..... (801) 538-4700
1596 W. N. Temple, SLC, UT 84116

UTAH RECREATION INFORMATION

Please contact the UTC or the agencies listed below.

Ski UT Vacation Planner ..... (801) 534-1779
Ski UT, 150 West 500 South, SLC, UT 84101
Bicycle UT Vacation Guide ..... (801) 649-5806
Bicycle UT, P.O. Box 738, Park City, UT 84060
UT Guides & Outfitters ..... (801) 566-2662
153 East 7230 So., Midvale, UT 84047
2002 SLC Winter Olympics ..... (801) 322-2002
215 So. State St., SLC, UT 8[illegible]
UT Golf Directory ..... (801) 538-1030
Raft UT Vacation Planner ..... (801) 566-2662
UT Snowmobile Directory ..... (801) 538-1030

TRAFFIC RULES

Unless otherwise posted, right turns are permitted on a red light only after a full stop. U-turns are allowed except across a painted median or a double yellow line. Some communities prohibit U turns within city limits.

Do not pass when the solid yellow line is in your lane. Lane changes, slowing or other maneuvers must be signaled at least three seconds in advance.

Utah speed limits are strictly enforced. The maximum speed limit in Utah is 55 mph, except on rural interstate highways where it is 65 mph. Please obey all posted speed limits.

ACCIDENTS AND FINANCIAL RESPONSIBILITY

Any traffic accident involving death, personal injury or damage of $400 or more must be reported immediately to law enforcement officers.

Utah has a no-fault insurance law requiring motorists to carry adequate insurance. If you are insured properly in your state of residence, you will be adequately covered in Utah.

WINTER DRIVING CONDITIONS

Mountain driving can be hazardous during heavy snowstorms, particularly over high passes. Some routes most commonly affected are:

US 89, Logan Canyon NE of Logan
US 89 and 91, NE of Brigham City
I-80, Parleys Canyon E of SLC
US 40, Daniels Canyon SE of Heber
US 6, Soldier Summit SE of Provo
US 191 between Duchesne and Helper
UT 31 between Fairview and Huntington
UT 14 between Cedar City and US 89

A 24-hour road condition recording may be reached in the SLC area by calling 964-6000. Within Utah but outside of the SLC area, the toll-free number is (800) 492-2400.

Commercial vehicles must have tire chains in possession during winter months.

Motorists traveling in designated ski canyons must have mounted snow tires or chains for their drive wheels from November 1 through March 31. All-season tires qualify if they have a mud and snow rating from the manufacturer.

Studded snow tires are only permitted on Utah highways from October 15 through April 15.

YOU CAN HELP PRESERVE UTAH'S UNIQUE AND IRREPLACEABLE TREASURES

TREAD LIGHTLY. Leave no trace of your camping. Camp in designated sites only. Stay on established roads and trails.

KEEP UTAH FORESTS AND CANYONS CLEAN. Pick up and pack out trash. Dispose of human waste properly.

PROTECT AND CONSERVE WATER SOURCES. Carry your own water for drinking and washing to protect scarce desert water sources and forest watershed areas.

ALLOW SPACE FOR WILDLIFE. Maintain your distance, remain quiet, do not chase or pick up wild animals, keep your pets under control.

LEAVE HISTORIC SITES, ROCK ART, RUINS AND ARTIFACTS UNTOUCHED. Admire remnants of the past from a distance, and report violations.

Buckle Up

LEGEND

HIGHWAY CLASSIFICATIONS
Interstate Highway
Interchange
Multilane Divided Highway
Principal Through Highways
Other Highways
Paved Improved Unimproved
Local Roads
Paved Improved Unimproved
(Inquire locally for condition of these roads)
County Boundary Line

POPULATION SYMBOLS
County Seat Shown In Red
0-2,500
2,500-5,000
5,000-50,000
50,000 and over
State Capitol
Lettering used for incorporated places - PROVO
Lettering used for unincorporated places - Aneth

HIGHWAY MARKERS
Interstate Route
U.S. Route
State Route
Interchange Exit Number

OTHER MAP SYMBOLS
Accumulated Mileage between Red Bars
Intermediate mileage between towns, junctions or interchanges
Scenic Byways
HISTORIC TRAILS

National Forests
National Parks, Monuments and Recreation Areas
Wilderness and Primitive Areas
Indian Reservations
State Parks and Recreation Areas
Points of Interest
Campsites
Bureau of Land Management Jurisdiction
Rest Areas
View Areas
Winter Sports Area
Bird Refuge
Fish Hatcheries
Airports
Visitors Information Center
Boundary between Pacific and Mountain Standard Time

Individual County General Highway Maps are available at nominal cost from the Utah Department of Transportation and should be referred to for more detailed information. Map orders should be addressed to Utah Department of Transportation, Office of Community Relations U.D.O.T.-D.P.S Complex 4501 So. 2700 W. Salt Lake City, Utah. 84119 Phone (801)965-4104

UDOT
DRIVE THE ASTRO BELT

Population: 1,722,850 — 1990 Census **Area:** 84,990 Sq. Miles **Capital:** Salt Lake City

ATTACHMENT 2

ATTACHMENT 2

THE WHITE HOUSE

WASHINGTON

April 29, 1994

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Government-to-Government Relations with Native American Tribal Governments

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

William J. Clinton

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 Storage Installation)	)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with § 2.713(b), 10 C.F.R., Part 2, the following information is provided:

Name:	Catherine L. Marco
Address:	U.S. Nuclear Regulatory Commission Office of the General Counsel Washington, D.C. 20555
Telephone Number:	(301) 415-3052
Admissions:	Massachusetts Supreme Judicial Court District of Columbia Court of Appeals
Name of Party:	NRC Staff

Respectfully submitted,

Catherine L. Marco

Catherine L. Marco
Counsel for NRC Staff

Dated in Rockville, Maryland
this 18th day of September, 1997.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'97 SEP 19 P3:44

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

Name:	Sherwin E. Turk
Address:	U.S. Nuclear Regulatory Commission Office of the General Counsel Washington, D.C. 20555
Telephone Number:	(301) 415-1575
Telefax Number:	(301) 415-3725
Admissions:	United States Supreme Court State of New Jersey District of Columbia
Name of Party:	NRC Staff

Respectfully submitted,

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 18th day of September 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 REQUEST FOR HEARING AND PETITION TO INTERVENE FILED BY THE CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION AND DAVID PETE" and "NOTICE OF APPEARANCE" for Catherine L. Marco and Sherwin E. Turk 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, this 18th day of September, 1997:

Office of the Secretary
ATTN: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555

G. Paul Bollwerk, III, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Thomas D. Murphy
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
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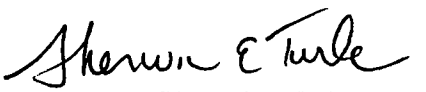
BROWN & GEE
185 S. State St., Suite 1300
P.O. Box 11019
Salt Lake City, UT 84147-0019

Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of the Commission Appellate
Adjudication
Mail Stop: 16-G-15 OWFN
U.S. Nuclear Regulatory Commission
Washington, DC 20555



Sherwin E. Turk
Counsel for NRC Staff