

JUNE 2, 1999

**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
)	
(Private Fuel Storage Facility))	

**INTERVENOR OHNGO GAUDEDAAH DEVIA'S
MOTION TO HOLD IN ABEYANCE ACTION ON ITS MOTION TO
COMPEL ANSWERS TO INTERROGATORIES AND TO PRODUCE
DOCUMENTS DIRECTED TO THE APPLICANT**

Intervenor Ohngo Gaudedah Devia (OGD) hereby requests the Atomic Safety and Licensing Board (Board) to hold in abeyance action on OGD's Motion to Compel Answers to Interrogatories and to Produce Documents Directed to the Applicant until after June 9, 1999. This brief delay will allow the OGD and Private Fuel Storage (PFS or Applicant) to consult prior to the resolution of the Motion to Compel as directed by the Board in its April 22, 1998 Memorandum and Order (LBP-98-7) at 161. The following provides the basis for OGD's Motion for Abeyance.

1. This matter is proceeding on an expedited schedule. As a result, a party must file a Motion to Compel within seven days of service of responses to discovery. August 20, 1998 Memo and Order at 4. Service by e-mail in effect, shortens the time in which a party must respond to responses to discovery.

2. On May 10, 1999, OGD submitted formal discovery requests to PFS. These requests consisted of five interrogatories and ten document requests.
3. OGD's formal discovery requests are virtually identical to its informal discovery requested, which were submitted to PFS on October 9, 1998. OGD's informal discovery request is attached hereto.
4. PFS's response to OGD's formal discovery request is almost identical to its response to OGD's informal request. Those responses are attached hereto. Thus, upon denying OGD's formal discovery request, PFS had twice denied OGD access to essentially the same information for essentially the same reason. Given the consistency of PFS's negative responses to discovery, the likelihood of any consultation avoiding the need for OGD to seek the intervention of the Board was unlikely.
5. On May 27, 1999, OGD filed its Motion to Compel Answers to Interrogatories and to Produce Documents Directed to the Applicant (OGD's Motion to Compel).
6. On June 1, 1999, counsel for PFS contacted counsel for OGD to explain that PFS wanted the opportunity to consult with OGD prior to a ruling on OGD's Motion to Compel. However, during the conversation counsel for PFS offered no compromise regarding PFS's prior position on OGD's discovery requests.

7. Nonetheless, the Board's April 22, 1998 Memorandum and Order states that prior to filing a motion to compel, the party filing the motion shall certify that it has provided a written statement explaining deficiencies with or objections to and the requested action relative to the discovery request to the other party and consult with that party in an effort to resolve the matter without Board action. As a result, OGD agreed to engage in a discovery meeting(s) with PFS. See, Board Memo and Order at 161. However, OGD specified that such discussions must be concluded by June 9, 1999.
8. If the Board grants OGD's Motion, OGD will provide a written statement to PFS as per the Board's Order and will consult with PFS regarding that written statement on or prior to June 7, 1999. On June 9, 1999, OGD will inform the Board with regard to any part of OGD's Motion to Compel that may no longer require Board action.
9. OGD regrets the technical non-compliance with the Board's April 22, 1998 Memo and Order and believes that the relief sought by this Motion should rectify this procedural error.

OGD respectfully requests this Board to grant its Motion to Hold in Abeyance Action on its Motion to Compel Answers to Interrogatories and to Produce Documents Directed to the Applicant until June 9, 1999, at which time OGD will inform the Board which portion of the Motion to Compel may no longer require action by the Board.

Respectfully submitted,



JORO WALKER
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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
ASLBP No. 97-732-02-
ISFSI
JUNE 2, 1999

CERTIFICATE OF SERVICE

I hereby certify that copies of **Intervenor Ohngo Gaudedah Devia's Motion to Hold in Abeyance Action on its Motion to Compel Answers to Interrogatories and to Produce Documents Direct to the Applicant** were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 2nd day of June 1999.

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Attention: Rulemakings and Adjudications
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Joro Walker



LAND AND WATER FUND

Legal Aid For The Environment

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VIA E-MAIL AND FIRST CLASS MAIL

Jay E. Silberg, Esq.
Ernest L. Blake, Jr.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N. W.
Washington, DC 20037-8007

Re: In the Matter of Private Fuel Storage, L.L.C.
Docket No. 72-22-ISFSI

Dear Messrs. Silberg and Blake:

Pursuant to the ASLB's June 29, 1998 Memorandum and Order concerning informal discovery and other matters, OGD requests that Private Fuel Storage, L.L.C. provide the following information:

- (1) Please provide the names, addresses, telephone numbers, facsimile numbers, and titles of each person who evaluated any potential location for the proposed PFS facility.
- (2) Please provide the names, addresses, telephone numbers, facsimile numbers, and titles of each person who participated in any manner in the decision to choose the Skull Valley Reservation as the site for the proposed PFS facility.
- (3) Please provide the names, addresses, telephone numbers, and facsimile numbers of each contractor or agent of PFS (or any of the companies who have an interest in PFS) who evaluated any potential location for the proposed PFS facility.
- (4) Please provide the names, addresses, telephone numbers, and facsimile numbers of each contractor or agent of PFS (or any of the companies who have an interest in PFS) who participated in any manner in the decision to choose the Skull Valley Reservation as the site for the proposed PFS facility.

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and Desert Southwest*

(5) Please identify each person/organization that has an interest in PFS. For each person and organization identified please provide: (a) if a person- name, address, telephone number, facsimile number, and title; (b) if an organization- complete legal name, location of corporate headquarters, copy of latest annual report, copy of all licenses or permits issued by any state or federal agency, copy of latest filing with any public utility commission, copy of latest filing with the Securities and Exchange Commission, copies of all licenses/permits authorizing the organization to do business in the State of Utah.

(6) Please provide copies of all articles of incorporation, by-laws, and partnership agreements that pertain to PFS, L.L.C.

(7) For each nuclear power facility that may provide waste to be stored at the proposed PFS facility please identify the name, street address, city, and state of the facility.

(8) For each nuclear power facility that may provide waste to be stored at the proposed PFS facility please provide all documentation that describes the location, status, and quantity of current spent fuel storage at the facility.

(9) For each nuclear power facility that may provide waste to be stored at the proposed PFS facility please provide all documentation pertaining to space at the facility that could be used for additional spent fuel storage.

(10) For each nuclear power facility that may provide waste to be stored at the proposed PFS facility please provide all documentation pertaining to any funding received from the federal government, including but not limited to, funding received from the U.S. Department of Energy and the U.S. Nuclear Regulatory Commission.

In addition, we would appreciate a list of persons, including addresses and telephone numbers, who have any personal knowledge concerning the subjects identified in items 1 - 10. Please list the person(s) identified under the applicable item.


After we review the list you provide we will likely request to interview one or more persons on the list.

Thank you in advance for your cooperation in helping OGD complete its informal discovery requests. If you have any questions please contact us.

Sincerely



Richard E. Condit



Joro Walker

Land and Water Fund

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Counsel for Ohngo Gaudadeh Devia

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New York
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November 24, 1998

By E-Mail and Regular Mail

Joro Walker, Esq.
Richard E. Condit, Esq.
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**Re: Response to OGD's Informal Discovery Requests of October 9,
1998 to Applicant PFS and the Skull Valley Band**

Dear Ms. Walker and Mr. Condit:

We have received your letter of October 9, 1998 in which, as part of the informal discovery process in the Private Fuel Storage Facility ("PFSF") licensing proceeding, OGD requests a broad range of information from Private Fuel Storage ("PFS"). The Skull Valley Band has forwarded to us a similar request to it of the same date to which we are also responding as the lead party in opposition to all admitted contentions contested by PFS and the Band. See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 244 (1998). In view of the outstanding cooperation that we have had with OGD and other parties to date in this proceeding, we are certainly interested and willing to cooperate with OGD in obtaining informal discovery. However, unfortunately we find ourselves in a position where -- except for parts of your request to the Band -- we must object to your requests for information because they are outside the scope of your contention in this proceeding.

The only contention submitted by OGD which has been admitted in this proceeding is part of OGD Contention O. See LBP-98-7, supra, 47 NRC at 226-234. OGD Contention O, as admitted by the Board, was specifically limited to Bases 1, 5, and 6. Id. at 233. These admitted bases challenge PFS's assessment of whether minority and low income communities surrounding the PFSF site on Skull Valley Band Reservation will suffer disproportionately high and adverse human health and environmental effects by virtue of the

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Richard E. Condit, Esq.
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PFSF being located on the Reservation. Except for parts of your requests to the Skull Valley Band, your requests for information do not relate to the environmental justice issues of Contention O as admitted by the Board.

Specifically, paragraphs 1 through 4 of your request to PFS ask for the names and addresses of persons involved in the selection of a location for the PFSF. Such information does not relate to Contention O. The Contention as admitted by the Board is limited to the asserted "disparate impact" of the PFSF that allegedly results from its location on the Skull Valley Band's Reservation and does not involve the site selection process. See LBP-98-7, supra, 47 NRC at 233. Indeed, the Commission has expressly reminded both the Board and the parties that, in accordance with its LES decision, Contention O is not to involve litigation of the justness or fairness of the site selection process or the motivation of those involved in that process. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 37 (1998).

Paragraphs 5 and 6 of your request to PFS ask for information concerning the owners of the PFS, including names, locations, and annual reports, as well as the articles of incorporation and agreements that pertain to PFS. Again this information does not relate to OGD's Contention O, which concerns alleged disparate impacts of the PFSF on surrounding communities. Paragraphs 7 through 10 of your request to PFS ask for information on each power plant that may contract to store spent fuel at the PFSF, including the names of such facilities, the quantity of spent fuel stored at each facility, and the space available at each for the storage of additional spent fuel. This information however, relates to the third and fourth bases of Contention O as originally filed -- both rejected by the Board -- which concerned the amount of additional spent fuel storage capacity allegedly needed at U.S. power reactors (basis 4) and the alleged benefits of leaving spent fuel stored on-site at the power reactors as an alternative to the PFSF (basis 3).

Thus, the requests in paragraphs 1 through 10 of your request to PFS are outside of the scope of OGD's Contention O, as it was admitted by the Board. PFS finds that it must therefore respectfully object and decline to answer these requests because to do so would greatly expand the scope of the contention beyond that admitted by the Board. PFS, however, is ready and willing to respond to any requests that are within the scope of OGD's admitted contention.

Insofar as OGD's request to the Skull Valley Band is concerned, we are enclosing with this letter demographic data currently in the files of the Band and its attorney pertaining to persons living and/or working on the Reservation which is responsive to your first request. The person most knowledgeable about this data is Leon Bear.

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Paragraphs 2 and 3 of OGD's request to the Band ask for the names and addresses of each person who participated in any manner, both on behalf of PFS and the Band, in the negotiation of the lease of Reservation land to PFS. The negotiations leading up to the lease are not, however, related to the issues of disparate impact raised in OGD Contention O. Rather, it is the final lease, as negotiated and agreed to by PFS and the Band, that may be relevant insofar as it identifies payments and other benefits to the Band. In this regard, the Applicant has produced at Parson, Behle & Latimer's offices in Salt Lake City a copy of the lease which contains information on payments and other benefits to the Band which would be available to OGD for purposes of this proceeding upon executing an appropriate confidentiality agreement.

Paragraph 4 of OGD's request to the Band asks for all documents that pertain to the lease of Reservation land to PFS. This request is overly broad for the same reasons as the requests in paragraph 2 and 3 discussed above. As stated there, the Applicant has produced a copy of the lease which contains the information pertaining to the lease that is pertinent to OGD Contention O.

Please call me should you have any questions concerning this letter.

Sincerely,



Paul A. Gaukler
Counsel for Applicant