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, L.L.C.	) ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel	)
Storage Installation	) November 23, 1998

OHNGO GAUDADEH DEVIA'S (OGD) REPLY TO THE APPLICANT'S AND STAFF'S RESPONSES TO LOW RAIL CONTENTIONS

INTRODUCTION

On or about August 28, 1998, Private Fuel Storage, L.L.C. (PFS or Applicant) filed an amendment to its application for a license designating a new rail spur as the preferred mode of transportation for spent fuel from the Union Pacific mainline at Low Junction to the Skull Valley Reservation. In early October 1998, OGD received copies of the documentation concerning PFS' Low rail transportation license amendment (Low Rail Amendment).

On November 2, 1998, OGD filed its contentions regarding the Low Rail Amendment. On November 10, 1998, the NRC Staff filed their response (Staff Resp.) to OGD's contentions regarding the Low Rail Amendment. Additionally, on November 12, 1998, PFS filed its Answer (App. Ans.) to OGD's contentions. Subsequently, the Board granted OGD's request to prepare a reply, requiring the reply to be filed by November 23, 1998.

I. THE LATE-FILED CONTENTION CRITERIA

A. OGD's Contentions are Not Late-Filed

The Staff and PFS argue that OGD's contentions are required to meet the NRC's regulations concerning late-filed contentions. Staff Resp. at 3 - 6; App. Ans. at 1 - 5. However, the Staff and PFS incorrectly assume, without discussion, that the requirements for late-filed contentions must be met by OGD in this instance. The regulations do not support their assumption.

The intervention standard articulated in the NRC's regulations does not require OGD or similarly situated parties to meet the late-filed contentions criteria in this instance. The plain language of the applicable regulation provides:

> The petition and/or request shall be filed not later than the time specified in the notice of hearing, or as provided by . . . the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request . . .

10 C.F.R. § 2.714(a)(1). Following the filing of the Low Rail Amendment there were no new hearing notices issued, nor did the Board issue an order indicating a time for filing new contentions. OGD submitted its contentions as soon after receiving notice of the Low Rail Amendment and the revisions to the Safety Analysis Report (SAR), Environmental Report (ER), and Emergency Plan (EP), as was practicable. Therefore, considering the facts and regulations, OGD's contentions were not late-filed.

B. Even if OGD's Contentions are Deemed Late-Filed, the Criteria for Late-Filed Contentions are Met

The criteria applied to late-filed contentions are:

(i) Good cause, if any, for failure to file on time.
(ii) The availability of other means whereby the petitioner's interest will be

protected.

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

(iv) The extent to which the petitioner's interest will be represented by existing parties.

(v) The extent to which petitioner's participation will broaden the issues or delay the proceeding.

10 C.F.R. § 2.714(a)(1). OGD's Low Rail Amendment contentions meet each of these criteria.[1]

First, regarding good cause, OGD has already noted that it was not given notice of the Low Rail Amendment until quite recently. See, Affidavit of Margene Bullcreek dated November 2, 1998 at ¶ 4. The Board should consider that an amendment to a pending application and the response thereto is not like other late-filed contention circumstances where the challenging party files contentions months or years after the proceeding has begun. The application is the foundation of the licensing process. When that document is altered, it is only reasonable and consistent with notions of fairness and due process, to allow the parties presently involved and those whose rights may be directly effected for the first time to submit contentions within a reasonable time after being noticed of the amendment or change. OGD had good cause for the timing of its filing of the Low Rail Amendment contentions. See, e.g., Cleveland Electric (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-90, 16 NRC 1359, 1361-1362 (1982).

Second, OGD's interests concerning the proposed rail spur cannot be adequately

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[1] The Staff argues that because OGD did not initially state how it meets the late-filed contention criteria "its contentions should be rejected." Staff Resp. at 4, citing, Duke Power Co. (Perkins Nuclear Power Station, Units 1, 2, and 3), ALAB-615, 12 NRC 350, 352-353 (1980). However, Duke Power is not applicable because there the late petitioner was "out of time in the extreme" and had not addressed the late-filed criteria in any manner. Duke Power, 12 NRC at 351. In the instant case, OGD has a legitimate basis for arguing that its contentions are not late and is addressing the criteria in this brief.

protected by other means. No other proceedings are presently available within which OGD could challenge the proposed rail spur. The Tribal Government offers no process. The Bureau of Land Management (BLM) has not offered any process. And, the NRC's NEPA comment process is not an adequate substitute for participation in a licensing hearing. Cincinnati Gas & Electric (Zimmer Nuclear Station), LBP-79-22, 10 NRC 213, 215 (1979).[2]

Third, OGD has raised sound contentions concerning the Low Rail Amendment that will assist the NRC in making a decision. In support of its contentions, OGD has provided a reasoned basis for raising each contention. The Staff argues that OGD's failure to identify experts to support its contentions and its failure to summarize expert testimony "weighs against the admission of the contention." Staff Resp. at 5. However, contrary to the Staff's position, the intervention standard does not require the proffer of expert opinion in order to have a contention admitted. 10 C.F.R. § 2.714(b)(2)(ii) ("or expert opinion"). Where appropriate, OGD has identified in its bases a deficiency in the Applicant's assessment of the issue(s) being raised in a contention. See, e.g., bases stated for Contentions R, T, U, V, and Z.

> While the 'basis with reasonable specificity' standard requires a contention to be stated with particularity, . . . it does not require a petition to detail supporting evidence. Nor should a licensing board address the merits of a contention when determining its admissibility. What is required is that an intervenor state the 'reasons' for its concern.

Public Service of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649 (1982) (citations omitted). See, also, Duke Power Co. (Amendment to

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[2] The Staff agrees that this factor weighs in favor of OGD's contentions being admitted. Staff Resp. at 5.

Materials License SNM-1773), ALAB-528, 9 NRC 146, 151 (1979) ("Rejecting this contention for lack of specificity flies in the face of its plain language"). OGD has met the third factor specified in the criteria for late-filed contentions.

Fourth, none of the parties can represent OGD's interests. OGD is primarily comprised of persons living on the Skull Valley Reservation who also oppose the construction and operation of the proposed facility. Contrary to the position taken by the Staff, neither the State nor other parties can adequately represent the unique point of view held by members of OGD. See, Staff Resp. at 5. The fact that the State of Utah has presented contentions akin to OGD's does not mean that the State is willing or able to represent OGD's interests. Duke Power Co. (Amendment to Materials License SNM-1773), ALAB-528, 9 NRC 146, 150 (1979). Many of OGD's members are traditionalists who believe strongly in the importance of their relationship to the land, plants, and creatures on and around the Skull Valley Reservation. See, e.g., Affidavits of Margene Bullcreek dated September 12, 1998 and November 2, 1998. Consequently, OGD's assessment of issues associated with the PFS project, even regarding technical issues, is likely to be distinct from other parties.

Finally, it is unlikely that OGD's contentions will so significantly broaden the scope of the issues or delay the case in any meaningful manner. To the extent OGD's contentions would delay completion of the licensing process, the Applicant has as much or more responsibility for the potential delay because of the lateness of the license amendment. Under the circumstances present in this case there is little likelihood that OGD's contentions will contribute to any delay. See, Texas Utilities Electric Co.

(Comanche Peak Steam Electric Station, Unit 1), ALAB-868, 25 NRC 912, 927 (1987).

In sum, OGD's contentions pertaining to the Low Rail Amendment are not "late." However, even if the contentions are adjudged to be late, OGD satisfies, on balance, the five intervention criteria.

II. OGD's CONTENTIONS ARE ADMISSIBLE

Both the Staff and the Applicant argue that OGD's contentions regarding the Low Rail Amendment are inadequately pled. Staff Resp. at 6; App. Ans. at 5. In general, the Staff and the Applicant argue two points: 1) that OGD is not specific or detailed enough regarding the substance of its contentions, and 2) that some of the contentions amount to impermissible challenges to NRC regulations. The Board should reject both arguments.

First, the specificity of OGD's contentions are directly related to the amount of time available to respond to the Applicant's license amendment and OGD's position as a citizen-intervenor with very limited resources. OGD could have spent several months attempting to obtain experts and numerous documents to provide further support for its contentions, but then the Board would have heard the Staff and Applicants even more loudly and strenuously complain that OGD's contentions were "late" and should be dismissed. Instead, OGD sought to file its contentions as quickly as possible in order to avoid being deemed somehow "late."

Moreover, OGD should not be required to present the details of its case in order to even be permitted to participate in the licensing process.

> . . . for the purposes of intervention a petition must be adequate to show that it applies to the facility and that there has been sufficient foundation assigned for it to warrant further exploration. And the greater the particularity of the contentions to permit a conclusion that there is in fact a genuine issue, the better. But this

does not mean that Section 2.714 should be turned into a fortress to deny intervention . . .

* * * * *

[G]ranting an intervention merely sets in motion the next steps in the prehearing process which are designed to assure that a genuine issue in fact exists which warrants an evidentiary hearing.

Philadelphia Electric Co. (Peach Bottom, Units 2 and 3), ALAB-216, 8 AEC 13, 21 (1974).[3] OGD should be permitted to complete discovery to allow the organization to develop a more substantial foundation for its contentions. This is the point of the discovery process. The merits of OGD's contentions can be challenged, if necessary, after discovery is completed but before hearings commence.

Second, the arguments by the Staff and the Applicant that OGD is seeking to impermissibly challenge a regulation are incorrect. Staff Resp. at 9; App. Ans. at 5, 7 - 8, 10. Such arguments are heavy-handed attempts to summarily dismiss valid contentions. OGD has no intention of challenging NRC regulations. For the most part, OGD is challenging errors, omissions, or weaknesses it views in the Applicants paper-based presentation of the proposed rail spur and facility. The Board is asked to review OGD's contentions in light of this intent.

The Board should avoid harshly interpreting NRC regulations to further exclude OGD from the licensing process by denying its contentions regarding the Low Rail Amendment. This result would be inappropriate and would potentially raise issues of

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[3] Although the NRC has adopted new rules since these cases were decided, the NRC states that the new requirements are not "a substantial departure from existing practice." Rules of Practice for Domestic Licensing Proceedings, 54 Fed.Reg. 33168, 33170 (1989) (current rule "does not require a petitioner to describe facts which would be offered in support of a proposed contention").

fairness and due process. Below, OGD presents any additional argument it has deemed necessary to support its contentions.

A. Contention Q

The Staff and Applicant argue that this contention lacks specificity and the Applicant argues that OGD seeks to challenge the licensing process. Staff Resp. at 6; App. Ans. at 5 - 6. With the addition of the rail spur to PFS' license application, it has become clear to OGD that much effort is being exerted by the NRC, Applicant, and other parties on the question of licensing when the real questions are: 1) is this facility needed; 2) if it is needed, what is the appropriate site for the facility; and 3) what alternatives are there to the creation of a spent fuel storage facility. Once these questions are answered through a detailed environmental impact statement process, then the specifics of licensing a facility, if necessary, should be examined.

With each step forward in the licensing process currently under the Board's direction, the Applicant moves closer to approval of the facility. For the NRC's part, both the Board and the Staff are contributing enormous amounts of time and other resources to the licensing issue. While it is not a foregone conclusion that the Board and Commission will license the proposed facility and rail spur, the current course of the NRC's process is designed to answer a question that in OGD's view is premature. There is simply no need to advance the licensing process if it is decided through the NEPA process that either no action is warranted or that an alternative to the proposed facility (e.g., expanding current on-site storage) would be better. OGD, as part of its contention, cited NEPA regulations that address this point.

Moreover, courts have consistently recognized that NEPA's purpose is to ensure "meaningful consideration of environmental factors at all stages of agency decision-making and to inform both the public and agencies implicated at subsequent stages of the decision-making of the environmental costs of the proposal." Jones v. District of Columbia Redevelopment Land Agency, 499 F.2d 502, 510 (D.C. Cir. 1974). Accordingly, major federal actions which will significantly affect the quality of the environment must be "preceded by an environmental impact statement or EIS" which fully and adequately complies with NEPA. Holy Cross Wilderness Fund v. Madigan, 960 F.2d 1515, 1521-1523 (10th Cir. 1992) (emphasis added); see also Inland Empire Public Lands Council v. Schultz, 992 F.2d 977, 980 n.1 (9th Cir. 1993) (agencies must consider the environmental consequences of their proposed actions before the actions are implemented) (emphasis added). In this regard, the Supreme Court expressly recognized that "[s]ection 102(2)(C) [of NEPA] is one of the 'action-forcing' provisions intended as a directive to 'all agencies to assure consideration of the environmental impact of their actions in decision-making' . . . during the development of a proposal." Kleppe, 96 U.S. at 409.

Given that NEPA is designed to ensure the full and adequate investigation and disclosure of the environmental consequences of proposed agency actions before agency action, implementation or initiation of any part of a project with perfunctory, after-the-fact justification is unlawful. NEPA guarantees that by "focusing the agency's attention on the environmental consequences of a proposed project, . . . that important effects will not be overlooked or underestimated only to be discovered after resources have been

committed or the die otherwise cast." Robertson, 490 U.S. at 349 (emphasis added). As aptly stated by one court, "[a]n ex post facto justification generally is not an acceptable substitute, as NEPA . . . does not authorize defendants to meet their responsibilities by locking the barn door after the horses are stolen." Cady v. Morton, 527 F.2d 786, 794 (9th Cir. 1975). The focus of NEPA's provisions are to require officials to determine, in light of environmental considerations, whether the actions they contemplate should be undertaken. Friends of the River v. Federal Energy Regulatory Commission, 720 F.2d 93, 106 (D.C. Cir. 1983) ("And of particular importance, the EIS requirement inhibits post hoc rationalizations of inadequate environmental decisionmaking.")

While the Applicant and the Staff may find some comfort in the plan to eventually incorporate NEPA issues into the licensing process, complying with NEPA after initiating the licensing process prejudices, in this case, the NEPA process in favor of licensing. This problem can be cured by delaying further action on licensing the PFS facility until after the NEPA review is complete. If no action or an alternative to the PFS facility are the better choices, then the licensing process would be unnecessary.

Accordingly, despite the objections of the Staff and Applicant, the Board should stay the current proceedings pending completion of the NEPA process.

B. Contention R

The Staff and the Applicant improperly argue that Contention R is inadmissible because OGD 1) has merely repeated its Contention P; 2) has failed to provide an adequate basis for its assertion that the license amendment has not adequately studied impacts of the proposed rail spur on the traditional life style of OGD members. The

arguments of the Staff and Applicant fail.

First, with regard to the charge of repetition, it is important to note that Contention R is based solely on the license amendment and therefore cannot be merely repetitive of OGD's earlier contention.

It is clear that the license amendment differs materially from the applicant's original proposal. In its 1997 ER, the applicant plainly states that it intends to use truck transport along Skull Valley Road as the sole means of moving spent fuel from the main railroad line to the reservation. When it submitted its original application, PFS considered any railroad spur "optional," ER at 2.1-3; 4.4-1, had not even conducted a suitability study for the railroad spur, Id., and had done only a few pages of analysis on the environmental impacts of the spur. Id. at 4.4. However, PFS now considers the rail spur to be its "preferred option" and not until now has PFS put substantial work into its development and analysis of this new proposal. As a result, contentions based on the license agreement necessarily deal with a new proposal and cannot be repetitive.

Second, in answer to claims that OGD has failed to provide a basis for contention R, it is important to note that OGD's challenge is essentially focused on the sufficiency of PFS's license application – the applicant has failed to adequately analyze the potential effects that construction and operation of the rail spur and the associated noise, visual, travel-impeding impacts may have on OGD members and their traditional lifestyle. To provide the basis for this claim, OGD notes that the current ER is inadequate because it does not deal with these issues. Also in defense of its position, OGD notes that noise, visual impacts, the blockage of traditional travel routes, impacts to wildlife, wildlife

habitat and plant life will impact the traditional lifestyle of OGD members.[4] Affidavit of Margene Bullcreek, November 2, 1998.

Thus, OGD has, with sufficient factual basis and specific reference to the ER, demonstrated that portions of the license amendment are in dispute and that further exploration of the issue must be undertaken. *See*, Rules of Practice for Domestic Licensing Proceedings, 54 Fed.Reg. 33168, 33170 (1989) ("Where the intervenor believes the application and supporting material do not address a relevant matter, it will be sufficient for the intervenor to explain why the application is deficient").

C. Contention S

Again, the Staff and PFS argue that Contention S should be rejected because OGD has failed to point to specific portions of the application that address this issue. However, because the license amendment does not address these safety concerns, OGD can only point to the absence of these issues in the SR.

Again the Staff and PFS contend that contention S is repetitive of an earlier contention. However, this contention addresses only the Low rail spur, which, as demonstrated above, was a largely unanalyzed, material change to the application upon which OGD's earlier contentions were based. As a result, OGD's contentions, based on new information, are themselves new.

Finally, the Staff and PFS suggest that because NRC regulations rely on cask construction to guarantee public safety and health, the issues of terrorism and sabotage are not relevant to this proceeding. However, this argument fails to recognize that the

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[4] Of course, OGD members are experts, sufficiently knowledgeable to assert with confidence that these impacts will occur, thereby meeting any "expert opinion" requirement of the NRC regulations.

railroad itself is cars, as indicated below, and tracks (as distinguished from the casks) which are subject to sabotage, threatening the health and welfare of OGD members.

Thus, because it has pointed out, specifically, that the application fails to deal with issues that are properly the concern of this proceeding, OGD has demonstrated that portions of the license amendment are in dispute and that further exploration of the issue must be undertaken. 54 Fed.Reg. at 33171 ("The Commission expects that at the contention filing stage the factual support necessary to show that a genuine dispute exists need not be in affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion").

D. Contention T

The Staff and PFS also argue, for essentially the same reasons as they set forth with regard to Contention S, that Contention T should not be admitted. However , as stated above, PFS should address the issue of the safety of the rail cars, independently of the shipping casks, in its SR for the Low rail spur. Thus, OGD has indicated with specificity that the application fails to deal with issues that are properly the concern of this proceeding. Further, OGD has sufficiently demonstrated that portions of the license amendment are in dispute and that further exploration of the issue must be undertaken. 54 Fed.Reg. at 33170.

E. Contention U

The Staff and PFS also dispute the admissibility of Contention U, arguing that OGD has failed to substantiate its members' concerns that an increased risk of wildfires will result from construction and operation of the Low rail spur . However, this argument

is unconvincing – particularly because this contention challenges the sufficiency of the license amendment and need only point to the inadequacies of the analysis of this amendment to demonstrate that the application is in dispute.

For example, the ER admits that an increase in wildfires may result from the rail spur; ER, 4.4-9, but fails to adequately address this potential. ER § 4.4.8. Instead, the ER relies on the construction and maintenance of an environmentally destructive fire corridor without assurance that one can be built or that it will adequately reduce the threat of fires. In addition, the ER fails to account for the rise in the potential for wildfires caused by an increase in human activity, such as the clearing of the fire buffer zone and maintenance of the rail line. ER, § 4.4.8. Finally, the ER fails to establish that emergency vehicles can cross the rail line in the coarse of their fire fighting duties and fails to adequately address the impacts of the fire buffer zone on the visual, wildlife (including special status species), wildlife habitat, and riparian resources of the area. ER, § 4.4.8.

Again, Contention U contests the adequacy of the ER and therefore need only point to those sections of the application that are inadequate. The fact that the application fails to properly analyze the likelihood of the rail spur increasing the chances of frequent and recurring wildfires occurring in Skull Valley and threatening OGD members is sufficient to establish that portions of the license amendment are in dispute and that further exploration of the issue must be undertaken. 54 Fed.Reg. at 33170.

F. Contention V

In objecting to Contention V, the Staff and PFS improperly contend that OGD is refuting the sufficiency of Table S-4. Instead, OGD is asserting that the table does not cover all issues of relevance to a properly formulated license application. For example, the table does not account for the fact that, because the casks are of a new generation, they have not been subjected to any significant physical testing or durability demonstrations. As a result of this, the generous allowances of Table S-4, based on such testing, are not applicable to the current application. As a result, the application is insufficient.

Because OGD is contesting the failure of the application and its supporting material to address relevant issues, it has met the test for an admissible contention by explaining why the application is deficient. 54 Fed.Reg. at 33170.

G. Contention W

As demonstrated above, the argument advanced by the Staff and PFS that OGD is impermissibly attacking Table S-4 is misplaced. Rather, OGD is pointing out that the table does not cover issues relevant to the license application such as potential human errors or accidents, or other malfunctions involving the loading of shipping casks, the transportation of shipping casks to railhead, and transportation of casks via the proposed rail spur. Because the license application fails to address these relevant issues, it is deficient and its adequacy is properly in dispute.

H. Contention X

Not surprisingly, the Staff and PFS object to Contention X on the basis of OGD's

failure to provide an adequate factual basis for its claim that the license application fails to address environmental justice issues raised by the proposed rail spur. However, OGD, by referring to previous statement of fact, including the Affidavit of Margene Bullcreek, dated September 12, 1998, has established the same factual basis that prompted the Board to admit Contention O. OGD seeks to assure that the environmental justice analysis undertaken pursuant to this proceeding includes analysis of whether the discriminatory intent was behind or disparate impacts will result from the construction and operation of the rail spur alone and in connect with the rest of the proposed facility.

Again, because this contention addresses the adequacy of the license application and its failure to analyze relevant issues, it should be admitted on the basis of OGD's citations to the deficiencies of the application. 54 Fed.Reg. at 33170.

I. Contention Y

In their discussion of Contention Y, the Staff and PFS are misdirected. PFS suggests that the license application has adequately addressed the issue of livestock grazing. App. Ans. at 13. However, the underlying assumption behind the application discussion – that Ms. Bullcreek has options as to where to graze her horses – is without foundation. The license application operates on the assumption that grazing in Skull Valley can occur anywhere on the 271,000 acres of range land there. However, Ms. Bulcreek does not have access to or permission to graze on these acres of range land, but instead is limited to grazing on the part of the reservation where the rail spur will be located. Declaration of Margene Bullcreek, November 2, 1998, at ¶ 7. The license application does not address the impacts of the rail spur on grazing in this context and

therefore is inadequate.

J. Contention Z

Finally, to argue that Contention Z should be declared inadmissible, the Staff and PFS improperly discount Goshute oral history. Although wisdom, passed down orally from generation to generation, suggests that important cultural artifacts lie along the rail spur corridor, the Staff and PFS immediately discount this wisdom as undeserving of any deference. Interestingly, when Ms. Bullcreek's oral tradition-based statement that artifacts may be located in the path of the rail spur is compared to the license application assertion that "there is only a low probability" that artifacts occur within the rail spur, the former is discounted and the latter given authoritative weight. Neither the Staff nor PFS even consider the possibility that where experts disagree, there is a factual dispute worthy of further investigation. The assumptions that underlie such reasoning are disturbing and inappropriate and fail to give sufficient weight to the importance of cultural artifacts to Goshute traditionalists.

What is also distressing is that the Staff and PFS expect OGD, a group with limited resources and contacts, to survey the area for cultural artifacts within a month of learning of the alignment of the rail spur. Without anything stronger than a "may" impact, the Staff and PFS contend OGD's concerns should be dismissed. Without the typical trappings of a powerful intervenor with resources to spend on participation in this proceeding, it is argued OGD should be ignored. Such reasoning would unnecessarily limit participation in this proceeding to those, no matter their interests, who can finance expensive surveys with little notice. In addition, it would unnecessarily limit sources of

fact to those based on the dominant cultural notions of what constitutes a need for further inquiry.

Finally, the Staff and PFS ignore that the application's analysis of the cultural resource issue is limited and made without consultation with OGD. As a result, the application fails to sufficiently address issues relevant to the license application. Furthermore, OGD has established that important facts are in dispute and that the concerns raised by Contention Z are worthy of further investigation.

Conclusion

As established above, OGD's rail spur contentions are admissible herein.

Of further note, to assure justice and due process in this proceeding, the Board should admit OGD's contentions readily. Should it, instead, reject these contentions for want of a more expert or extensive factual basis, the Board will have only underscored the environmental justice issues which plague the application process. Essentially, by requiring, at the offset, an unduly rigorous factual basis for contentions, the Board would be limiting access to its proceedings to only those groups whose have the connections and resources to consult and hire experts who will enable these groups to bring their issues before the Board. As a result, only those well connected and well financed will be positioned to participate and protect their interests in an NRC proceeding. So, not only will the siting and impacts of the facility be subject to environmental justice concerns, but the application process itself will be as well.

Respectfully submitted this 23rd day of November, 1998.

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CERTIFICATE OF SERVICE

I hereby certify that copies of OGD's REPLY TO THE APPLICANT'S AND STAFF'S RESPONSES TO LOW RAIL CONTENTIONS, dated November 23, 1998, 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 23rd day of November, 1998.

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