

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

'99 DEC -3 P131

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In the Matter of

PRIVATE FUEL STORAGE, L.L.C.

(Independent Spent Fuel
Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

December 3, 1999

MEMORANDUM AND ORDER
(Denying Motion to Compel)

In a May 27, 1999 motion, as supplemented on June 9, 1999, intervenor Ohngo Gaudadeh Devia (OGD) seeks to compel discovery responses by applicant Private Fuel Storage, L.L.C., (PFS) to two interrogatories (Interrogatory Nos. 4-5) and six document requests (Document Request Nos. 4-5, 7-10) propounded by OGD on May 10, 1999. In its motion, OGD asserts that all these discovery requests are relevant to this litigation and its lone admitted issue, contention OGD O, Environmental Justice Issues are Not Addressed. See Intervenor [OGD] Motion to Compel Answers to Interrogatories and to Produce Documents Directed to [PFS] (May 27, 1999) at 6-14 [hereinafter OGD Motion]. PFS declares in response that these requests each fail to meet the 10 C.F.R. § 2.740(b)(1) standard of being "reasonably

calculated" to lead to the discovery of admissible evidence relative to contention OGD 0, so that OGD's motion to compel must be denied. See [PFS] Response to OGD's Motion to Compel [PFS] to Answer Interrogatories and Produce Documents (June 16, 1999) at 4 [hereinafter PFS Response].

Finding the OGD requests do not comply with the scope of admissible discovery under section 2.740(b)(1), the Board denies the OGD motion to compel.

OGD justifies its Interrogatory No. 4 and Document Request Nos. 4 and 5, all of which seek general information about the membership and structure of PFS, as relevant to the basic subject matter of this litigation. See OGD Motion at 7, 10-11. By reason of its opposition to the PFS application, OGD likely has a general interest in any information concerning PFS. Nonetheless, for purposes of discovery in this proceeding, its relevant interest is the subject matter of contention OGD 0, which concerns the question whether there is an adequate National Environmental Policy Act of 1969 (NEPA) analysis of any disparate impact that the PFS facility would visit on minority and low-income individuals in the surrounding area.¹ Because OGD has made

¹ Although the agency's rules of procedure governing the scope of discovery indicate that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of any other party," 10 C.F.R. § 2.740(b)(1), in the context of this
(continued...)

no showing as to how the information it seeks is relevant to its admitted contention, we deny its motion to compel relative to these discovery requests.

Interrogatory No. 5 seeks identifying information regarding each nuclear power facility that may use the PFS facility for waste storage, including a description of whether the facility currently stores and/or has room to store the waste it would place at the PFS facility. OGD justifies this request as possibly providing information that could assist it in seeking further information concerning storage impacts on those facilities' communities, thereby aiding OGD in evaluating the type and disproportionate nature of the impacts the local community could suffer from the PFS facility. Putting aside the fact that this interrogatory seems directed at providing information regarding the adequacy of existing onsite reactor storage, a matter we previously rejected as an appropriate basis for this contention, see LBP-98-47, 47 NRC 142, 233, aff'd, CLI-98-13, 48 NRC 26 (1998), it fails the "reasonably calculated" standard by virtue of the fact this interrogatory is, in fact, not reasonably likely

¹(...continued)
multi-party proceeding in which there are contention-related limitations on the number and timing of discovery requests, we see no basis for allowing a party to engage in discovery unless its request has some relevance to admitted contentions it sponsored or adopted.

to reveal information relevant to OGD's claim of disparate impact on minority or low-income populations in the local community.

In connection with Document Request No. 7, which seeks information regarding the PFS lease with the Skull Valley Band of Goshute Indians (Skull Valley Band), as well as any related PFS funds or services provided to the Band, PFS declares that it has already placed relevant documents, including the lease, in its Salt Lake City document repository and, because it considers the information confidential, has offered to make the documents available to OGD, as it has done for intervenor State of Utah (State) and the NRC staff, if OGD is willing to execute an appropriate confidentiality agreement. See PFS Response at 7-9.

Although OGD questions the basis for the PFS claim of confidentiality, see OGD Motion at 12-13, we observe that this issue recently was addressed in another federal judicial forum and resolved in favor of PFS. See Utah v. United States Department of the Interior, Consolidated Case No. 2:98 CV 380 K, slip op. at 4-8 (D. Utah Nov. 3, 1999) (granting summary judgment in favor of Interior Department regarding its claim PFS/Skull Valley Band lease agreement is confidential proprietary document not subject to disclosure under Freedom of Information Act exemption four). Nothing before the Board at this juncture provides any basis for us

to reach a different conclusion. Accordingly, we deny the OGD motion to compel relative to this document request. OGD can, of course, avail itself of the PFS offer to review the relevant documents after executing an appropriate confidentiality agreement.

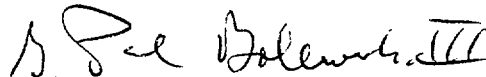
OGD Document Request Nos. 8 and 9 seek information on any federal funding or financial assistance provided to each nuclear facility that may ship spent fuel to the PFS facility, while OGD Document Request No. 10 seeks information regarding federal funding and nonmonetary assistance to PFS in identifying the Skull Valley site. As with Interrogatory No. 5, OGD declares that this information will help it identify health and safety issues that may be relevant to its disparate impact claim. And again, we deny these discovery requests because they fail the "reasonably calculated" standard by virtue of the fact they do not appear reasonably likely to reveal information relevant to OGD's claim of disparate impact on minority or low-income populations in the local community.²

² We would observe, however, that OGD is free during the Group III limited discovery period to attempt to reformulate these discovery requests (or any of the others that we deny today) in an effort to address the Board's relevancy concerns.

Accordingly, OGD's May 27, 1999 motion to compel discovery is denied.³

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁴



G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

December 3, 1999

³ Because we deny the 15-page OGD motion to compel on its merits, we need not reach the PFS claim that OGD violated the Board's requirement that a party wishing to file a motion exceeding ten pages must request leave to do so at least three business days before the motion is submitted (or include a showing of good cause for not filing three days beforehand) and must consult with any other affected party to determine whether or not they will oppose the motion. See PFS Response at 1 n.3. Nonetheless, any future failure to comply with these requirements could result in the Board striking all or part of the offending pleading.

⁴ Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant PFS; (2) intervenors Skull Valley Band, OGD, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State; and (3) the staff.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O-DENY'G MOTION TO COMPEL have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Dated at Rockville, Md. this
3 day of December 1999


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