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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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))	ASLBP No. 97-732-02-ISFSI

APPLICANT'S RESPONSE TO OGD REQUEST FOR EXTENSION OF TIME

Pursuant to the Atomic Safety and Licensing Board's ("Board") Order of April 12, 2001,¹ Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") files this response to intervenor Ohngo Gaudadeh Devia's ("OGD") April 11 motion for extension of time until April 23² to respond to PFS's March 28 motion to compel answers to PFS discovery.³ PFS opposes OGD's motion on the grounds of lack of good cause.

I. BACKGROUND

On February 16, 2001, PFS served OGD with the discovery requests in question.⁴ As discussed in PFS's motion to compel, PFS received responses to its requests that it believes are inadequate. The underlying requests, however, were short and providing adequate responses to them would not have been burdensome to OGD in any way. PFS

¹ Order (Schedule for Responses to Time Extension Motion) (Apr. 12, 2001).

² Request for Extension of Time for Ohngo Gaudadeh Devia (OGD) (Apr. 11, 2001) ("OGD Mot.").

³ Applicant's Motion to Compel Answers to Applicant's Discovery Requests to Intervenor OGD (Mar. 28, 2001) ("PFS Mot.").

⁴ Applicant's Second Set of Formal Discovery Requests to Intervenor OGD (Feb. 16, 2001) ("PFS 2nd Req.").

engaged in an extended attempt to obtain satisfactory responses from OGD without involving the Licensing Board. On March 26, 2001, then OGD counsel Joro Walker filed a notice of withdrawal from this proceeding, effective April 1.⁵ On March 28, 2001, after being unable to resolve its differences with OGD, PFS filed its motion. On March 29, 2001, the Board issued its order setting April 4, 2001 as the deadline for responses to PFS's motion.⁶ On April 11, one week after the April 4 deadline, the law firm of Steadman & Shepley, LC filed its notice of appearance in this proceeding as OGD counsel⁷ and filed OGD's motion for extension of time.

II. DISCUSSION

PFS opposes OGD's motion for an extension on the grounds that it lacks the good cause required by 10 C.F.R. § 2.711(a). OGD received PFS's motion on March 28. OGD knew, before the effective date of the withdrawal of its former counsel and before Steadman & Shepley, LC made its appearance, that OGD's response was due on April 4. Mr. Shepley stated that he "underst[ood] and expect[ed] that Joro Walker, Esq. [would] transfer all records and other documents and information to Steadman & Shepley, LC upon her return from vacation at the end of this week [April 8-14]," OGD Mot. at 1 (emphasis added). In fact, counsel for PFS spoke to Ms. Walker, who remains counsel for

⁵ Land and Water Fund of the Rockies Withdrawal of Counsel for Ohngo Gaudadeh Devia (OGD) (Mar. 26, 2001).

⁶ Order (Schedule for Responses to Motion to Compel) (Mar. 29, 2001).

⁷ Notice of Appearance of Steadman & Shepley, LC for Ohngo Gaudadeh Devia (OGD) (Apr. 11, 2001).

intervenor Southern Utah Wilderness Alliance, by telephone at her office on April 10.⁸ PFS also notes that Steadman & Shepley, LC is hardly new to the PFS case. For more than two years, it has been representing OGD Chairwoman Ms. Margene Bullcreek and other individual members of the Skull Valley Band of Goshutes opposed to the PFS project in their challenge of the PFS lease agreement with the Band in federal court.⁹ Furthermore, the principal disputed issue between PFS and OGD here, and the subject of the motion to compel, involves OGD's failure to specify the documents in that very case that OGD now asserts contain the bases for its claims in Contention OGD O. See PFS Mot. at 4-5. Thus, OGD's slow response to the issue at hand is essentially due to a lack of diligence.

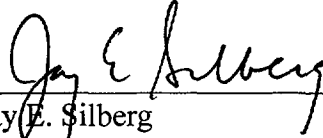
The Board established the discovery schedule in this case to enable all parties to obtain information and resolve issues in a timely manner. It is unfair for PFS to have to wait more than two months to receive an adequate answer to a short discovery request. Therefore, for the foregoing reasons, PFS requests that the Board deny OGD's motion and order OGD to promptly respond to PFS's discovery request, as set forth in PFS's motion. PFS believes that a deadline of April 23 would give OGD more than adequate time to respond to the underlying discovery requests.

⁸ Knowing that PFS had filed its motion and that the response was due on April 4, OGD should have made an effort to obtain the documents from Ms. Walker necessary to reply to the motion before the effective date of her withdrawal from the case.

⁹ On March 10, 1999, Steadman & Shepley, LC filed a case entitled United States of America ex rel. Sammy Blackbear, Sr. et al. v. Babbitt, U.S. District Court for the District of Utah, Case No.: 2-99-CV-156K.

For the reasons set forth above, PFS respectfully requests the Licensing Board to deny OGD's requested extension to respond to the motion to compel.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Jay E. Silberg", is written over a horizontal line.

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April 16, 2001

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CERTIFICATE OF SERVICE

I hereby certify that copies of the Applicant's Response to OGD Request for Extension of Time 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 16th day of April 2001.

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* Adjudicatory File
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