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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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 MOTION TO RENEW MOTION TO COMPEL ANSWERS
TO APPLICANT'S DISCOVERY REQUEST TO INTERVENOR OGD**

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") files this motion to renew its March 28, 2001 motion to compel¹ Ohngo Gaudadeh Devia ("OGD") to answer interrogatories and produce documents. PFS files this motion after receiving an additional response² to its discovery requests³ from OGD that remains deficient and incomplete, despite OGD's assurance, in response to PFS's motion to compel, "that OGD will provide answers to [the] subject discovery requests."⁴

¹ Applicant's Motion to Compel Answers to Applicant's Discovery Requests to Intervenor OGD (Mar. 28, 2001) ("PFS Motion").

² Ohngo Gaudadeh Devia's (OGD) April 25, 2001 Additional Response to Private Fuel Storage's (PFS) Motion to Compel (Apr. 25, 2001) ("OGD Add. Resp.").

³ Applicant's Second Set of Formal Discovery Requests to Intervenor OGD (Feb. 16, 2001) ("PFS 2nd Req."); see Ohngo Gaudadeh Devia's (OGD) Supplemental Responses to Applicant's First Set of Discovery Requests and Initial Responses to Applicant's Second Set of Discovery Requests (Mar. 8, 2001) ("OGD Resp."); Ohngo Gaudadeh Devia's (OGD) Second Supplemental Responses to Applicant's First Set of Discovery Requests and Initial Responses to Applicant's Second Set of Discovery Requests (Mar. 26, 2001) ("OGD Supp. Resp.").

⁴ Ohngo Gaudadeh Devia's (OGD) Response to Private Fuel Storage's (PFS) Motion to Compel (Apr. 23, 2001) ("OGD Mot. Resp.").

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On March 28, 2001, PFS filed its motion to compel. On April 11, the firm of Steadman & Shepley, LC, filed its notice of appearance as OGD counsel and filed a motion for extension of time to respond to PFS's motion.⁵ On April 17, the Licensing Board granted OGD until April 23 to respond to the motion.⁶ On April 20, OGD counsel contacted PFS counsel and stated that OGD would provide responses to PFS's outstanding discovery requests.⁷ On April 23, OGD filed its response to PFS's motion stating to the Board and the parties that:

PFS and OGD have . . . agreed by stipulation that OGD will provide answers to subject discovery requests on or before the 1st day of May, 2001, including providing the list of documents from the specified litigation that may be offered as evidence in support of OGD's environmental justice contention on or before the 25th day of April, 2001.

OGD Mot. Resp. Nevertheless, on April 25, OGD filed an additional response to PFS Interrogatory No. 8 and Document Request Nos. 4 and 5 (in response to all of which it had originally cited the "documents from the specified litigation") that is essentially no more adequate or complete than OGD's initial response. Thus, to preserve its position on the record, PFS renews its motion to compel.⁸

⁵ Request for Extension of Time for Ohngo Gaudadeh Devia (OGD) (Apr. 11, 2001); see Applicant's Response to OGD Request for Extension of Time (Apr. 16, 2001).

⁶ Memorandum and Order (Granting Motion to Compel Response Filing Extension Motion) (Apr. 17, 2001).

⁷ Telephone call from Duncan Steadman, counsel for OGD, to Sean Barnett, counsel for PFS (Apr. 20, 2001).

⁸ In a conversation with PFS counsel on April 26, Mr. Steadman stated for the first time that OGD understood that its April 25 response to Interrogatory No. 8 was inadequate and that OGD would supplement that response with a written response by May 1. Telephone call from Duncan Steadman, counsel for OGD, to Sean Barnett, counsel for PFS (Apr. 26, 2001). That position was not what PFS understood from previous conversations with Mr. Steadman and it is contradicted by the belligerence of the response OGD filed

In Interrogatory No. 8, see PFS 2nd Req. at 3, PFS had asked OGD for the bases of its assertion that a majority of the Skull Valley Band of Goshutes does not support the PFS ISFSI and the reasons for OGD's disagreement with the conclusion in the Draft Environmental Impact Statement (DEIS) for the PFSF that the PFS project would result in a net increase in Band members living on the Reservation. OGD responded that the basis for OGD's assertion regarding the support of the Band members for the PFS project were detailed "in affidavits filed with the United States District Court for the District of Utah in State of Utah v. United States Department of the Interior, Case No. 2:98 CV 380 K" and that "other evidence submitted relative to this case provides a further basis for this claim." OGD Resp. at 4. OGD later added that it intended to rely on "all evidence submitted in that case by the 'Blackbear' Plaintiffs, as contained in affidavits, declarations and other supporting or evidentiary documents and records." OGD Supp. Resp. at 2. In its motion, PFS stated that OGD's response was inadequate, in that it impermissibly required PFS to sift through documents to obtain a complete answer to its question. PFS Mot. at 5 (quoting Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 NRC 1400, 1421 n.39 (1982)).

OGD now provides the following "List" of Utah v. Department of the Interior documents, in response to Interrogatory No. 8 and Document Request Nos. 4 and 5, that provides no more information than its initial response:

on April 25. See OGD Add. Resp. at 2-3 & n.1. Therefore, PFS renews its motion to compel to preserve its position for the record.

1. As PFS is aware, nearly all of the documents involved with the subject litigation address issues relevant to one or more of the topics associated with Interrogatory 8 and Document Requests 4 and 5.
2. The pleadings are especially concerned with such issues (for example, the Black-bear Plaintiffs' Complaint, BIA's Answer, PFS' motions to dismiss, and the responses of all parties).
3. The associated affidavits, declarations and support documents address such issues in some detail (for example, the declarations of Leon Bear and Sammy Black-bear).

PFS is as intimately familiar with these documents as any other entity, and needs no further help in dealing with these documents, which are all reasonably calculated to contain discoverable information, in response to its requests.

OGD Add. Resp. at 3-4.

Despite OGD's assurances to PFS and to the Board that it would provide responses to PFS's discovery requests, this answer remains vague and nonspecific and does not answer Interrogatory No. 8.

Finally, in addition to being inadequate regarding Interrogatory No. 8, OGD claims that the April 25 response, quoted above, also responds to PFS Document Request Nos. 4 and 5. OGD Add. Resp. at 1, 3. Nevertheless, OGD's response is inadequate, in that it does not identify specific documents and is not what OGD had previously committed to provide PFS. See PFS Motion at 8-9. Thus, PFS also renews its motion to compel with respect to Document Request Nos. 4 and 5 in order to preserve its position on the record with respect to those requests.

Therefore, PFS moves to renew its motion to compel until such time as OGD provides full and complete answers to PFS's discovery requests.

Respectfully submitted,

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

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April 27, 2001

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PRIVATE FUEL STORAGE L.L.C.)	Docket No. 72-22
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CERTIFICATE OF SERVICE

I hereby certify that copies of the Applicant's Motion to Renew Motion to Compel Answers to Applicant's Discovery Requests to Intervenor OGD 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 27th day of April 2001.

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Attention: Rulemakings and Adjudications Staff
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* Adjudicatory File
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