

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Private Fuel Storage, a Limited Liability Company;
(Independent Spent Fuel Storage Installation).

Docket No. 72-22
ASLBP No. 97-732-02-ISFSI
May 4, 2001

**OHNGO GAUDADEH DEVIA'S (OGD) SECOND ADDITIONAL RESPONSE TO
PRIVATE FUEL STORAGE'S (PFS) (RENEWED) MOTION TO COMPEL**

Additional Response: OGD hereby provides an additional response to PFS's March 28, 2001 Motion to Compel. OGD hereby provides an additional response to PFS's March 28, 2001 Motion to Compel. OGD believes this provides full and complete responses to all information requested in PFS's instant Motion to Compel and completely answers the Motion. OGD provides this information even though OGD does not believe the Motion to Compel was warranted. OGD is willing, ready, even eager to provide information pertinent to its contention.

Litigation Documents: As addressed in OGD's previous additional Response, dated April 25, 2001, in its March 28th Motion to Compel, PFS argues that OGD's response to PFS's Interrogatory No. 8 and Document Requests No. 4 and 5 (wherein OGD intended to rely, in part, on information, including all evidence, contained in "affidavits, declarations and other supporting or evidentiary documents and records" in *Utah v. Department of the Interior*) were, as a matter of law, necessarily inadequate. PFS stated that OGD's response, with respect to the litigation documents, impermissibly presented it with an "impenetrable mass of documents" and that more specificity was, as a matter of law, required. OGD disagreed and still disagrees.

1. **PFS Was a Party Defendant:** As addressed in OGD's April 25, 2001 Additional Response, but inexplicably not addressed in PFS's April 27th Renewal, PFS fails to account for the

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fact that PFS was a party defendant in the subject litigation and already possesses all of the subject documents.

a. Nearly half of the subject documents were written by PFS, generally in response to the other half of the subject documents.

b. PFS is therefore intimately familiar with the litigation documents and the documents can hardly be characterized as an “impenetrable mass” with respect to PFS.

c. OGD’s first response, therefore, may be considered adequate under the circumstances and certainly cannot be inadequate as a matter of law.

d. Despite and notwithstanding OGD’s position that its first response was adequate, OGD provided more detail in OGD’s April 25th Additional Response, which included a descriptive list from which PFS, being intimately familiar with the documents, would have no problem identifying them.

2. OGD Provides Even More and Unnecessary Detail: Despite and notwithstanding OGD’s position that its previous responses were more than adequate, OGD provides herein a more detailed list of litigation documents reasonably calculated to contain discoverable evidence.

a. As has been shown, PFS as a party defendant, either generated or was served with all of the documents as part of the subject litigation and is intimately familiar with the documents.

3. The List:

a. As PFS is aware, nearly all of the documents involved with the subject litigation address relevant issues

b. Here is a list of documents, identified on the official court docket¹ by docket

¹Official Court Docket available at “ <http://pacer.utt.uscourts.gov/dc/cgi-bin/pacer740.pl> ”

date, which contain the most information relevant to the issues:

No.	Docket Date	Document
1	5/27/98	Complaint by Utah
2	7/28/98	Answer to Complaint by BIA
3	8/28/98	Motion and Memorandum for Summary Judgment by Utah
4	9/28/98	Answer to Complaint by PFS
5	9/30/98	Cross-motions for Summary Judgment by all parties
6	1/8/99	Replies by all parties
7	3/10/99	Complaint by Blackbear Plaintiffs
8	5/25/99	Answer to Complaint by BIA and Motion to Dismiss by PFS
9	6/2/99	Amended Answer
10	7/12/99	Responses to cross - motions and Motion to Dismiss
11	8/12/99	Declaration of Sammy Blackbear and response to motions
12	8/13/99	Documents concerning Subpoena of Leon D. Bear
13	8/16/99	Reply to S J Motions
14	8/18/99	All documents listed per this docket date (L. D. B. subpoena)
15	8/20/99	All docs. Listed per this docket date (PI replies issues)
16	8/24/99	All docs. Listed per this docket date (PI Memo and minute entry)
17	9/27/99	PI Memo
18	10/15/99	PI Memo
19	N/A	Transcript of Case

c. The associated affidavits, declarations and support documents are included (for example, the declarations of Leon Bear and Sammy Blackbear).

4. 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.

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Other Responses: In its March 28th Motion to Compel, PFS argues that in OGD's response to PFS's Interrogatory No. 8 and 9, OGD used the phrase "other issues relevant to the facility" which PFS claims is too vague.

1. OGD responds that other issues relevant to the facility are the improper changes in purported tribal government and associated improper actions caused by PFS's bypassing the Tribes legitimate government and conducting improper dealings with and support of unauthorized persons in usurping illegitimate power, leading to corruption and disparate adverse impacts.

2. In its March 28th Motion to Compel, PFS argues that in OGD's response to PFS's Interrogatory No. 9, OGD used the phrase "including . . ." which PFS claims is too vague.

3. PFS requests that OGD provide a more complete list of ways in which the DEIS does not address Environmental Justice issues.

4. OGD responds that the DEIS describes numerous potentially adverse risks to health and environment and provides purported analyses addressing these risks.

a. None of these descriptions or analyses consider risks in terms of causing a disproportionate adverse risk to low income and minority populations.

b. This is despite the fact that any health or environmental risk can potentially present a disproportionate risk depending on the circumstances of the risk and the conditions and factors at play in the interaction with these circumstances, with the low income and minority populations.

c. The DEIS does not adequately address these issues for any of the health and environmental risks it addresses.

d. OGD believes no such analyses were done.

Notice of Existence of Other Relevant Documents: OGD hereby gives notice that it has

become aware, as a result of the transition to the new law firm representing OGD, of documents pertinent to the subject contention that if in OGD's possession would be responsive to PFS's discovery requests.

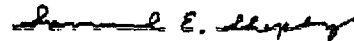
1. These documents are in the possession of various persons, some of whom are members of OGD and others who are not members of OGD.

2. OGD will within the next fifteen days seek to arrange to make these documents available under the circumstances of the NRC proceedings and provide a descriptive list to all parties.

3. The documents will then be immediately available, in most cases at the law offices of Steadman & Shepley, LC, for inspection and copying in accordance with procedures established by the NRC in these proceedings.

4. OGD will additionally investigate the possibility of the existence of additional pertinent documents, and if such are identified, OGD will seasonably provide supplemental responses as needed.

Respectfully submitted,



Samuel E. Shepley, Esq
Steadman & Shepley, LC
550 South 300 West
Payson, Utah 84651-2808
(801) 465-0703
E-mail: Steadman&Shepley@usa.com
slawfirm@hotmail.com
DuncanSteadman@mail.com
Attorney for OGD

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CERTIFICATE OF SERVICE

I hereby certify that copies of **OHNGO GAUDADEH DEVIA'S (OGD) SECOND ADDITIONAL RESPONSE TO PRIVATE FUEL STORAGE'S (PFS) MOTION TO COMPEL** were served on the persons listed below by e-mail (unless otherwise noted) with conforming copies by United States Mail, first class, postage prepaid, this 4th day of May, 2001.

G. Paul Bollwerk III, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: GPB@nrc.gov

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: PSL@nrc.gov

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: JRK2@nrc.gov; kjerry@erols.com

Office of the Secretary
Attn: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: hearingdocket@nrc.gov
(Original and two copies)

Catherine L. Marco, Esq.
Sherwin E. Turk, Esq.
Office of the General Counsel
Mail Stop O-15 B18
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
E-mail: pfscase@nrc.gov; set@nrc.gov;
clm@nrc.gov

Jay E. Silberg
Shaw, Pittman
2300 N Street, NW
Washington, D.C. 20037
E-mail: jay_silberg@shawpittman.com
ernest_blake@shawpittman.com
paul_gaukler@shawpittman.com

Joro Walker, Esq.
Director, Utah Office
Land and Water Fund of the Rockies
1473 South 1100 East, Suite F
Salt Lake City, Utah 84105
E-mail: lawfund@inconnect.com

John Paul Kennedy, Sr., Esq.
Confederated Tribes of the Goshute
Reservation and David Pete
1385 Yale Avenue
Salt Lake City, Utah 84105
E-mail: john@kennedys.org

CERTIFICATE OF SERVICE-OGD'S 2ND ADDITIONAL RESPONSE TO PFS'S (RENEWED) MOTION TO COMPEL

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* Adjudicatory File
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

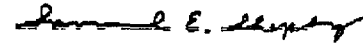
Denise Chancellor, Esq.
Assistant Attorney General
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, Utah 84114-0873
E-mail: dchancel@state.ut.us
jbraxton@email.usertrust.com

James M. Cutchin
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: jmc3@nrc.gov

* By United States Mail only

Danny Quintana, Esq.
68 South Main Street, Suite 600
Salt Lake City, Utah 84101
E-mail: quintana@xmission.com

Diane Curran, Esq.
Harmon, Curran, Spielberg &
Eisenberg, L.L.P.
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
E-mail: dcurran@harmoncurran.com



Samuel E. Shepley, Esq