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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

July 19, 2001

Mr. Duncan Steadman
Steadman & Shepley, LC
550 South 300 West
Payson, Utah 84651-2808

**In the Matter of Private Fuel Storage L.L.C.(Private Fuel Storage
Facility), Docket No. 72-22, ASLBP No. 97-732-02-ISFSI,**

Dear Mr. Steadman:

This letter concerns OGD's June 28, 2001 Response to PFS's Motion for Summary Disposition of OGD O, specifically the exhibits to the declaration of Sammy Blackbear filed in support of OGD's Response. Although PFS recognized that OGD had not transmitted the exhibits electronically, PFS had expected to receive them along with the copy of OGD's Response served by regular mail. It was not until last week, upon not receiving a copy of the exhibits, that PFS upon further review noted the statement in the OGD certificate of service that the "Exhibits to the declaration of Sammy Blackbear . . . are not being served other than on the judges (and only by mail), subject to claims of confidentiality, safety and sovereignty more fully set forth in the cover letter accompanying these documents." The circumstances and need for this unusual filing by OGD had not been discussed with opposing counsel nor did you provide to opposing counsel the cover letter mentioned in the certificate of service. At that point, we assumed that you would send to the parties a showing as to "the claims of confidentiality, safety and sovereignty." Having received nothing more from OGD, it now appears that OGD may have made an improper, *ex parte* communication to the Licensing Board in violation of 10 C.F.R. § 2.780(a).

For the reasons set forth in PFS's Motion for Summary Disposition, little, if any, of Mr. Blackbear's declaration is relevant to the issues raised in OGD O. PFS presumes that the related exhibits are similarly irrelevant. Nevertheless, PFS believes that it is contrary to the letter and spirit of the Board's orders in this proceeding as well as an apparent violation of NRC regulations regarding *ex parte* communications for OGD to have filed material which it presumably believes is relevant to OGD O solely with the Licensing Board.

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OGD's unexplained reference in the certificate of service to "claims of confidentiality, safety and sovereignty" in our view does not warrant OGD's failure to serve the exhibits upon the parties. The practice of the parties concerning confidential information in this proceeding has been to file confidential materials in accordance with 10 C.F.R. § 2.790 and to serve the materials on the Board, the NRC Staff and those parties that have executed confidentiality agreements. Since PFS did not receive a copy of the cover letter accompanying the documents, we do not know the nature of the confidentiality claim concerning the exhibits (e.g., are they documents claimed to be confidential by OGD, documents that PFS or Skull Valley claim to be confidential which OGD is acting to preserve, or documents that are assertedly confidential for some other reason). Nor was PFS ever advised by OGD of a potential need to execute a confidentiality agreement as a precondition to receiving documents that OGD considers relevant to this matter. Even if the exhibits are "confidential," the appropriate action would have been for OGD to enter into confidentiality agreements with opposing parties or to seek a protective order from the Licensing Board. We can think of no basis whereby it would have been appropriate for OGD to make an *ex parte* submission of the materials with the Licensing Board.

As to OGD's "claims of . . . safety," nothing in the OGD Response provides any basis for withholding material from counsel for the opposing parties. Any implication that material must be withheld from opposing counsel for reasons of safety is unfounded and insulting. Similarly, any claim of sovereignty as a basis for withholding material from PFS and the Skull Valley Band is wholly unsupported.

We request that you take appropriate corrective action to cure the apparent violation of 10 C.F.R. § 2.780(a). Further, while this case concerns hotly disputed substantive issues, counsel have been able to work together cooperatively on procedural matters. We would hope that counsel for OGD in the future would proceed consistent with this spirit of professional cooperation appropriate for NRC proceedings.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Gaukler". The signature is fluid and cursive, with the first name "Paul" and last name "Gaukler" clearly distinguishable.

Paul A. Gaukler
Counsel for Applicant

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cc: G. Paul Bollwerk III, Esq., Chairman
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