

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

RAS 4023

DOCKETED 03/06/02

SERVED 03/06/02

Before Administrative Judges:

Michael C. Farrar, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

In the Matter of

PRIVATE FUEL STORAGE, LLC

(Independent Spent Fuel
Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

March 6, 2002

NOTICE OF CONFERENCE CALL IN AID OF SETTLEMENT
(Regarding "Contention OGD O" -- Environmental Justice)

In a recent opinion (LBP-02-08, 55 NRC ____, Feb. 22, 2002), we denied in part the Applicant's motion for summary disposition of the "environmental justice" claim embodied in Contention OGD O. Although that opinion thus set certain aspects of the matter for hearing, we also expressed our strong recommendation that the parties consider settling the matter instead of having their dispute resolved at trial.

Now, confirming the informal arrangements made in recent email communications, the Licensing Board will conduct a telephone conference call at 1:00 PM Eastern Standard Time this Thursday, March 7, 2002, to determine the level of interest in pursuing settlement of the remaining environmental justice issues and, if desired, to establish a process to further that purpose. Counsel participating in the call are to be those representing Ohngo Gaudedah Devia, the Skull Valley Band, the Applicant PFS, and the NRC Staff.

Logistics of Call. Those participating in the call are to phone 1-800-638-8081 and use the access code 2935. We do not anticipate the call lasting more than an hour.

Because the call involves settlement discussions, it will not be recorded or transcribed. If any counsel deems it advisable, he may have his client present during the call, but given the preliminary nature of the call, we do not intend to have the clients participate in this discussion.

Encouragement of Settlement. We emphasized in LBP-02-08 that the Commission's policy strongly favors settlement. In order to carry out as far as possible the instructions of the Commission to encourage settlement, in a situation for which settlement would seem entirely appropriate, we wish to add here some thoughts illustrating that it is not just the Commission that values settlements as serving the public interest and the interests of the involved parties.¹

We ask counsel to bring the thoughts appearing below to their clients' attention. While we think they may find these thoughts instructive, they are of course free to disregard such guidance, for it in no way binds them or controls their actions.

Our opinion in LBP-02-08 pointed out that showing deference to principles of Tribal governance was not necessarily inconsistent with examining the environmental justice dispute before us. But, more importantly for present purposes, we also said there that those doctrines certainly teach that there is a better alternative than a hearing, namely, that "solutions to disputes among Tribal members come from those who understand their customs and practices -- so that any resolution incorporates conditions within which all can function well as time goes forward." That can happen through settlement amongst themselves, which we there urged.

¹ These thoughts had been largely prepared prior to the recent filings by the Staff and the Band with the Commission but were delayed pending review of the implications of those documents. In view of the Band's indication therein that it expected the call would still go forward (Motion for Protective Order, p. 3), we have determined to issue this Memorandum as originally contemplated and plan, absent further developments, to proceed with the call. Its length and content will largely depend upon the parties' willingness to engage in the proposed preliminary settlement appraisal.

On that score, we think it appropriate to bring to the parties' attention the thoughts of Robert Yazzie, Chief Justice of the Navajo Nation. Writing about Navajo justice in an article entitled Life Comes From It,² Chief Justice Yazzie compares vertical systems of justice, which employ power, with the horizontal justice model, where "no person is above the other."³ As he describes Navajo justice, it "prefers a win-win solution."

Going on, Chief Justice Yazzie explains the thinking behind the Navajo Peacemaker Court. Created in 1982, that Court relies on a traditional Navajo civil leader who "attempts to bring participants to a final decision that everyone agrees to for the benefit of all" and who creates distributive justice by sharing knowledge with "the disputants so they can use it to achieve consensus."

The Chief Justice concludes by indicating that peacemaking is being revived for an obvious reason: "life comes from it." As he sees it, there is great benefit in the result he sees, that "communities . . . resolve their own legal problems using resources they already have."

We recognize that there may be significant differences between Navajo and Goshute traditions and practices, and perhaps Chief Justice Yazzie's ideas -- which make such sense to us -- are not accepted outside the Navajo culture. But we would think it universal -- among communities on or off Indian Reservations -- that disputes resolved by litigation too often result in a hollow victory for the winning side. As lawyers who realize the importance of counseling

² The Ecology of Justice (Spring 1994, p. 29), published by the Context Institute and available on the Internet at <http://www.context.org/> [Click on "Search all the IC Issues" and then search for "yazzie"]. Although the Chief Justice focuses to a large extent on the criminal justice system, the lessons taught would seem applicable to civil disputes as well.

³He explains: "A graphic model often used by Indians to portray this thought is a circle. In a circle, there is no right or left, no beginning or end. Every point (or person) on the line on a circle looks to the same center as the focus. The circle is the symbol of Navajo justice because it is perfect, unbroken, and a simile of unity and oneness."

their clients about non-litigation options often explain, it does not necessarily add to a client's future enjoyment to prevail in litigation against family, neighbors, friends, or co-workers.

It is far better to reach an amicable compromise on the matters troubling these continuing relationships, so that future unavoidable contacts are not of an adversarial nature and do not intrude on the enjoyment of one's neighborhood, workplace, and the like. Thus has there arisen widespread appreciation of the value of peaceably resolving disagreements by seeking broad consensus that recognizes and accommodates the views of all.

Accordingly, on this 6th day of March, 2002, we make these thoughts available in the event that counsel for OGD and the Skull Valley Band wish to present them to their clients. In any event, the conference call regarding settlement will take place at 1:00 PM EST on Thursday, March 7, 2002.

THE ATOMIC SAFETY
AND LICENSING BOARD⁴

/RA/

Michael C. Farrar
ADMINISTRATIVE JUDGE

/RA/

Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 6, 2002

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 of Goshute Indians, OGD, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State of Utah; and (3) the NRC Staff.

⁴ Judge Kline participated in the development of this Notice and agrees with its content but was unavailable to sign it.

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NUCLEAR REGULATORY COMMISSION

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PRIVATE FUEL STORAGE, L.L.C.)	Docket No. 72-22-ISFSI
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(Independent Spent Fuel Storage)	
Installation))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB NOTICE OF CONFERENCE CALL IN AID OF SETTLEMENT (REGARDING "CONTENTION OGD O" -- ENVIRONMENTAL JUSTICE) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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Docket No. 72-22-ISFSI
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 6th day of March 2002