

United States Court of Appeals for the Tenth Circuit
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Patrick J. Fisher, Jr.
Clerk of Court

Jane B. Howell
Chief Deputy Clerk

June 2, 2003

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Washington, DC 20037

Mr. Tim Vollmann
3301 R Coors Rd NW
Albuquerque, NM 87120

Re: 02-9583, Devia v. NRC
Dist/Ag docket: 72-22-ISFSI

Dear Counsel:

The court filed an order today dismissing this case. A copy of the order is enclosed for all parties.

Also enclosed for the district court clerk or for the named agency, is a certified copy of the dismissal order which is issued as the mandate of the court. Please file it in the records of the district court or agency.

The clerk of the named agency is requested to acknowledge receipt of this mandate by file stamping and returning the enclosed copy of this letter. Any original record will be returned to you at a later date.

Please contact this office if you have questions.

Sincerely,

PATRICK FISHER
Clerk

By:  310
Deputy Clerk

PF:kf

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

OHNGO GAUDADEH DEVIA,

Petitioner,

v.

No. 02-9583

**NUCLEAR REGULATORY
COMMISSION,**

Respondent,

**PRIVATE FUEL STORAGE, L.L.C.;
THE SKULL VALLEY BAND OF
GOSHUTE INDIANS,**

Intervenors.

A true copy

Teste

**Patrick Fisher
Clerk, U. S. Court of
Appeals, Tenth Circuit**

By


Deputy Clerk

ORDER

Filed June 2, 2003

Before EBEL, Circuit Judge, BRORBY, Senior Circuit Judge, and HENRY, Circuit Judge.

This case is before the court based on a motion by Respondent-Intervenor Private Fuel Storage to dismiss the petition for review based on lack of finality, and the motion by Respondent United States Nuclear Regulatory Commission to hold the case in abeyance.

Ohngo Gaudadeh Devia seeks review of an October 1, 2002 Order of the United States Nuclear Regulatory Commission.

The court lacks appellate jurisdiction. The October 1, 2002 Order is not final. It did not "dispose[] of all issues as to all parties in the licensing proceeding." *Commonwealth of Massachusetts v. NRC*, 924 F.2d 311, 322 (D.C. Cir.), *cert. denied*, 502 U.S. 899 (1991). Furthermore, Petitioner Ohngo Gaudadeh Devia has failed to demonstrate that any exception to the finality requirement applies in this case.

The motion to hold case in abeyance is denied. When a petition for review is filed before an agency order is final, subsequent action by the agency does not ripen the petition for review. *See Melcher v. FCC*, 134 F.3d 1143, 1163 (D.C. Cir. 1998).

Accordingly, the motion to dismiss is GRANTED. The motion to hold case in abeyance is DENIED. The petition for review is DISMISSED for lack of appellate jurisdiction. The mandate will issue forthwith.

Entered for the Court,
Patrick Fisher, Clerk