

January 14, 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PRIVATE FUEL STORAGE L.L.C.) Docket No. 72-22-ISFSI
)
(Independent Spent)
Fuel Storage Installation))

NRC STAFF'S RESPONSE TO "FURTHER
SUPPLEMENTAL MEMORANDUM IN SUPPORT
OF THE PETITION OF THE CONFEDERATED
TRIBES OF THE GOSHUTE RESERVATION AND
DAVID PETE TO INTERVENE AND FOR A HEARING"

On December 29, 1997, the Confederated Tribes of the Goshute Reservation ("the Confederated Tribes") and David Pete filed a "Further Supplemental Memorandum"¹ in support of their petition for leave to intervene and request for a hearing in this proceeding.² By Order of January 12, 1998,³ the Licensing Board directed that any responses to that memorandum be

¹ "Further Supplemental Memorandum in Support of the Petition of the Confederated Tribes of the Goshute Reservation and David Pete to Intervene and For a Hearing," dated December 29, 1997.

² The Confederated Tribes and David Pete filed their initial petition for leave to intervene and request for a hearing on August 29, 1997; Private Fuel Storage L.L.C. (the "Applicant") and the NRC Staff ("Staff") filed responses in opposition to that petition on September 15 and 18, 1997, respectively. On October 15, 1997, the Confederated Tribes and David Pete filed a "Supplemental Memorandum" in support of their petition; the Applicant and Staff filed further responses in opposition to the petition, based upon the matters set forth in the "Supplemental Memorandum," on December 12 and 23, 1997, respectively.

³ "Order (Response Schedule for Further Supplemental Petition and Additional Late-Filed Contention)," dated January 12, 1998.

filed on or before January 14, 1998. In accordance with the Licensing Board's Order, the NRC Staff hereby responds to that Further Supplemental Memorandum.

Based upon a review of the information provided in the Confederated Tribes' and David Pete's Further Supplemental Memorandum and the "Second Supplemental Declaration" of Chissandra M. Reed attached thereto, the Staff believes that the Confederated Tribes (but not David Pete) have established their representational standing to intervene in this proceeding. Specifically, the Confederated Tribes have shown that Ms. Reed has interests as an individual which could be adversely affected by the outcome of this proceeding, in light of her assertion (a) that "on average [she] visits the Skull Valley Reservation about 8-10 times per year," and (b) that she drops off her granddaughter, and thus travels in the vicinity of, the Rowley Junction interchange (where spent fuel shipments are expected to arrive *en route* to the Applicant's ISFSI site), in connection with the child's visits to the Skull Valley Reservation. These statements, considered together, appear to establish Ms. Reed's individual standing to intervene in this proceeding, and thus support the representational standing of the Confederated Tribes, whom she has authorized to represent her in this proceeding.⁴

Also, inasmuch as Ms. Reed indicates that her three-year old granddaughter is "an enrolled member" of the Confederated Tribes, and that the child frequently stays at the Skull Valley Reservation on visits lasting "from one night to periods of up to two weeks," where "she drinks local water and eats . . . natural foods gathered in the Skull Valley area" (Second Supplemental Declaration, at 2), the Confederated Tribes could base their representational

⁴ See Supplemental Declaration of Chissandra M. Reed, dated October 14, 1997, at 5 (authorizing the Confederated Tribes and David Pete "to represent her and her family in this matter"). *Id.* at 5.

standing to intervene upon the interests of that child. Although the record contains conflicting information concerning the frequency of Michaela's visits to the Skull Valley Reservation,⁵ on balance it appears that her visits are sufficiently frequent, and of sufficient duration, to show she has interests which could be affected by the outcome of this proceeding. Ms. Reed has authorized the Confederated Tribes to represent her granddaughter in this proceeding, and, inasmuch as she asserts -- albeit without supporting documentation -- that she is the legal guardian for that minor child,⁶ she appears to be legally capable of authorizing the Confederated Tribes to represent her granddaughter in this proceeding.

⁵ Ms. Reed had previously stated that she "takes her granddaughter, Michaela, to the Skull Valley Reservation approximately every other week." Supplemental Declaration of Chissandra M. Reed, dated October 14, 1997, at 2. A statement was then filed by Ms. Reed's cousin, Arlene Walsh, with whom Ms. Reed's granddaughter stays during her visits with the Skull Valley Band of Goshutes. Ms. Walsh stated, *inter alia*, that Michaela stays with her "3 or 4 times a year or more"; and that Ms. Reed "does not come onto the reservation to drop off or pick up Michaela." See "Declaration of Arlene Walsh," dated November 10, 1997, at 1-2 (attached to "Applicant's Answer to the Confederated Tribes and David Pete's Supplemental Memorandum in Support of Petition to Intervene and for a Hearing," filed on December 12, 1997). Ms. Reed's "Further Supplemental Declaration" of December 29, 1997, provided additional information concerning the locations at which she drops off and picks up her granddaughter in connection with the child's visits to the Skull Valley Reservation, and states that "[a]bout one-fourth of the pick-ups are on the Skull Valley Reservation." *Id.* at 2.

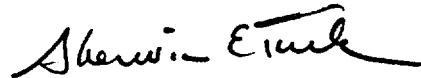
⁶ Although an individual is generally not permitted to assert the interests of third parties, the Atomic Safety and Licensing Appeal Board has suggested, *in dictum*, that a parent may be able to do so where he or she alleges "that the son [child] is a minor or otherwise under a legal disability which would preclude his assertion" of an affected interest on his own behalf. *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977). See generally, *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 387 (1978) (a mother was not allowed to base her intervention upon the standing of her son, who planned to attend medical school 30 miles from a reactor site); *Atlas Corp.* (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 426 n.2 (1997) (noting that a petitioner's "ability to gain standing for himself based on injury in fact to the interests of his spouse or children (especially if those children are not minors) is problematic.")

In sum, the Confederated Tribes have shown that (a) Ms. Reed and her granddaughter may suffer "injury in fact" to their interests, which injury is arguably within the zone of interests protected by the statutes governing the proceeding, and (b) the Confederated Tribes have been authorized to represent Ms. Reed and her granddaughter in this proceeding. On this basis, the Confederated Tribes appear to have established their standing to intervene. See Staff Response of September 18, 1997, at 3-7; Staff Response of December 23, 1997, at 5-9.⁷

CONCLUSION

For the reasons set forth above, the Staff hereby withdraws its opposition to the Confederated Tribes' petition for leave to intervene, subject to the Licensing Board's finding that the Confederated Tribes have filed at least one admissible contention, as required by 10 C.F.R. § 2.714(b). However, inasmuch as the "Further Supplemental Memorandum" does not address or demonstrate standing for David Pete, the Staff continues to oppose Mr. Pete's petition for leave to intervene for the reasons stated by the Staff in response thereto.

Respectfully submitted,



Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 14th day of January 1998

⁷ The Staff notes that it inadvertently attributed certain language which is quoted in n.6 of its Response of December 23, 1997, to the decision in *Washington Public Power Supply* (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 338 (1979). In fact, the quoted language appears in the other decision which is cited in the text accompanying that note, and the citation should therefore be corrected to read, "*Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1448 (1982)."

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO 'FURTHER SUPPLEMENTAL MEMORANDUM IN SUPPORT OF THE PETITION OF THE CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION AND DAVID PETE TO INTERVENE AND FOR A HEARING'" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or, as indicated by an asterisk, by deposit in United States mail, first class, with copies by E-mail as indicated, this 14th day of January, 1998:

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