

October 1, 1997

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S STATUS REPORT AND RESPONSE TO  
REQUESTS FOR HEARING AND PETITIONS TO INTERVENE  
FILED BY (1) THE STATE OF UTAH, (2) SKULL VALLEY BAND  
OF GOSHUTE INDIANS, (3) OHNGO GAUDADEH DEVIA, AND  
(4) CASTLE ROCK LAND AND LIVESTOCK, L.C., ET AL.

INTRODUCTION

In accordance with 10 C.F.R. § 2.714(c) and the Licensing Board's "Memorandum and Order (Initial Prehearing Order)" of September 23, 1997 ("Order"), the NRC Staff ("Staff") hereby (a) responds to the requests for hearing and petitions to intervene filed by (1) the State of Utah, (2) the Skull Valley Band of Goshute Indians ("Skull Valley Goshutes"), (3) Ohngo Gaudadeh Devia ("OGD"), and (4) Castle Rock Land and Livestock, L.C., Skull Valley Company, Ltd., and Ensign Ranches of Utah, L.C. (collectively referred to herein as "Castle Rock"), and (b) provides a status report concerning its review schedule in this proceeding (*see* discussion *infra* at 5).

As more fully set forth below, the Staff believes that these petitioners have satisfactorily demonstrated their standing to participate in this proceeding and have properly identified specific

aspects of the subject matter of the proceeding as to which they wish to intervene, in accordance with 10 C.F.R. § 2.714 and established legal requirements.<sup>1</sup> Accordingly, the Staff does not oppose their requests for hearing and petitions for leave to intervene, subject to each petitioner's filing of at least one admissible contention, as required by 10 C.F.R. § 2.714(b).

### BACKGROUND

On June 20, 1997, Private Fuel Storage L.L.C. ("PFS") applied for a license, pursuant to 10 C.F.R. Part 72, to receive, transfer and possess power reactor spent fuel and other radioactive material associated with spent fuel storage in an independent spent fuel storage installation (ISFSI), to be constructed and operated on the Skull Valley Indian Reservation in Tooele County, Utah.<sup>2</sup> On July 31, 1997, the Commission published a "Notice of Consideration of Issuance of a Materials License for the Storage of Spent Fuel and Notice of Opportunity for a Hearing," concerning the PFS application. 62 Fed. Reg. 41,099 (July 31, 1997). The Notice stated that the license, if granted, will authorize PFS to store spent fuel in dry storage cask systems at the ISFSI that PFS proposes to construct and operate on the Skull Valley Goshute Indian Reservation, for a license term of 20 years. *Id.* The Notice further provided that by September 15, 1997, "any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and

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<sup>1</sup> While the Petitioners have identified specific aspects of the subject matter of the proceeding as to which they wish to intervene, not all of the issues which have been identified are properly within the scope of this proceeding. The Staff will address the admissibility of such issues, as appropriate, in its forthcoming response to contentions.

<sup>2</sup> See Letter from John D. Parkyn, Chairman of the Board, Private Fuel Storage L.L.C., to Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, dated June 20, 1997.

a petition for leave to intervene with respect to the subject materials license in accordance with the provisions of 10 C.F.R. 2.714.” *Id.* In response to the Notice, requests for hearing and petitions for leave to intervene were filed by the Confederated Tribes of the Goshute Reservation (“Confederated Tribes”) and David Pete on August 29, 1997,<sup>3</sup> by the State of Utah and Castle Rock on September 11, 1997, and by the Skull Valley Goshutes and Ohngo Gaudadeh Devia on September 12, 1997.

### DISCUSSION

In the Staff’s Response to the Confederated Tribes and David Pete’s petition, the Staff addressed the legal standards governing the grant of petitions for leave to intervene in NRC adjudicatory proceedings, which discussion is hereby incorporated by reference herein. In sum, pursuant to § 189a(1) of the Atomic Energy Act of 1954, as amended, and 10 C.F.R. § 2.714, persons who seek to intervene in an NRC adjudicatory proceeding must demonstrate that they have an interest which may be affected by the proceeding, and must describe with particularity how that interest may be affected by the results of the proceeding. The Commission applies contemporaneous judicial concepts of standing in determining whether the petitioner has established the requisite interest. Accordingly, a petitioner must show that the proposed action will cause “injury in fact” to its interest, and that the injury is arguably within the zone of interests protected by the statutes governing the proceeding. *See* Staff Response at 3-7, and cases cited therein.

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<sup>3</sup> The Staff has responded separately to the petition filed by the Confederated Tribes and David Pete. *See* “NRC Staff’s Response to Request for Hearing and Petition to Intervene Filed by the Confederated Tribes and David Pete,” dated September 18, 1997 (“Staff Response”).

The Staff has reviewed the petitions filed by the State of Utah, the Skull Valley Goshutes, OGD, and Castle Rock, and believes that they have satisfactorily demonstrated various cognizable interests which could be affected by the outcome of this proceeding. For example, the State of Utah identified, *inter alia*, its interest as a State government responsible for protecting the health and safety of its citizens, as well as its riparian rights and interests in property located in the immediate vicinity of the proposed facility which could be affected by the licensing of the facility. Similarly, both the Skull Valley Goshutes <sup>4</sup> and OGD indicated, *inter alia*, that their members reside in close proximity to the plant and that their health and safety could be affected by the outcome of this proceeding, either by the terms of any licensing action (Skull Valley Goshutes) or by an accidental release of radiation from the facility (OGD).<sup>5</sup> The Castle Rock petitioners likewise identified, *inter alia*, financial interests and interests in property located close to the facility which could be affected by environmental consequences resulting from operation of the facility or an accidental release of radiation.

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<sup>4</sup> The Skull Valley Goshutes petitioned for leave to intervene, but specifically declined to request a hearing (Petition, at 3). While their petition for leave to intervene lacks much of the detail normally required to demonstrate standing in Commission proceedings, the Staff believes that their standing would be readily apparent upon further supplementation, given their ownership (and lease to PFS) of the property upon which the proposed facility is to be constructed, and the close geographic proximity between the facility and their homes and daily activities. Accordingly, the Staff does not believe that further supplementation by the Skull Valley Goshutes must be required at this time.

<sup>5</sup> Notwithstanding the Staff's view that the petitioners have established their standing to intervene, it should be noted that the regulations in 10 C.F.R. Part 72 reflect the Commission's determination that an accidental release of radiation associated with operation of an ISFSI is unlikely to have significant offsite consequences. *See, e.g.*, 10 C.F.R. § 72.32(a) (requiring onsite emergency planning only, with provisions for coordination and communication with offsite authorities); Statement of Consideration, "Emergency Planning Licensing Requirements for Independent Spent Fuel Storage Facilities (ISFSI) and Monitored Retrievable Storage Facilities (MRS)," 60 Fed. Reg. 32430 (June 22, 1995).

"Injury in fact" has been established in that the petitioners have shown that they may personally suffer a "distinct and palpable" harm that is fairly traceable to the proposed licensing action, which is likely to be redressed by a decision favorable to them in the proceeding. Further, at least some of the interests identified by these petitioners are within the zone of interests sought to be protected by the Atomic Energy Act of 1954, as amended, or the National Environmental Policy Act. Accordingly, the Staff believes that these petitioners have satisfactorily demonstrated their standing to intervene in this proceeding.<sup>6</sup>

#### NRC STAFF REVIEW SCHEDULE

In its Order of September 23, 1997, the Licensing Board directed the Staff to provide a status report identifying when it expects to issue a safety evaluation report (SER) and environmental impact statement (EIS) regarding the PFS application (*Id.* at 2). The Staff hereby provides the following information in accordance with the Licensing Board's Order.

The Staff currently expects to complete a draft EIS within approximately two years, with a Final EIS to be issued approximately six to twelve months later. Further, the Staff currently expects to issue an SER in approximately two to three years. The Staff notes that its review schedule depends upon the prior occurrence of certain other events, including completion of the certification process for the casks to be used by PFS, and the receipt of timely and complete responses from PFS to any requests for information which may be transmitted by the Staff during its review.

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<sup>6</sup> The Staff notes that, given the number of petitioners and issues which have been raised to date, it may be appropriate for parties and issues to be consolidated in this proceeding.

CONCLUSION

For the reasons set forth above, the Staff submits that the State of Utah, the Skull Valley Goshutes, Ohngo Gaudadeh Devia, and the Castle Rock petitioners have satisfactorily shown a potential injury in fact to their interests within the zone of interests sought to be protected by the statutes governing this proceeding, and that they have therefore established their standing to intervene in this proceeding. Accordingly, the Staff submits that their petitions for leave to intervene should be granted.

Respectfully submitted,



Sherwin E. Turk  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 1st day of October 1997

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S STATUS REPORT AND RESPONSE TO REQUESTS FOR HEARING AND PETITIONS TO INTERVENE FILED BY (1) THE STATE OF UTAH, (2) SKULL VALLEY BAND OF GOSHUTE INDIANS, (3) OHNGO GAUDADEH DEVIA, AND (4) CASTLE ROCK LAND AND LIVESTOCK, L.C., ET AL." in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by express mail as indicated by an asterisk this 1st day of October, 1997:

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