

November 2, 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
)	
(Private Fuel Storage Facility))	ASLBP No. 97-732-02-ISFSI

**OHNGO GAUDADEH DEVIA's (OGD) CONTENTIONS RELATING TO THE
LOW RAIL TRANSPORTATION LICENSE AMENDMENT**

I. INTRODUCTION

On or about August 28, 1998, Private Fuel Storage, L.L.C. (PFS or Applicant) filed Amendment 2 to its license application. This amendment proposed a new rail spur to shuttle the high level radioactive wastes being transported from various nuclear power facilities to the Salt Lake City area into the Skull Valley Reservation. The Applicants describe the amendment as follows:

The proposed new rail spur originates from the Union Pacific mainline at Low Junction south of I-80 and proceeds along the western side of the Skull Valley to the PFSF [Private Fuel Storage Facility]. The new ITP [Intermodal Transfer Point] is approximately 1.8 miles west of Timpie Junction and still utilizes Skull Valley Road for the heavy haul option. Although transporting shipping casks by direct rail to the PFSF is the preferred option, heavy haul from the ITP is still considered a viable alternative.

Letter from John D. Parkyn to Director NMSS dated August 28, 1998 at 1. This proposed amendment to PFS' application was not published in the Federal Register or any local newspaper or other local media outlet.

OGD did not receive notice or a copy of the proposed license amendment until approximately the first few days of October 1998. Consequently, OGD, consistent with its current participation in the litigation concerning PFS' license, requests the opportunity to intervene and files herein its contentions challenging PFS' proposed amendment.

II. CONTENTIONS

Contention Q: In acting on the proposed license and amendments prior to completing an Environmental Impact Statement (EIS) as required by the National Environmental Policy Act (NEPA), the NRC has made irretrievable commitments of resources resulting in severe prejudice to the EIS process. In particular, the present procedure employed for the PFS license and license amendments prejudices the NRC's ability to fairly assess alternatives to the proposed PFS facility and the transportation of high level spent fuel.

Basis: NEPA, 42 U.S.C. § 4332; 40 C.F.R. §§ 1506.1, 1502.2(f), 1502.2(g).

Contention R: OGD and its members will be adversely impacted by the routine operation of the Low rail spur and will be seriously impacted by any transportation-related accidents.

Basis: The ability of OGD and its members to pursue the traditional Goshute life style will be adversely impacted by the routine operations at the storage facility and the transportation activities resulting from the construction and operation of the Low rail spur. Obvious impacts resulting from the physical presence of the rail spur are: visual intrusion; noise; worker and visitor traffic and activity. Those impacts that are not as obvious but nonetheless serious are: individual and collective social, psychological, and

cultural impacts such as a sense of loss of well-being because of the dangerous wastes that are being stored and transported near their homes, community, and ancestral lands.

The ability of OGD members to pursue a traditional Goshute life style will be adversely affected by routine transportation operations of spent nuclear fuel and/or the presence of trucks, especially very large heavy haul trucks. The other obvious and other effects include the same kind of effects that are listed above, including fear that a transportation accident will occur, fear of acts of terrorism or sabotage which could disproportionately expose members of OGD and their families, their homes, the community and their ancestral land.

NRC regulations, 10 C.F.R. § 72.32(5), require that the License Application contain a brief description of the means of mitigating the consequences of each type of accident. The License application fails to address the concerns that OGD members have about the obvious impacts resulting from living in fear that an accident will happen which could expose members and their families, their homes, their community and their ancestral land.

Contention S: OGD and its members are adversely effected by the potential sabotage of spent nuclear fuel during transportation along the proposed rail spur.

Basis: PFS and the NRC have failed to adequately evaluate the possibility of sabotage and the impacts associated with sabotage along the proposed rail spur.

Contention T: OGD and its members are adversely affected by the failure of PFS and/or the NRC to fully evaluate the potential failure of the flat bed rail cars that will transport the spent nuclear fuel along the rail spur.

Basis: The Safety Analysis Report (SAR) prepared by PFS simply notes that flat bed rail cars are not important to safety. PFS SAR § 4.5.5.2. This conclusion improperly relies on the integrity of the shipping cask as the means of maintaining all safety functions. However, malfunctions or accidents involving the rail cars will have an impact on the environment and may have impacts on human health depending upon the nature of the accident. For example, should a mechanical breakdown stall a rail convoy of casks along the rail spur the situation would create greater opportunity for sabotage, impacts from repair activities, potential for human error in moving casks, and similar effects that have not been fully considered by PFS.

Contention U: OGD and its members are adversely affected by potential fires caused by or enhanced by rail activities.

Basis: Fires could have a serious impact on the lands proposed for use in developing the rail spur and on people living nearby. The environmental impact of a range fire on the limited vegetation in a dry region could be devastating to wildlife and persons who enjoy the lands that will support the rail spur. Although PFS' Environmental Report (ER) acknowledged the possibility of range fires and proposes a plan to allow fire equipment access, the report does not discuss the impacts of creating the buffer zone or the impacts of a fire. PFS ER § 4.4.8.

Contention V: OGD and its members are adversely affected by the potential human health and environmental safety problems associated with any type of failure of the casks that may be used to ship spent nuclear fuel to the proposed PFS facility along the proposed rail spur.

Basis: The casks under consideration for shipping the wastes proposed for the PFS facility are a new generation of casks that have not been subjected to any significant physical testing or durability demonstrations. The absence of this data undermines the generous allowances that the NRC and PFS have provided in considering the potential impacts of transportation to the proposed PFS facility. See, 10 C.F.R. § 51.52 (Summary Table S-4). Without some significant field test data, reliance on the proposed shipping casks is misplaced and violates public health and safety and environmental protection standards.

Contention W: OGD and its members are adversely affected by potential human errors, accidents, and/or other malfunctions involving the 1) loading of shipping casks, 2) transportation of shipping casks to a railhead, and 3) transportation of shipping casks via rail, including the proposed rail spur to the proposed PFS facility.

Basis: 10 C.F.R. § 51.52 (Summary Table S-4) does not adequately contemplate any of the issues mentioned in this contention. Therefore, complete reliance on Table S-4 to assess potential fails to satisfy requirements for protection of public health and the environment.

Contention X: OGD and its members are adversely affected by the failure of PFS and/or the NRC to assess environmental justice issues caused by the proposed amendment to transport high level spent nuclear fuel into the Skull Valley area via rail spur.

Basis: OGD and its members are discriminatorily and disproportionately impacted by the plan to transport high level spent nuclear fuel into the Skull Valley area. A facility like PFS and a rail spur to accommodate it would not be proposed for

communities that are wealthy, more densely populated, and predominately white. OGD and its members, as well as others living in the Skull Valley area, are being asked to accept the burden of the decisions made by governments in other parts of the nation who chose nuclear power over energy efficiency and renewable energy sources. They are also being asked to shoulder the potential consequences associated with the use of nuclear power from which Utah receives very little of its energy. In further support of this contention, OGD incorporates herein by reference the analysis provided in OGD Contention O.

Contention Y: OGD and its members are adversely affected by the taking and use of lands proposed for the construction and operation of the proposed rail spur because they will be deprived of the opportunity to utilize these lands for grazing animals.

Basis: At least one OGD member currently utilizes Reservation land designated for the rail spur to graze horses. PFS failed to adequately assess the impacts noted in this contention. Consequently, PFS' application and amendments are deficient. See, the September 12, 1997 and November 2, 1998 affidavits submitted by Margene Bullcreek Chairperson of OGD.

Contention Z: The construction and operation of the proposed rail spur will permanently damage the historically and culturally significant trail used by the Goshute and others who used the area planned for the Low Corridor Rail Spur to travel through the Skull Valley region.

Basis: Oral history indicates that Goshute people used the area designated for the rail spur as a travel corridor and for hunting. See, November 2, 1998 affidavit of Margene Bullcreek. PFS' ER discusses a modest review of cultural resources, but failed

to assess whether significant artifacts exist in the area proposed for the rail spur. PFS ER

§ 4.4.8.

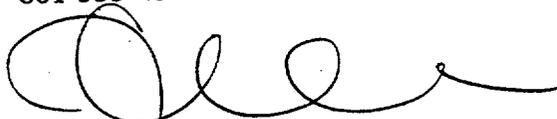
III. CONCLUSION

For the reasons stated, OGD's contentions regarding the Low rail spur should be included in the licensing process.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of OHNGO GAUDADEH DEVIA'S
CONTENTIONS RELATING TO THE LOW RAIL TRANSPORTATION
LICENSE AMENDMENT and DECLARATION OF MARGENE BULLCREEK
were served on the persons listed below by electronic mail (unless otherwise noted)
with conforming copies by United States mail first class, this 2nd day of November,
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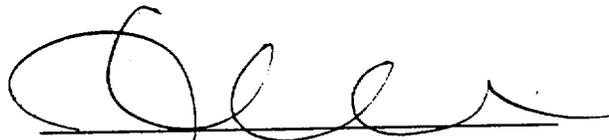
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	Docket No. 72-22-ISFSI
)	
PRIVATE FUEL STORAGE, LLC)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel)	
Storage Installation))	November 2, 1998

DECLARATION OF MARGENE BULLCREEK
CHAIR, OHNGO GAUDADEH DEVIA (OGD)

I, MARGENE BULLCREEK, based on personal knowledge, declare as follows:

1. My name is Margene Bullcreek. I am a member of the Skull Valley Band of Goshutes and chair of Ohngo Gaudadeh Devia, intervenor in this matter.

2. I have reread and incorporate by reference my affidavit that was filed in this matter on September 12, 1997 as an attachment to OGD's Request For Hearing and Petition to Intervene. That affidavit further supports OGD's contentions regarding the Low rail spur filed herewith.

3. Our oral history tells that our people use to travel across the area where the Low rail spur will be constructed and operated. I am concerned that because our ancestors frequently used this area, there may be important cultural artifacts and other historical remnants there. These artifacts may be located on the lands where the rail spur will be constructed and operated. Alternatively, these artifacts may be

located such that my access to them will be blocked by the construction and operation of the Low rail spur.

4. I have only known about the proposed Low rail spur alignment since early October and have not had the opportunity to adequately determine if any artifacts do indeed exist on the lands where the Low rail spur will be constructed and operated or on lands to which my access will be blocked by the Low rail spur.

5. Removal, tampering or destruction of these artifacts will greatly disrupt our traditional values and life style because these types of actions would show disrespect for our ancestors. In addition, if burial sites were disturbed and reburial required we would be unable to reenact the traditional burial ceremonies adequately to show sufficient respect for our ancestors. Furthermore, construction and operation of the Low rail spur itself near important cultural sights will lessen our ability to participate in our traditional life style. The frightening and intrusive nature of the construction and operation of the Low rail spur will stymie our traditional lifestyle.

6. I believe that the construction and operation of the Low rail spur will adversely impact nearby native plants and animals. Our traditional life style and culture place great emphasis on the well being of these plants and animals. Our creation stories tell that native animals were once people. Furthermore, these plants and animals play an important part in our life and have contributed, in a significant way, to the survival of our people. Therefore, we owe these plants and animals a

great deal of respect and reverence and adverse impacts to them will harm our ability to engage in this paying of respect.

7. I currently own nine horses that graze on the land where the rail spur will be constructed and operated. I believe that the construction and operation of the rail spur will adversely impact my ability to feed and keep my horses and will endanger their well being.

I DECLARE, under penalty of perjury, that the foregoing is true and correct.

Executed on this November 2, 1998.



MARGENE BULLCREEK