

# ShawPittman

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June 7, 1999

E mail and U.S. Mail

Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

**Re: In the Matter of Private Fuel Storage, L.L.C.,  
Docket No. 72-22, ASLBP No. 97-732-02-ISFSI**

To the Secretary:

Enclosed please find Exhibit 1 to Applicant's Opposition to OGD's Motion to Extend Discovery and Motion to Quash OGD's Notice of Deposition of Leon Bear. The exhibit was inadvertently omitted from the Opposition when it was filed.

Sincerely,



Paul Gaukler

Enclosure

cc: Service List

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New York  
Virginia

November 24, 1998

By E-Mail and Regular Mail

Joro Walker, Esq.  
Richard E. Condit, Esq.  
Land and Water Fund  
165 South Main Street, Suite 1  
Salt Lake City, UT 84114

**Re: Response to OGD's Informal Discovery Requests of October 9,  
1998 to Applicant PFS and the Skull Valley Band**

Dear Ms. Walker and Mr. Condit:

We have received your letter of October 9, 1998 in which, as part of the informal discovery process in the Private Fuel Storage Facility ("PFSF") licensing proceeding, OGD requests a broad range of information from Private Fuel Storage ("PFS"). The Skull Valley Band has forwarded to us a similar request to it of the same date to which we are also responding as the lead party in opposition to all admitted contentions contested by PFS and the Band. See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 244 (1998). In view of the outstanding cooperation that we have had with OGD and other parties to date in this proceeding, we are certainly interested and willing to cooperate with OGD in obtaining informal discovery. However, unfortunately we find ourselves in a position where -- except for parts of your request to the Band -- we must object to your requests for information because they are outside the scope of your contention in this proceeding.

The only contention submitted by OGD which has been admitted in this proceeding is part of OGD Contention O. See LBP-98-7, supra, 47 NRC at 226-234. OGD Contention O, as admitted by the Board, was specifically limited to Bases 1, 5, and 6. Id. at 233. These admitted bases challenge PFS's assessment of whether minority and low income communities surrounding the PFSF site on Skull Valley Band Reservation will suffer disproportionately high and adverse human health and environmental effects by virtue of the

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PFSF being located on the Reservation. Except for parts of your requests to the Skull Valley Band, your requests for information do not relate to the environmental justice issues of Contention O as admitted by the Board.

Specifically, paragraphs 1 through 4 of your request to PFS ask for the names and addresses of persons involved in the selection of a location for the PFSF. Such information does not relate to Contention O. The Contention as admitted by the Board is limited to the asserted "disparate impact" of the PFSF that allegedly results from its location on the Skull Valley Band's Reservation and does not involve the site selection process. See LBP-98-7, supra, 47 NRC at 233. Indeed, the Commission has expressly reminded both the Board and the parties that, in accordance with its LES decision, Contention O is not to involve litigation of the justness or fairness of the site selection process or the motivation of those involved in that process. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 37 (1998).

Paragraphs 5 and 6 of your request to PFS ask for information concerning the owners of the PFS, including names, locations, and annual reports, as well as the articles of incorporation and agreements that pertain to PFS. Again this information does not relate to OGD's Contention O, which concerns alleged disparate impacts of the PFSF on surrounding communities. Paragraphs 7 through 10 of your request to PFS ask for information on each power plant that may contract to store spent fuel at the PFSF, including the names of such facilities, the quantity of spent fuel stored at each facility, and the space available at each for the storage of additional spent fuel. This information however, relates to the third and fourth bases of Contention O as originally filed -- both rejected by the Board -- which concerned the amount of additional spent fuel storage capacity allegedly needed at U.S. power reactors (basis 4) and the alleged benefits of leaving spent fuel stored on-site at the power reactors as an alternative to the PFSF (basis 3).

Thus, the requests in paragraphs 1 through 10 of your request to PFS are outside of the scope of OGD's Contention O, as it was admitted by the Board. PFS finds that it must therefore respectfully object and decline to answer these requests because to do so would greatly expand the scope of the contention beyond that admitted by the Board. PFS, however, is ready and willing to respond to any requests that are within the scope of OGD's admitted contention.

Insofar as OGD's request to the Skull Valley Band is concerned, we are enclosing with this letter demographic data currently in the files of the Band and its attorney pertaining to persons living and/or working on the Reservation which is responsive to your first request. The person most knowledgeable about this data is Leon Bear.

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Paragraphs 2 and 3 of OGD's request to the Band ask for the names and addresses of each person who participated in any manner, both on behalf of PFS and the Band, in the negotiation of the lease of Reservation land to PFS. The negotiations leading up to the lease are not, however, related to the issues of disparate impact raised in OGD Contention O. Rather, it is the final lease, as negotiated and agreed to by PFS and the Band, that may be relevant insofar as it identifies payments and other benefits to the Band. In this regard, the Applicant has produced at Parson, Behle & Latimer's offices in Salt Lake City a copy of the lease which contains information on payments and other benefits to the Band which would be available to OGD for purposes of this proceeding upon executing an appropriate confidentiality agreement.

Paragraph 4 of OGD's request to the Band asks for all documents that pertain to the lease of Reservation land to PFS. This request is overly broad for the same reasons as the requests in paragraph 2 and 3 discussed above. As stated there, the Applicant has produced a copy of the lease which contains the information pertaining to the lease that is pertinent to OGD Contention O.

Please call me should you have any questions concerning this letter.

Sincerely,



Paul A. Gaukler  
Counsel for Applicant