

May 20, 1999

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

**APPLICANT'S OBJECTIONS AND RESPONSES  
TO OGD'S FIRST REQUESTS FOR DISCOVERY**

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") files the following objections and responses to "Ohngo Gaudedah Devia's First Set of Discovery Requests Directed to the Applicant" ("OGD's First Discovery Requests"), an electronic copy of which was served on the Applicant on Monday, May 10, 1999. Pursuant to Board Orders,<sup>1</sup> OGD requested Applicant to answer the Interrogatories within 10 days after service of the formal discovery request and to produce documents within 15 days after service of the formal discovery request. OGD's First Discovery Requests at 1.

**I. GENERAL OBJECTIONS**

These objections apply to the Applicant's responses to all of OGD's First Discovery Requests.

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<sup>1</sup> See Board Orders dated April 22, 1998, June 29, 1998 and August 20, 1998.

1. The Applicant objects to the OGD's instructions and definitions on the grounds and to the extent that they request or purport to impose upon the Applicant any obligation to respond in manner or scope beyond the requirements set forth in 10 C.F.R. §§ 2.740, 2.741 and 2.742.

2. The Applicant objects to OGD's Request for Production of Documents to the extent that it requests discovery of information or documents protected under the attorney-client privilege, the attorney work product doctrine, and limitations on discovery of trial preparation materials and experts' knowledge or opinions set forth in 10 C.F.R. § 2.740 or other protection provided by law. The Applicant has provided OGD with a Privilege Log which identifies documents subject to these privileges and protections, which the Applicant reserves the right to supplement.

3. The Applicant objects to OGD's interrogatories and document requests to the extent they seek discovery beyond the scope of OGD Contention O, as admitted by the Board in this proceeding. OGD is only permitted to obtain discovery on matters that pertain to the subject matter with which OGD is involved in this proceeding. 10 C.F.R. § 2.740(b). The only OGD contention admitted by the Board was OGD O. In admitting the contention, the Board specifically limited the scope of OGD O to the issue of "disparate impact[s]" of the PFSF on the "Skull Valley Goshute community." Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 233 (1998). The Board rejected contention bases 2, 3, and 4 addressing the cost-benefit analysis of facility siting and the alleged lack of need for the facility. See id. OGD's discovery requests involving facility siting, at-reactor storage, PFS ownership,

and federal agency funding for nuclear power or federal agency assistance in facility siting are beyond the scope of OGD O, as admitted by the Board, and therefore not relevant to the subject matter to which OGD is a party in this proceeding. None of these issues pertain to the alleged disparate impacts that the facility will have on the surrounding community, the sole issue admitted by the Board with respect to OGD Contention O. PFS objects to OGD's request to obtain discovery on these matters.

## II. INTERROGATORIES

These interrogatories apply to OGD Contention O, "Failure to Address Environmental Justice Issues."

**INTERROGATORY NO. 1.** Please state the name, business address, and job title of each person who was consulted and/or who supplied information for responding to interrogatories and requests for the production of documents. Specifically note for which interrogatories and requests for production each such person was consulted and/or supplied information.

If the information or opinions of anyone who was consulted in connection with your response to an interrogatory or request for admission differs from your written answer to the discovery request, please describe in detail the differing information or opinions, and indicate why such differing information or opinions are not your official position as expressed in your written answer to the request.

**APPLICANT'S RESPONSE:** In addition to counsel for PFS, the following persons were consulted and/or supplied information in responding to the OGD's First Discovery Requests:

John Donnell - Interrogatory No. 2; Document Request Nos. 1-2.  
Project Director  
Private Fuel Storage L.L.C.  
7677 East Berry Ave  
Englewood, CO 80111-2137

Beverly Slack - Document Request No. 6  
Assistant Project Director  
Tapai Project Office  
Skull Valley Band of Goshute Indians  
2480 South Main Street, Room 110  
Salt Lake City, UT 84115

In response to whether the information or opinions of anyone who was consulted in connection with PFS's response to an interrogatory differs from the PFS's written answer to the discovery request, PFS is unaware of any such difference among those consulted.

**INTERROGATORY NO. 2.** To the extent that PFS has not previously produced documents pertaining to OGD's admitted contention, please identify all such documents not previously produced. PFS may respond to this request by notifying OGD that PFS has updated its repository of documents pertaining to admitted contentions at Parsons, Behle and Latimer.

**APPLICANT'S RESPONSE:** PFS is aware of no additional documents to produce at this time beyond those previously produced and made available by PFS at its document repository at Parsons, Behle and Latimer in Salt Lake City. PFS will notify OGD upon updating its repository of documents relevant to the admitted OGD Contention O maintained at Parsons, Behle and Latimer.

**INTERROGATORY NO. 3.** Please provide the names, addresses, telephone numbers, facsimile numbers, and titles of each person, employee, agent, representative (including attorneys), consultant who evaluated potential sites/locations for the proposed PFS facility and who participated in any manner in the decision to choose the Skull Valley Reservation as the site for the proposed PFS facility.

**APPLICANT'S RESPONSE:** Applicant objects to this Interrogatory as it requests information that is beyond the scope of OGD Contention O as admitted by the Board. See General Objection 3. Specifically, 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, OGD 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).

**INTERROGATORY NO. 4.** Please identify each person, organization, and/or entity that has a substantial interest in PFS. For the purposes of this interrogatory the phrase "substantial interest" means an interest equal to or greater than five percent (5%) of the controlling interest or shares of the company. For each person and organization identified please provide: (a) if a person- name, address, telephone number, facsimile number, and title; (b) if an organization- complete legal name, location of corporate headquarters, and the name, address, and telephone number for each of the organization's directors and officers.

**APPLICANT'S RESPONSE:** Applicant objects to this Interrogatory as it requests information that is beyond the scope of OGD Contention O as admitted by the Board. See General Objection 3.

**INTERROGATORY NO. 5.** For each nuclear power facility that may provide waste to be stored at the proposed PFS facility please identify the name, street address, city, and state of the facility, and fully describe whether the facility currently stores and/or has room to store the type of wastes planned for storage at the proposed PFS facility.

**APPLICANT'S RESPONSE:** Applicant objects to this Interrogatory as it requests information that is beyond the scope of OGD Contention O as admitted by the Board. See General Objection 3. Moreover, this information relates to the third and fourth bases of OGD 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).

### III. DOCUMENT REQUESTS

OGD requests the Applicant to produce the following documents directly or indirectly within the possession, custody, and/or control of PFS, its employees, directors, officers, agents (including attorneys), contractors, and/or the companies that have been involved in the formation and/or operation of PFS:

**REQUEST NO. 1.** All documents in your possession, custody or control that are identified, referred to or used in any way in responding to all of the above-stated interrogatories.

**APPLICANT'S RESPONSE:** No documents were used in responding to the above-stated interrogatories.

**REQUEST NO. 2.** All documents in your possession, custody or control pertaining to OGD's admitted contention, with the exception of those documents already produced during the informal discovery process.

**APPLICANT'S RESPONSE:** PFS is aware of no additional documents to produce at this time. PFS will notify OGD upon updating its repository of documents relevant to the admitted OGD Contention O maintained at Parsons, Behle and Latimer in Salt Lake City. See Response to Interrogatory No. 2.

**REQUEST NO. 3.** All documents (including experts' opinions, notes, workpapers, affidavits, and other materials used to render such opinion) supporting or otherwise relating to testimony or evidence that you intend to use at the hearings in opposition to OGD's admitted contention.

**APPLICANT'S RESPONSE:** Applicant objects to this Request as being overly broad, vague, unduly burdensome and seeking privileged material. Applicant will provide documents with respect to its witnesses as agreed to with respect to other parties.

See Applicant's Objections and Non-Proprietary Responses to State's First Requests for Discovery, Response to General Interrogatory No. 5 (Apr. 21, 1999).

**REQUEST NO. 4.** For PFS and the companies involved in the formation and/or operation of PFS please produce the following documents: (a) the latest annual report, (b) all licenses or permits issued by any state or federal agency, (c) the latest filing with any public utility commission and/or corporations commission, (d) the latest filings with the Securities and Exchange Commission, (e) all licenses and/or permits authorizing the organization to do business in the State of Utah.

**APPLICANT'S RESPONSE:** Applicant objects to this Request as it requests information that is beyond the scope of OGD Contention O as admitted by the Board.

See General Objection 3.

**REQUEST NO. 5.** Please provide copies of all articles of incorporation, by-laws, and partnership agreements that pertain to PFS, L.L.C.

**APPLICANT'S RESPONSE:** Applicant objects to this Request as it requests information that is beyond the scope of OGD Contention O as admitted by the Board.

See General Objection 3.

**REQUEST NO. 6.** To the extent that the Skull Valley Band of Goshute (Band) has not previously produced documents pertaining to OGD's admitted contention, please identify and produce all such documents not previously produced. The Band may respond to this request by notifying OGD that it has placed documents or other information in the repository of documents pertaining to admitted contentions at Parsons, Behle and Latimer.

**APPLICANT'S RESPONSE:** PFS is aware of no additional documents to produce at this time beyond those previously produced and made available by PFS and the Band.<sup>2</sup> PFS will notify OGD upon updating the repository of documents relevant to the admitted OGD Contention O. See Response to Interrogatory No. 2.

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<sup>2</sup> See Letter from P. Gaukler (Shaw Pittman) to J. Walker (Land and Water Fund of the Rockies) regarding Response to OGD's Informal Discovery Requests of October 9, 1998 to Applicant PFS and the Skull

**REQUEST NO. 7.** All documents that are directly or indirectly controlled by PFS, the Band, and/or Tribal Chairperson Leon Bear pertaining in any manner to: (a) any lease agreement(s) and/or other contracts between PFS and the Band, the Band's attorney(s), and/or Chairperson Bear; (b) the payment of funds from PFS to the Band, the Band's attorney(s), and/or Chairperson Bear; (c) any promise made by PFS to provide to the Band, the Band's attorney(s), and/or Chairman Bear with funds; (d) all services provided to the Band, the Band's attorney(s), and/or Chairperson Bear by PFS.

**APPLICANT'S RESPONSE:** Applicant objects to this Request as it is overly broad and requests information that is beyond the scope of OGD Contention O as admitted by the Board. See General Objection 3. For example, the negotiations leading up to the lease are not 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.<sup>3</sup>

PFS is aware of no additional documents to produce at this time beyond those previously produced and made available by PFS and the Band. PFS will notify OGD upon updating the repository of documents relevant to the admitted OGD Contention O.

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Valley Band (Nov. 24, 1998); letter from P. Gaukler (Shaw Pittman) to C. Nakahara (Utah Dep't of Env. Qual.) regarding Discovery of PFS and the Skull Valley Band (Dec. 3, 1998). As stated in the December 3, 1998 letter; although not maintained at their offices, arrangements to review the Skull Valley Band documents can be made through Parsons, Behle and Latimer.

<sup>3</sup> A draft confidentiality agreement between ODG and PFS was sent to OGD's counsel in January 1999. See Letter from P. Gaukler (Shaw Pittman) to J. Walker (Land and Water Fund of the Rockies) regarding establishment of a confidentiality agreement (Jan. 11, 1999). We have not yet heard back from OGD regarding the draft confidentiality agreement.

**REQUEST NO. 8.** For each nuclear power facility that may provide waste to be stored at the proposed PFS facility please provide all documentation pertaining to any funding provided to that facility and/or the facility's owner and/or operator by the NRC and/or any other governmental agency.

**APPLICANT'S RESPONSE:** Applicant objects to this Request as it requests information that is beyond the scope of OGD Contention O as admitted by the Board.

See General Objection 3.

**REQUEST NO. 9.** For each nuclear power facility that may provide waste to be stored at the proposed PFS facility please provide all documentation pertaining to any federal financial assistance provided to that facility and/or the facility's owner and/or operator by the NRC and/or any other governmental agency.

**APPLICANT'S RESPONSE:** Applicant objects to this Request as it requests information that is beyond the scope of OGD Contention O as admitted by the Board.

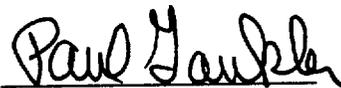
See General Objection 3.

**REQUEST NO. 10.** Provide all documents pertaining in any manner to any funding and/or non-monetary assistance promised or received by PFS from the NRC, Department of Energy, and/or any other federal agency or program that assisted PFS in any manner in identifying the Skull Valley site and/or reaching an agreement to lease the Skull Valley site.

**APPLICANT'S RESPONSE:** Applicant objects to this Request as it requests information that is beyond the scope of OGD Contention O as admitted by the Board.

See General Objection 3.

Respectfully submitted,



Jay E. Silberg

Ernest L. Blake, Jr.

Paul A. Gaukler

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Dated: May 20, 1999

**UNITED STATES OF AMERICA**  
**NUCLEAR REGULATORY COMMISSION**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the Applicant's Objections and Responses to OGD's First Requests For Discovery and the Affidavit of Paul A. Gaukler were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 20th day of May 1999.

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\* By U.S. mail only

  
Paul A. Gaukler

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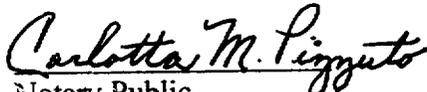
AFFIDAVIT OF PAUL A. GAUKLER

I, Paul A. Gaukler, being duly sworn, state as follows:

1. I am counsel with Shaw Pittman Potts & Trowbridge in Washington, D.C.
2. I am duly authorized to verify Private Fuel Storage's Responses to OGD's First Requests for Discovery to Applicant Private Fuel Storage; specifically, those responses to Interrogatory Nos. 1 and 2.
3. I certify that the statements in such responses are true and correct to the best of my personal knowledge and belief.

  
Paul A. Gaukler

Sworn to and subscribed  
before me this 20<sup>th</sup> day  
of May, 1999.

  
Notary Public

My commission expires:  
8-14-2000