

UNITED STATES OF AMERICA  
BEFORE THE  
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Private Fuel Storage, a Limited Liability Company;  
  
(Independent Spent Fuel Storage Installation).

Docket No. 72-22  
ASLBP No. 97-732-02-ISFSI  
May 14, 2001

**OHNGO GAUDADEH DEVIA'S (OGD) RESPONSE TO PRIVATE FUEL  
STORAGE'S (PFS) MOTION FOR ENTRY OF ORDER TO COMPEL**

**Response to Yet Another Confusing Motion:** OGD hereby provides a response to PFS's May 7, 2001 Motion for Entry of Order Compelling Intervener OGD to Answer Applicant's Discovery Requests. The May 7<sup>th</sup> Motion is the most recent of a line of what OGD believes to be unnecessary motions requesting ever more detailed responses on issues on which PFS is intimately familiar to the greatest detail because PFS has been an active party to federal court litigation, but on which PFS demands unnecessary detail from OGD, who was never a party to said litigation.

**Background:** As addressed in OGD's previous responses, dated April 25, and May 4, 2001, PFS argues in its March 28<sup>th</sup> Motion to Compel that OGD's response to PFS's Interrogatory No. 8 and Document Requests Nos. 4 and 5 (wherein OGD intended to rely, in part, on information, including all evidence, contained in "affidavits, declarations and other supporting or evidentiary documents and records" in *Utah v. Department of the Interior*) were, as a matter of law, necessarily inadequate, and did not differentiate the inadequacies. PFS stated that OGD's response, with respect to the litigation documents, impermissibly presented it with an "impenetrable mass of documents" and that more specificity was, as a matter of law, required.

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OGD disagreed and still disagrees. Now PFS adds that it would have to “sift through documents” and “guess as to the basis” in order to obtain its answer. OGD disagrees.

**PFS was an Active Named Party Defendant:** As addressed in OGD’s April 25, and May 4, 2001 responses, but inexplicably not addressed in PFS’s April 27<sup>th</sup> Renewal, nor in the present Motion, PFS fails to account for the fact that PFS was a named and active party defendant in the subject litigation and already possesses all of the subject documents and has already analyzed all of the major issues. Nearly half of the subject documents were written by PFS, generally in response to the other half of the subject documents. PFS is therefore intimately familiar with the litigation documents and the major issues.

**OGD’s Initial Response was Adequate, Further Detail is Unnecessary:** The documents and litigation issues can hardly be characterized as an “impenetrable mass” with respect to PFS. Nor is PFS in a position of having to “sift through documents” or “guess as to the basis” in order to obtain its answer. The allegation that most of the members of the Skull Valley Band did not support the PFS project was a major issue in the litigation. The bases for such an allegation were well addressed in the litigation documents and PFS has thoroughly analyzed and was and is intimately familiar with such bases. PFS is in the position of having known, thoroughly and completely, the answer to its Interrogatory 8 before it posed it to OGD, who PFS knew had not been a party, and had reason to believe was not as familiar with the issues as PFS. OGD’s first response, therefore, may be considered adequate under the circumstances, and certainly cannot be inadequate as a matter of law. Despite and notwithstanding OGD’s position that its first response was adequate, OGD provided more detail. In OGD’s April 25<sup>th</sup> Additional Response, OGD included a descriptive list. In OGD’s May 4<sup>th</sup> Second Additional

Response, OGD included a unique identification, referenced to the court Docket, of specific documents wherein such bases were addressed .

**OGD Provides Even More and Unnecessary Detail:** Despite and notwithstanding OGD's position that its previous responses were more than adequate, OGD provides herein a more detail response.

**Litigation:** With respect to the litigation documents, the Complaint, dated and filed in federal court on March 10<sup>th</sup> 1999, addresses topics forming the bases for the allegation that most of the members of the Skull Valley Band did not support the PFS project. See in particular the March 10 Complaint, ¶¶ 15,16,17,33,95,97,98,99,180,183,185,186,187. The already specified Answer and other specified pleading documents, including exhibits and especially the declarations of Sammy Blackbear and Leon D. Bear, contain paragraphs which respond to these paragraphs in the Complaint, which also address such bases. Further, such bases are also addressed in the appeal, within the BIA forum, of BIA's improper approval of the purported lease agreement, legal action to which PFS was again an active, responsive, party. Additionally, such bases are still further addressed in the complaint dated and filed in federal court on May 2, 2001. See in particular the May 2 Complaint, ¶¶ 1,30,33,35,42,43,44,45,49, 72, 74, 87, 146, 147, 148, 206, and associated exhibits.

**Finally:** In addition to the merits of the allegations addressed in the litigation (OGD hereby adopts as bases the allegations, addressed in the litigation, that a majority of the Tribal General Council has not properly considered or approved the purported lease agreement, authorized its signature, nor expressed support for the PFS project, and any purported resolutions or other documents to the contrary are bogus, based on fraud, bribery, and corruption, all

allegations OGD is prepared to prove), OGD hereby adds that its assertion, that a majority of the Band does not support the PFS project, is additionally based on current and ongoing discussions with members of the Band themselves, indicating a present lack of support for the PFS project by the majority. PFS is free to conduct its own discussions.

**Other Responses:**

**Improper dealings by PFS:** In its March 28<sup>th</sup> Motion to Compel, PFS argued that in OGD's response to PFS's Interrogatory No. 8 and 9, OGD used the phrase "other issues relevant to the facility; . . ." which PFS claims is too vague.

OGD responded that other issues relevant to the facility are the improper changes in purported tribal government and associated improper actions caused by PFS's bypassing the Tribe's legitimate government and conducting improper dealings with and support of unauthorized persons in usurping illegitimate power, leading to corruption and disparate adverse impacts.

In PFS' May 7 Motion, PFS says that this answer is too vague to act as a "reason" for OGD's disagreement. OGD disagrees. The intent of discovery is to inform, not to prove issues before the time for proof. There is nothing vague about the allegation that PFS is not dealing with the Tribe's legitimate government, and by, for example, supplying funds to individuals (for instance Leon Bear and Danny Quintana) who do not represent the Tribe, project funds are likely to cause disparate adverse impacts. PFS has been on notice that it is dealing with individuals who do not represent the Tribe from at least March of 1999. Again PFS is intimately knowledgeable concerning the details of these allegations, which are major issues in the litigation where PFS is

and has been an active and responsive party. Again, PFS should have no problem understanding the issue (at least as well as OGD did) without OGD providing ever more and more detail.

**PFS Fails to Analyze Disproportionate Risk:** In its March 28<sup>th</sup> Motion to Compel, PFS argued that OGD's response to PFS's Interrogatory No. 9 OGD used the phrase "including . . ." which PFS claims is too vague. PFS requests that OGD provide a more complete list of ways in which the DEIS does not address Environmental Justice issues.

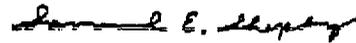
OGD responded: The DEIS describes numerous potentially adverse risks to health and environment and provides purported analyses addressing these risks. None of these descriptions or analyses consider risks in terms of causing a disproportionate adverse risk to low income and minority populations. This is despite the fact that any health or environmental risk can potentially present a disproportionate risk depending on the circumstances of the risk and the conditions and factors at play in the interaction with these circumstances with the low income and minority populations. The DEIS does not adequately address these issues for any of the health and environmental risks it addresses. OGD believes no such analyses were done.

PFS in its May 7 Motion says this is too vague. PFS would have OGD write its DEIS. PFS plans to construct and operate a nuclear waste facility sited in the middle of a small inhabited Indian reservation but wants OGD to specify all of the potential risks which could be disproportional. OGD does so: all of the potential risks addressed by PFS in the DEIS could, under these circumstances, be disproportional. PFS did not consider disproportionate risk with respect to any of the potential risks PFS analyzed. This is especially not justified in light of the Skull Valley Reservation not meeting the criteria as a so called "willing jurisdiction" which failure PFS has been on notice of since at least March of 1999, this issue being a major issue in the

litigation to which PFS has been an active and responsive party.

**OGD has Provided Adequate Responses:** OGD has provided adequate responses and requests that the Board protect OGD from the unnecessary expenses PFS would have it expend on ever more detail on issues PFS is already intimately familiar with. OGD intends to prove up its contention at the proper time and place.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that copies of **OHNGO GAUDADEH DEVIA'S (OGD) RESPONSE TO PRIVATE FUEL STORAGE'S (PFS) MOTION FOR ENTRY OF ORDER TO COMPEL** were served on the persons listed below by e-mail (unless otherwise noted) with conforming copies by United States mail, first class, postage prepaid, this May 14, 2001.

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**CERTIFICATE OF SERVICE OF OGD'S RESPONSE TO  
PFS' MOTION FOR ORDER TO COMPEL  
MAY 14, 2001 - PAGE 1 OF 2**

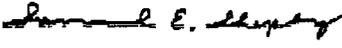
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