

October 4, 2001

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-ISFSI
)	
(Independent Spent Fuel)	
Storage Installation))	

NRC STAFF'S RESPONSE TO
INTERVENOR SKULL VALLEY BAND'S MOTION
FOR PROTECTIVE ORDER AS TO CERTAIN EXHIBITS

INTRODUCTION

Pursuant to 10 C.F.R. § 2.730(c) and the Licensing Board's "Order (Schedule for Additional Responses to Protective Order Motion)," dated September 27, 2001, the NRC Staff ("Staff") herewith responds to "Intervenor Skull Valley Band's Motion for Protective Order as to Certain Exhibits" ("Motion"), which was filed by Intervenor Skull Valley Band of Goshute Indians ("Band") on September 26, 2001. For the reasons set forth below, the Staff does not oppose the Band's Motion, subject to the modification discussed below.

DISCUSSION

The background of this matter is set forth at length in the Band's Motion, and need not be reiterated herein. In brief, Intervenor Ohngo Gaudadeh Devia ("OGD") attached a large number of exhibits to its June 28, 2001 response to a motion for summary disposition filed by Private Fuel Storage, L.L.C. ("PFS" or "Applicant") concerning Contention OGD O ("Environmental Justice").¹ Those exhibits, many of which pertain to internal Tribal matters, were initially filed with the Licensing Board under a claim of confidentiality, and were not served upon the parties in this

¹ See "[OGD's] Response to [PFS's] Motion for Summary Disposition of OGD Contention 'O,'" dated June 28, 2001 ("OGD's Response"); and "Applicant's Motion for Summary Disposition of OGD Contention O - Environmental Justice," dated May 25, 2001 ("Applicant's Motion").

proceeding.² OGD subsequently provided copies of those documents to the Band for its review and withdrew its request for confidentiality. The Band then determined that many of the documents contain information which the Band considers to be confidential and/or privileged, and therefore filed the instant Motion seeking the entry of a Protective Order pursuant to 10 C.F.R. § 2.740(c)(6) to protect certain documents (specifically identified in the Band's Motion) from being disclosed to the public or parties who are not involved in litigation of Contention OGD O.³

With respect to the terms of the requested protective order, OGD states:

The parties litigating Contention O, namely PFS, OGD, and the Band, are prepared to enter into a Confidentiality Agreement (now being drafted) which would allow use of these exhibits only for purposes of the Board's and the Commission's ultimate disposition of this contention, and not for any other purpose. These exhibits would not be served on any other party. In the event that OGD Contention O is the subject of a hearing . . . , the exhibits described above would continue to be treated as nonpublic information, and any discussion of the exhibits in testimony could, if necessary, be the subject of an *in camera* proceeding.

Motion at 6; emphasis added. The Band further indicates that "[t]he substance of this motion has been discussed with counsel for the two other parties litigating the merits of OGD Contention O, namely OGD and PFS, and . . . they are willing to enter into [a] confidentiality agreement" (Motion at 1; emphasis added).

The Staff does not object to the entry of a protective order, as requested by the Band, to assure proper treatment of the Band's confidential and/or proprietary information. The Staff notes, however, that the Band's reference to PFS and OGD as the only other parties engaged in litigation

² OGD initially submitted the documents to the Licensing Board, without serving copies on the Commission. At the direction of the Licensing Board, OGD then served copies of the exhibits upon the Secretary of the Commission, under a claim of confidentiality. See "Memorandum and Order (Status of 'Confidential' Documents)," dated July 24, 2001, at 4; letter from Samuel E. Shepley, Esq., to the Secretary (NRC), dated July 28, 2001.

³ The Band identified the following exhibits to OGD's Response as documents which it claims are confidential or proprietary: Exhibits C, D, E, F, H, I, K, M, O, X (Exhibit U on OGD's Table of Exhibits), and AA (Exhibit X on OGD's Table of Exhibits).

of Contention OGD O fails to recognize that the Staff is an active party in the litigation of this contention, and that the Staff (and its consultants) will need to obtain and utilize the withheld documents in litigating this contention.

Counsel for the Staff has discussed this matter with Tim Vollmann, Esq., Counsel for the Band, who has authorized the Staff to state that the Band does not object to the designation of the Staff (including its consultants) as a party to whom the identified documents may be disclosed, with the understanding that the documents are to be treated as confidential by the Staff and its consultants; this is acceptable to the Staff.⁴ Accordingly, the Staff does not oppose the grant of the Band's Motion, subject to the Board's designation of the Staff (and its consultants) as a party to whom the documents may be disclosed.

CONCLUSION

For the reasons set forth above, the Staff does not object to the Band's Motion, if modified in the manner set forth above.

Respectfully submitted,

/RA/

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 4th day of October, 2001

⁴ The Staff notes that the Commission has internal requirements in place pertaining to the treatment of protected information by NRC employees, consultants and contractors, so that the Staff and its consultants need not be required to execute a confidentiality agreement. See, e.g., "Memorandum and Order (Protective Order and Schedule for Filing Security Plan Contentions)," dated December 17, 1997, at 5 n.5; NRC Management Directive 12.6, "NRC Sensitive Unclassified Information Security Program" (applicable, *inter alia*, to proprietary information).

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO INTERVENOR SKULL VALLEY BAND'S MOTION FOR PROTECTIVE ORDER AS TO CERTAIN EXHIBITS," in the above captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 4th day of October, 2001:

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