

RAS 4043 UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 03/08/02

ATOMIC SAFETY AND LICENSING BOARD

SERVED 03/08/02

Before Administrative Judges:

Michael C. Farrar, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

In the Matter of

PRIVATE FUEL STORAGE, LLC

(Independent Spent Fuel
Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

March 8, 2002

MEMORANDUM OF SETTLEMENT CONFERENCE CALL
(Regarding "Contention OGD O" -- Environmental Justice)

As contemplated in our recent opinion (LBP-02-08, 55 NRC ____, Feb. 22, 2002)(slip op. at 4, 40-43), and as specifically planned with the parties before any papers challenging that decision were filed with the Commission,¹ the Board conducted on Thursday, March 7, 2002, a settlement conference call with the parties most directly affected by our environmental justice ruling. Represented on the call were counsel from OGD, the Skull Valley Band, the Applicant PFS, and the NRC Staff. The call lasted for two hours, from 1:00 PM to 3:00 PM.

At the outset, we inquired as to whether anyone thought it impermissible, in light of the filings late on March 4th with the Commission, to proceed with the call. No party objected to proceeding.

The call was long and arduous but all parties, while making their positions clear and insisting on preserving their rights (in terms of both their filings with the Commission and the

¹ See Notice of Conference Call in Aid of Settlement (March 6, 2002), confirming prior email communications of March 1 and March 4.

contemplated conduct and scheduling of the hearing), participated constructively. In that spirit, and after exploring several unproductive approaches, by the end of the call the principal protagonists, OGD and the Skull Valley Band, had agreed to enter promptly into serious settlement discussions along the lines the Board had suggested.

To promote those talks while preserving their respective rights, counsel for all four parties -- OGD, the Band, the Applicant, and the NRC Staff -- agreed that the Board should issue an order deferring the schedule it had set in LBP-02-08 (see slip op. at 38) along the following lines: the Board would postpone the hearing of this issue from the second or third week (the weeks of April 15th or 22nd) of the six-week Salt Lake City session to the sixth week (the week of May 13th). This delay, in turn, would allow the Board to move the date for pre-filing testimony from March 22nd to April 15th, thereby reducing the pressure on the Commission to act quickly on the pending papers and providing the two key parties time to carry out their settlement discussions before any filings with us had to be prepared.

Those discussions were, of necessity, to proceed promptly because of the pressure of the upcoming hearing and the filing deadlines. To that end, the parties all agreed that the Board should require counsel for OGD and the Band to report back within 10 days of the call, i.e., by March 17th. Given the good professional relationship that counsel for OGD and the Band assured us they had, the call terminated with the Board optimistic that, in the circumstances then presented, there was some significant likelihood that this long-festering dispute might be settled.

Given the strictures against use of matters discussed within a settlement conference for other purposes, the Board twice polled all counsel to be sure they agreed with the Board's (1) taking action to adjust the schedule announced in LBP-02-08 and (2) issuing a Memorandum recounting in general terms the progress made toward settlement, so that the Commission would be aware of that fact.

Shortly after terminating the call, the Board was given the Commission's decision of March 7 (CLI-02-08), indicating it had decided to review our environmental justice ruling and staying all Board proceedings on that issue, "including the hearing itself and all upcoming filing deadlines related to it." With the Commission having thus stayed the matter, the scheduling postponement measures discussed in the settlement conference call are MOOT; indeed, we would no longer have jurisdiction to enter them even if they were not.²

Accordingly, this Memorandum of the settlement conference call will be entered in the record this 8th day of March, 2002.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael C. Farrar
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 8, 2002

Copies of this Memorandum and Order were sent this date by Internet e-mail transmission to counsel for (1) Applicant PFS; (2) intervenors Skull Valley Band of Goshute Indians, OGD, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State of Utah; and (3) the NRC Staff.

² With no further role to play on this issue pending the outcome of the Commission's review, we close simply by encouraging counsel for OGD and the Band, Mr. Echohawk and Mr. Vollman -- who comported themselves so well during the call and who labored with us to begin the process that might lead to settlement -- to continue their efforts in that regard. We hope they will bear in mind the totality of the thoughts we expressed (1) in Part II of LBP-02-08, (2) in our March 6 Notice, and (3) during the call, about the higher duty of lawyers: to guide clients who must constantly associate with each other to peaceful resolution of matters that are dividing them.

Perhaps they can remind their clients of what was first said in the 3rd Century: "May I win no victory that harms me or my opponent." Given the good spirit that counsel exhibited during the call, we would like to believe that they will -- in their clients' long-term interests -- continue the efforts begun today. In that regard, the potential solution the Board outlined, which elicited their commitment to move forward with settlement talks, might serve their interests well.

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NUCLEAR REGULATORY COMMISSION

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Installation))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM OF SETTLEMENT CONFERENCE CALL (REGARDING "CONTENTION OGD O" -- ENVIRONMENTAL JUSTICE) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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Docket No. 72-22-ISFSI
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CONFERENCE CALL (REGARDING
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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 8th day of March 2002