

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION

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USNRC

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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of: )  
 ) Docket No. 72-22  
PRIVATE FUELS STORAGE, L.L.C. )  
 ) ASLBP No. 97-732-02-ISFI  
(Independent Spent Fuel Storage )  
Installation) )  
\_\_\_\_\_ )

OHNGO GAUDADEH DEVIA ("OGD")'S BRIEF IN SUPPORT OF UTAH'S  
SUGGESTION OF LACK OF JURISDICTION

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Dated: May 15, 2002

Pursuant to the Commission's Memorandum and Order (CLI-02-11), dated April 3, 2002, Ohngo Gaudadeh Devia (OGD) submits this brief in support of Utah's Suggestion of Lack of Jurisdiction (Suggestion) and the Petition to Institute Rulemaking (Petition) filed contemporaneously therewith. For the same reasons expressed by the State of Utah, OGD supports the suggestion that the Commission lacks authority to license PFS' proposed away from reactor spent fuel storage facility.

As the Commission noted in its Memorandum and Order (CLI-02-11), it is faced with the pure legal issue whether the Commission has authority under federal law to issue a license for the proposed privately-owned, away from reactor spent fuel storage facility. (Order CLI-02-11, at 1). As all parties agree, albeit to differing degrees, resolution of this issue turns on the Commission's interpretation of Congressional intent.

Significantly, the Commission pointed out that it "already [has] before [it] extensive arguments by Utah and PFS" addressing the issue. (Order CLI-02-11, at 6). Accordingly, in the interest of brevity, OGD adopts and incorporates herein by this reference the points and authorities advanced by the State of Utah in support of the Suggestion and Petition. OGD adds only one argument.

In examining whether Congress intended to allow for the type of privately owned, away-from-reactor storage facility proposed by PFS, the Commission should reflect upon the relative enormity<sup>1</sup> of the proposed facility and contemplate whether the inaction of Congress in expressly addressing the NRC's regulations allowing for licensing of ISFSI's when it passed the NWPA should be interpreted as affirmative approval of a scheme Congress never

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<sup>1</sup> In addressing the spent fuel storage problem, Congress apparently agonized over a 2,800 MTU or a 1,900 MTU aggregate limit. See Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. 10101, Subtitle B. Such a limit pales in comparison to the size of the 40,000 MTU of the proposed facility.

consciously considered. Members of OGD stand to have the Nation's entire present inventory of spent nuclear fuel stored on their permanent homeland. OGD relies upon fundamental notions of democracy in arguing that such a decision should be the product of conscious and deliberate Congressional action, especially where the Nuclear Waste Policy Act clearly prohibits the type of facility proposed in this case.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that on this 1<sup>st</sup> day of May, 2002, I caused to be served a true and correct copy of the foregoing by United States Mail, First Class and conforming copies by electronic mail, unless otherwise noted, and addressed to the following:

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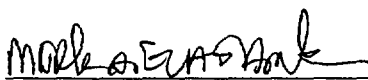
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