

CASE SCHEDULED FOR ORAL ARGUMENT JANUARY 16, 2004

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

MARGENE BULLCREEK, et al.,
Petitioners,

v.

UNITED STATES NUCLEAR REGULATORY
COMMISSION and the

UNITED STATES OF AMERICA,
Respondents.

STATE OF UTAH,
Petitioner,

v.

UNITED STATES NUCLEAR REGULATORY
COMMISSION and the

UNITED STATES OF AMERICA,
Respondents,

PRIVATE FUEL STORAGE, L.L.C. and
SKULL VALLEY BAND OF GOSHUTE
INDIANS,
Intervenors-Respondents.

No. 03-1018

No. 03-1022

**INTERVENOR PRIVATE FUEL STORAGE, L.L.C.'S
OPPOSITION TO PETITIONERS' MOTION FOR
PERMISSION TO FILE OVERLENGTH JOINT OPENING BRIEF**

Private Fuel Storage, L.L.C. ("PFS") opposes Petitioners' motion to file an overlength opening brief in the above-captioned matters. Petitioners fail to demonstrate any extraordinary or compelling circumstances requiring a deviation from the Federal Rules of Appellate Proce-

dure. To the contrary, the petitions before the Court raise a simple and straightforward issue of statutory interpretation. PFS respectfully requests that the Court deny Petitioners' motion.

Petitioners' overstate the complexity of the issue before the Court. This case involves but a single substantive issue of statutory interpretation involving the Nuclear Waste Policy Act of 1982, as amended, and the Atomic Energy Act of 1954, as amended.¹ Should Petitioners deem an extensive review of "Governmental postwar policy," Pet'rs Mot. at 3, critical to their argument regarding this single issue, they can simply provide a citation to the existing "review of that historical context." *Id.* The length of another Court's opinion in an unrelated case provides absolutely no basis to support Petitioners' motion.

Likewise, Petitioners attempt to juxtapose the purported "public importance" of the underlying administrative action and the facility proposed by PFS with the need for excessive "ventilation" of their legal position. The merits of the proposed facility are not at issue before this Court and do not affect the question of statutory interpretation raised by the petitions to this Court.

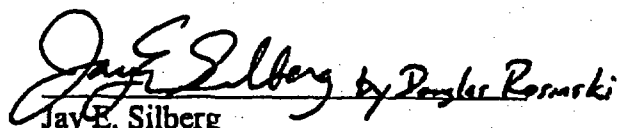
Finally, Petitioners disingenuously compare the single issue here with the multiple issues before the U.S. Court of Appeals for the Tenth Circuit. The "lawfulness" issue is only one of a number of complex issues before the Tenth Circuit. Moreover, in their brief to that Court, the State of Utah filed a 107 page brief (containing 2397 lines of text) discussing a panoply of issues including standing, ripeness, and federal preemption. *See generally*, Appellants' Opening Brief No. 2:01 CV 00270CV (Oct. 18, 2002). The State's discussion of the "lawfulness" issue consisted of only 29 of those 107 pages, or slightly more than 600 lines of text. *Id.* at 36-66. Peti-

¹ PFS is aware of the standing issue referred to the merits panel by an Order dated June 11, 2003. Petitioners' motion does not, however, refer to this issue in any way as justifying an overlength brief.

tioners provide no reason why they cannot fully "ventilate" before this Court in more than double the space.²

For all the above reasons, PFS respectfully requests that the Court deny Petitioners' motion to file an overlength joint opening brief.

Respectfully submitted,


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Dated: August 21, 2003

² Since Petitioners have already repeatedly argued this same issue in filings before an array of tribunals including the Nuclear Regulatory Commission's Atomic Safety and Licensing Board considering PFS' license application, the Nuclear Regulatory Commission itself, the United States District Court for the District of Utah, and the U.S. Court of Appeals for the Tenth Circuit, it is difficult to fathom why Petitioners cannot "fulfill their obligations to this Court" within the space allotted by the rules.

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CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing Intervenor Private Fuel Storage, L.L.C.'s Opposition to Petitioners' Motion for Permission to File Overlength Joint Opening Brief were served upon the following by United States mail, first class, postage pre-paid, on this 21st day of August, 2003:


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