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December 13, 2005

**BY HAND DELIVERY**

Office of the Clerk  
United States Court of Appeals  
for the District of Columbia Circuit  
5423 E. Barrett Prettyman United States Courthouse  
333 Constitution Avenue, N.W.  
Washington, DC 20001

**Re: Ohngo Gaudadeh Devia v. Nuclear Regulatory Commission, et al., No. 05-1419  
State of Utah v. Nuclear Regulatory Commission, et al., No. 05-1420**

Dear Clerk:

I represent petitioner the State of Utah in the above-captioned matters, which the Court has consolidated. A scheduling order issued by your office dated November 14, 2005, requires petitioners to file several documents by December 14, 2005, including a docketing statement, a certificate of counsel, a statement of the issues, a statement regarding the use of a deferred appendix, and any procedural motions that would affect the calendaring of this case.


However, the Nuclear Regulatory Commission (NRC) is filing an unopposed motion to hold this case in abeyance pending the NRC's resolution of a motion that Utah filed with the NRC on November 3, 2005. All parties and intervenors have consented to a grant of the NRC's motion to hold this case in abeyance.

We understand from discussions with your office that a grant of the motion to hold the case in abeyance will have the effect of superseding the deadlines set in the November 14 order, and that once the case ceases to be held in abeyance the Court will set new deadlines for the docketing statement, certificate of counsel, statement of the issues, statement regarding the use of

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a deferred appendix, and procedural motions that would affect that calendaring of the case. We are therefore not submitting any of those documents at this time. We stand ready to submit them promptly should the Court so require.

Sincerely,

  
Roy T. Englert, Jr.

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

STATE OF UTAH )

Petitioner, )

v. )

NUCLEAR REGULATORY COMMISSION and )  
THE UNITED STATES OF AMERICA )

Respondents. )

No. 05-1420

**STATE OF UTAH'S OPPOSITION TO THE MOTION OF  
WILLIAM D. PETERSON TO INTERVENE**

On Saturday, December 3, 2005, William D. Peterson sent to the State of Utah by email a document bearing the name of this Court, the docket number 05-1420, and the title (among others) "Petition to Intervene." It is not clear whether Mr. Peterson even sent his "Petition" to this Court. In the event the document is filed with this Court and treated as a motion to intervene, petitioner State of Utah hereby opposes it.

This matter is before the Court on petitions for review, filed by Ohngo Gaudadeh Devia (OGD) (No. 05-1419) and the State of Utah (No. 05-1420), of decisions of the Nuclear Regulatory Commission (NRC) that culminated on September 9, 2005, in authorization of the NRC staff to issue a license to Private Fuel Storage, L.L.C. (PFS), to build and operate an Independent Spent Fuel Storage Installation for spent nuclear fuel (SNF). Mr. Peterson does not appear to wish to contribute meaningfully to this Court's consideration of the challenges Utah and OGD are raising to NRC decisions in favor of the proposed PFS facility. Rather, paragraph 2 of Mr. Peterson's motion states: "Peterson herewith pleads for consent to bring this action against the sovereign United States of

America to enable money in Congress's created NUCLEAR WASTE FUND to be used for the disposal solution for SNF, even the permanent 300-year solution. Peterson proposes to do the intermediate storage and proposes that the Idaho National Laboratory (INL) develop and do the 5-9s separation of the transuranics from the fission wastes." Paragraph 3 asserts that "[t]he Federal Tort Claims Act is such a statutory waiver for use in this matter."

The NRC has previously concluded that Mr. Peterson lacks standing and is not seeking relief that falls within the scope of the NRC's powers. In 1998, Mr. Peterson filed an application for a license to store spent nuclear fuel in Box Elder County, Utah. Although the NRC assigned his application a docket number, the Staff concluded in 1999 that the application was inadequate and terminated its review. In 2000, Mr. Peterson attempted to intervene in the PFS matter. The NRC's Licensing Board denied his motion because he did not show good cause for late filing, did not have standing, and did not offer a single litigable contention. See LBP-00-23, 52 N.R.C. 114 (2000), reconsideration denied in unpublished order (Sept. 25, 2000). The Commission affirmed the Board's conclusion. See CLI-00-21, 52 N.R.C. 261 (2000).

In a subsequent document filed with the NRC, Mr. Peterson once again asked the NRC to approve his plan for storing nuclear waste in Utah. In a document titled, "Petition To License Pigeon Spur Interim Spent Nuclear Fuel Storage Facility," Mr. Peterson proposed to build a combination 300-year storage facility and spent fuel reprocessing facility. The NRC rejected his motion, concluding:

The PFS licensing proceeding is not an open forum for discussing the country's need for energy and spent fuel storage. Our regulations provide procedures for qualified applicants to obtain licenses for safely operated nuclear facilities. If Peterson believes he is qualified to operate a nuclear storage or reprocessing facility, he must comply with those prescribed licensing procedures.

CLI-04-7, 59 N.R.C. 111, 112 (2004).

Mr. Peterson's ideas about possible nuclear waste storage facilities *different from* the PFS proposal are simply a distraction from the issues properly before this Court on Hobbs Act review of NRC decisions pertaining to the proposed PFS facility. Mr. Peterson has not filed with this Court a timely petition for review of either the NRC's denial of his motion to intervene at the agency level in the *PFS* matter or the NRC's decision six years ago to terminate the proceeding it opened on Mr. Peterson's own proposal. His effort to invoke the Federal Tort Claims Act (against, among others, "President George W. Bush, Supreme Leader and Controller for Spent Nuclear Fuel processing and Nuclear Waste Deposit Fund") further suggests that Mr. Peterson may be trying to initiate a proceeding – albeit one facially lacking in merit – of the sort that must be brought (if at all) before a United States district court as an original action, not through intervention in a Hobbs Act review proceeding before this Court.

Utah respectfully requests that Mr. Peterson's motion to intervene be denied.

Respectfully submitted,



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December 13, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that on December 13, 2005, true and correct copies of the State of Utah's Opposition To The Motion Of William D. Peterson To Intervene were served by first class mail, postage prepaid, upon:

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