

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

OHNGO GAUDADEH DEVIA, et al.,
Petitioners,

v.

UNITED STATES NUCLEAR REGULATORY
COMMISSION and the

UNITED STATES OF AMERICA,
Respondents.

No. 05-1419, 015-1420,
06-1087 (Consolidated)

**RESPONSE OF INTERVENORS PRIVATE FUEL STORAGE, LLC AND SKULL
VALLEY BAND OF GOSHUTE INDIANS ON PROPOSED BRIEFING FORMAT**

By order dated June 23, 2006, the Court requested that the parties submit within 30 days proposed formats for the briefing of these consolidated cases. Intervenors Private Fuel Storage, LLC ("PFS") and the Skull Valley Band of Goshute Indians (the "Band") hereby submit their joint response to the Court's order.

PFS and the Band adopt and fully support the proposed briefing format set forth in the "Federal Respondents' Proposed Briefing Format" ("Federal Response") being filed today under which the petitioners State of Utah ("State) and Ohngo Gaudadeh Devia ("OGD") would be allowed a joint petitioners' opening brief of 14,000 words and a joint petitioners' reply brief of 7,000 words, the Federal Respondents would be allowed a respondents' brief of 14,000 words, PFS and the Band would be allowed a joint intervenors' brief of 8750 words, and *amicus curiae* briefs of 7000 words per side would be allowed. PFS and the Band also fully support the proposed briefing schedule set forth in the Federal Response.

PFS and the Band strongly oppose both the large word enlargement being sought by the State and the apparent request by the State and OGD to file separate petitioners' briefs.¹ The 35,000 word allotment for petitioners apparently contemplated by the State is clearly excessive, and, as aligned parties analogous to PFS and the Band, the State and OGD should be required to file a single joint petitioners' brief. If the Court were to permit separate petitioners' briefs by the State and OGD, PFS and the Band would respectfully request to be permitted to file separate intervenors' briefs, with the Band focusing on the issues raised by OGD.

PFS and the Band recognize that the Court in its discretion may allow some enlargement of the briefs. Should the Court allow an enlargement of petitioners' 14,000 word allotment, PFS and the Band would respectfully request a proportional enlargement of their 8,750 word allotment. As set forth in their respective intervention motions,² PFS and the Band have substantial, direct and tangible interests in this proceeding that only they can protect. PFS was the license applicant in the NRC licensing proceeding that is the subject of this appeal and now holds the NRC license challenged by petitioners. As the license applicant, PFS had the burden of proof in the NRC adjudicatory hearings and, as such, fully participated in that proceeding. As the beneficial owner of the tribal lands on which the proposed storage facility would be constructed and operated, the Band intervened and participated in the NRC proceeding in support of the PFS application, and focused its participation on issues raised by petitioner OGD.

¹ The State had previously sought permission to file a 21,000 word brief solely on its behalf, allowing OGD to file a full 14,000 word brief of its own, for a total of 35,000 words for petitioners. See Motion of State of Utah to Exceed the Word Limits Imposed by Rules 28 and 32 (April 17, 2006).

² Motion of Private Fuel Storage, L.L.C. for Intervention as of Right (Nov. 21, 2005); Motion to Intervene by the Skull Valley Band of Goshute Indians (Dec. 4, 2005).

Accordingly, PFS and the Band should be allowed to fully participate in this case in accordance with the policies and procedures of this Court, including being allocated a proportionate enlargement if any enlargement of briefs is permitted by the Court in its discretion.

Respectfully submitted,

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Dated: July 24, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing Response of Intervenors Private Fuel Storage, LLC and Skull Valley Band of Goshute Indians on Proposed Briefing Format were served upon the following by United States mail, first class, postage prepaid, on this 24th of July, 2006:

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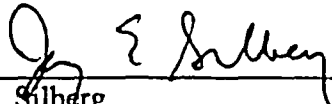
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