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Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
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Washington, D.C. 20555

Richard F. Cole, Special Assistant
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In the Matter of
NUCLEAR FUEL SERVICES, INC.
(Material License Amendment)
Docket No. 70-143-MLA

Dear Administrative Judges:

The Staff hereby responds to the Order dated December 17, 2002, in which the Staff was instructed to address whether it still believes that the current hearing requests should be held in abeyance pending the submission of all three related license amendment applications, particularly in light of the strong opposition by the Licensee to such a proposal.

Following receipt of five petitions requesting a hearing and seeking leave to intervene, the Presiding Officer, on September 11, 2002, issued a Memorandum and Order requesting further information regarding the Federal Register Notice on the license amendment application published on July 9, 2002. The Staff filed its response to this Order on September 19, 2002, acknowledging that the notice of opportunity for hearing contained in the July 9, 2002 Federal Register Notice was in error and that a corrected notice would be issued. This revised notice was published in the Federal Register on October 30, 2002.

On October 31, 2002, the Presiding Officer informed the petitioners that they had the option to file new or supplemental hearing requests by November 29, 2002. In response to that order, Friends of the Nolichucky River Valley (FONRV), State of Franklin Group of the Sierra Club (Sierra Club), Oak Ridge Environmental Peace Alliance (OREPA), and Tennessee Environmental Council (TEC) filed a joint request for hearing on November 27, 2002.¹ On November 27, 2002, FONRV, the Sierra Club, OREPA, and TEC also filed a request to hold the proceeding in abeyance pending the submission of the final two related license amendment applications.² The Blue Ridge Environmental Defense League also filed a request for hearing

¹ Request for Hearing by Friends of the Nolichucky River Valley, State of Franklin Group of the Sierra Club, Oak Ridge Environmental Peace Alliance, and Tennessee Environmental Council (November 27, 2002).

² Request By Friends of the Nolichucky River Valley, State of Franklin Group of the
(continued...)

on November 29, 2002.³ Kathy Helms-Hughes filed a hearing request via electronic mail on November 29, 2002.⁴

On December 6, 2002, the Staff, in light of the corrected *Federal Register* notice, reiterated that it did not plan to participate as a party in the adjudicatory proceeding on the February 28, 2002 license amendment. The Staff also opined that it agreed with the petitioners that it would be more expeditious to postpone the proceeding pending the submission of all of the related license amendments. On December 13, 2002, the Licensee filed answers to the requests for hearing,⁵ as well as to the Request for Abeyance.⁶

On December 17, 2002, the Presiding Officer issued an Order providing petitioners an opportunity to respond to the Applicant's filings of December 13, 2002, and instructing the Staff, while not a party to the proceeding, to address the issue of whether it still believed the proceeding should be held in abeyance pending the receipt and notice of the final two related amendment applications. On December 18, 2002, the Licensee filed a response addressing the Presiding Officer's question regarding the timing of the submission of the remaining two license amendment applications.⁷ The Licensee also filed a supplement to its answers to petitioner's hearing requests on December 19, 2002.⁸

²(...continued)

Sierra Club, Oak Ridge Environmental Peace Alliance, and Tennessee Environmental Council To Hold Proceeding In Abeyance Pending Submission of Additional License Amendment Applications (November 27, 2002) (Request for Abeyance).

³ The Substitute Request of The Blue Ridge Environmental Defense League for a Hearing on a License Amendment for Nuclear Fuel Services (November 29, 2002).

⁴ Declaration of Kathy Helms-Hughes (November 29, 2002).

⁵ Applicant's Answer to Request for Hearing of the Friends of the Nolichucky River Valley, the State of Franklin Group of the Sierra Club, the Oak Ridge Environmental Peace Alliance, and the Tennessee Environmental Council (December 13, 2002); Applicant's Answer to Request for Hearing and Areas of Concern for the Blue Ridge Environmental Defense League (December 13, 2002); Applicant's Answer to Declaration of Kathy Helms-Hughes (December 13, 2002).

⁶ Applicant's Answer to Request By the Friends of the Nolichucky River Valley, the State of Franklin Group of the Sierra Club, the Oak Ridge Environmental Peace Alliance, and the Tennessee Environmental Council To Hold Proceeding In Abeyance (December 13, 2002) (Answer).

⁷ Applicant's Response to Presiding Officer's Question Regarding Timing of Subsequent License Amendment Applications (December 18, 2002).

⁸ Applicant's Supplement to Applicant's Answers to Petitioner's Requests for Hearing (December 19, 2002).

In answer to the question posed by the Presiding Officer in the Order, dated December 17, 2002, the Staff no longer advocates holding this proceeding in abeyance pending the submission of the final two amendments.⁹ While there may be some overlap in the issues pertaining to each of the three license amendment requests and there might be some efficiency in addressing them in a single proceeding, there is no requirement that this proceeding be held in abeyance pending submission of all of the license amendment applications.

The Staff has prepared an Environmental Assessment (EA)¹⁰ and issued a final Finding of No Significant Impact (FONSI)¹¹ for the first amendment application. In preparing the EA and FONSI, the Staff examined not only the first application, but also aspects of the proposed remaining two license amendment applications, for purposes of complying with NEPA and avoiding segmentation, and in order to conduct a full and complete environmental analysis for the first amendment. The Staff maintains, however, that the three amendments are each distinct and independent undertakings that may be analyzed and acted upon separately. There is no requirement that this proceeding be held in abeyance pending the receipt and analysis of

⁹ The second license amendment application requesting authorization to dissolve and downblend special nuclear material in a new Blended Low-Enriched Uranium Preparation Facility was submitted to the NRC by NFS by letter dated October 11, 2002. The Staff is currently processing this application. The notice of receipt and issuance of opportunity for hearing was sent to the Federal Register on December 31, 2002. A copy of the notice sent to the Federal Register may be accessed through the ADAMS computer system at <http://www.nrc.gov/reading-rm/adams.html> using accession number ML023260143.

¹⁰ U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, NMSS, Environmental Assessment for Proposed License Amendments to Special Nuclear Material License No. SNM-124 Regarding Downblending and Oxide Conversion of Surplus High-Enriched Uranium (June 2002) (EA). A copy of the EA may be accessed through the ADAMS computer system at <http://www.nrc.gov/reading-rm/adams.html> using accession number ML021790068.

¹¹ The Staff published the Finding of No Significant Impact in the Federal Register. 67 Fed. Reg. 66,172, 66,176 (October 30, 2002).

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the remaining amendments. The Staff will provide an opportunity for hearing for each of the remaining two amendments at an appropriate time; thus Petitioners will not be deprived of an opportunity to seek a hearing. In sum, the Staff does not believe that the proceeding should be held in abeyance.

Sincerely,

/RA/

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cc: C. Todd Chapman, Esq.
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