

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE PRESIDING OFFICER

February 26, 2003

DOCKETED
USNRC

March 6, 2003 (2:51PM)

In the matter of

Nuclear Fuel Services, Inc.

(Materials License SNM-124)

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket No. 70-143

**MOTION BY FRIENDS OF THE NOLICHUCKY RIVER VALLEY,
STATE OF FRANKLIN GROUP OF THE SIERRA CLUB,
OAK RIDGE ENVIRONMENTAL PEACE ALLIANCE, AND
TENNESSEE ENVIRONMENTAL COUNCIL
FOR LEAVE TO REPLY TO NFS'S RESPONSE
TO PETITIONERS' SECOND HEARING REQUEST**

Petitioners, Friends of the Nolichucky River Valley ("FNRV"), the State of
Franklin Group of the Sierra Club, Oak Ridge Environmental Peace Alliance
("OREPA"), and Tennessee Environmental Council ("TEC"), hereby request leave to
reply to Nuclear Fuel Services' ("NFS's") response to their hearing request regarding
Nuclear Fuel Services's ("NFS's") second license amendment application for the "BLEU
Project" at NFS's facility in Erwin, Tennessee.¹ Although the Nuclear Regulatory
Commission's ("NRC's" or "Commission's") regulations in Subpart L of 10 C.F.R. Part
2 do not provide for replies to hearing requests, a grant of leave to reply is warranted in

¹ See Second 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 (February 6, 2003) (hereinafter "Petitioners' Second
Hearing Request"); Applicant's Answer to Second 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 (February 21,
2003) (hereinafter "NFS Response").

order to permit Petitioners to reply to legal and factual arguments that they could not have anticipated in their second hearing request. *Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521, 525 (1979). In *Allens Creek*, the Appeal Board analogized a response to a petitioner's contentions to a motion to dismiss, and held that fairness therefore required giving the petitioners an opportunity to respond. This reasoning is equally applicable to Petitioners' areas of concerns, which are akin to contentions; and to Petitioners' claim to have standing to request a hearing. The Presiding Officer should not consider what amounts to a motion to dismiss Petitioners' case, without considering Petitioners' response to NFS's arguments.

NFS raises a number of new standing arguments that Petitioners were not able to anticipate in their second hearing request. For instance, NFS argues that Petitioners' argument that their standing is demonstrated in part by NFS's past record of contaminating the environment is "irrelevant" because the contamination occurred "over 25 years ago." NFS's Response at 9. Petitioners seek to address the accuracy of both the legal and factual elements of this argument. Petitioners also seek to respond to NFS's citation of a recent Licensing Board decision, *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC __ (Dec. 2, 2003), for the proposition that radiation doses from the proposed BLEU Project will be too small to support a finding that Petitioners have standing. NFS Response at 10. In addition, Petitioners seek to respond to NFS's new legal arguments regarding the significance of cumulative effects of past and present operations, the

relevance of loss in property value to standing, and the question of whether discrepancies in NFS's estimates of future effluent emissions are sufficient to constitute "concrete" injury. NFS Response at 9-13. Finally, Petitioners seek leave to respond to NFS's argument that information in the expert declaration of Dr. Arjun Makhijani, which Petitioners submitted in support of their second hearing request, is both "wrong" and inconsequential. NFS Response at 13-14.

With respect to the admissibility of Petitioners' concerns, NFS has objected to each and every concern submitted by Petitioners, on the grounds that they either are legally invalid, not germane to the proposed license amendment, or inadequately particularized. Petitioners seek leave to respond to these arguments, which they could not have anticipated in their hearing request.

Respectfully submitted,



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Dated: February 26, 2003

CERTIFICATE OF SERVICE

I certify that on February 26, 2003, copies of MOTION BY FRIENDS OF THE NOLICHUCKY RIVER VALLEY, STATE OF FRANKLIN GROUP/SIERRA CLUB, OAK RIDGE ENVIRONMENTAL PEACE ALLIANCE, AND TENNESSEE ENVIRONMENTAL COUNCIL FOR LEAVE TO REPLY TO APPLICANT'S RESPONSE TO PETITIONERS' SECOND HEARING REQUEST were served on the following by first-class mail, and by e-mail if so designated:

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