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November 6, 2003 (3:12PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

DOCKET NO. 30-36239-ML

RAS 7040

From: Stephen Lewis
To: Curran, Diane; Pugsley, Chris; Sugarman, Robert; Thompson, Anthony
Date: Tue, Nov 4, 2003 3:09 PM
Subject: draft motion to simplify Hearing File process

Diane, Bob, Tony, Chris:

Attached is a motion that I intend to file in CFC Logistics tomorrow. I have described it to Bob and to Chris, so it should come as any surprise. I filed a similar motion yesterday in the Jefferson Proving Ground (JPG) proceeding, over which Judge Rosenthal is presiding.

As you will see, I asked for, and received from both parties to the JPG proceeding an e-mail indicating their support, or lack of objection, to the motion. I made those e-mails exhibits to the motion. The support, or lack of objection, is important in the presentation of this motion, and I am requesting that counsel for the Intervenors and for CFC Logistics provide me a similar e-mail response which I can attach to the motion. As with all of us, I have other pressing litigation matters to which I need to turn, and I will not prejudice the Staff's ability to meet Judge Farrar's date of November 28, 2003 for providing the Hearing File. Accordingly, I would like to receive your response today, or tomorrow, at the latest.

If you have any suggested modifications to the pleading that would improve its acceptability to your clients, please e-mail or call me promptly. Thanks very much. I believe the grant of this motion will be in all of our best interests.

Steve (301) 415-1684

CC: Dambly, Dennis; HEARINGDOCKET; Lewis, Stephen; Lodhi, Sattar;
McGrath, John

November 5, 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the matter)
)
Docket No. 302-362339-ML
CFC LOGISTICS, INC.)
)
ASLBP No. 03-814-01-ML
(Materials License))

NRC STAFF MOTION FOR MODIFICATION OF LBP-03-20
WITH RESPECT TO DIRECTIONS REGARDING HEARING FILE

INTRODUCTION

Currently in this proceeding the Presiding Officer has required that the Hearing File be provided in the form of paper copies. The Nuclear Regulatory Commission Staff ("Staff") respectfully moves that the procedure be modified to provide that the Hearing File will be created and maintained by a readily accessible list of the documents, with their Agencywide Documents Access and Management System ("ADAMS") accession numbers, dates, and titles. That is an option permitted by the Nuclear Regulatory Commission's ("NRC" or "Commission") regulations. The Staff far prefers to use that procedure for reasons discussed below.

DISCUSSION

In his October 29, 2003 Memorandum and Order (Ruling on Petitioners' Request for an Evidentiary Hearing)¹ the Presiding Officer directed the Staff to file by November 28, 2003 the Hearing File required under 10 C.F.R. § 2.1231(a) "...in the manner prescribed by that Rule and in the form prescribed in the margin." *Slip op.*, at 32. In footnote 42, the Presiding Officer stated:

The hearing file shall be chronologically arranged and prefaced with a numbered index of each item therein, which index shall reflect the name (or in lieu thereof a brief indication of the substance) and the date of each item. Each item in the hearing file shall be separated from the other hearing file items by a substantial colored sheet of paper, to which colored sheet shall be attached the numbered tab for the hearing file item that follows it. The hearing file shall be contained in binders that allow for ready inclusion of any supplements to the original material that may later be located. Any subsequent additions to the hearing file shall contain an index and be organized in the same manner as the original.

51 NRC at 161. Although the footnote does not use the term "paper copies," the Staff considers that requirement to be inherent in the reference to binders and to an index.

¹CFC Logistics, Inc. (Materials License), LBP-03-20, 58 NRC ____ (2003); herinafter *slip op.*

Wording very similar to that used in the Memorandum and Order was used in a proceeding that pre-dated the 1999 final rule² that resulted in the current wording of 10 C.F.R. § 2.1231(a)(1).³ Substantially the same wording used in LBP-03-20 has been carried forward in several other proceedings that post-date the final rule.⁴

Section 2.1231(a)(1) permits the Hearing File requirement to be met by reference to the documents through an identification of their availability through the NRC website. Specifically, 10 C.F.R. § 2.1231(a)(1) states that the Hearing File may be provided by “making the file available at the NRC website, <http://www.nrc.gov>.”

This provision of 10 C.F.R. § 2.1231 came into effect through the 1999 final rule referenced in footnote 2, above. As explained in the Notice of Proposed Rulemaking (“NOPR”):⁵

When ADAMS becomes operational, NRC intends to discontinue furnishing paper and microfiche copies of its publicly available records to the NRC Public Document Room (PDR), located in Washington, D.C., and the Local Public Document Rooms (LPDRs), located near nuclear power plants and other nuclear facilities.

² Final Rule: Electronic Availability of NRC Public Records and Ending of NRC Local Public Document Room Program, 64 Federal Register 48942 (1999).

³ Department of the Army (Aberdeen Proving Ground, Maryland), unpublished, slip opinion, page 1. (Exhibit 1).

⁴ Fansteel, Inc. (Muskogee, Oklahoma Facility), LBP-99-47, 50 NRC 409, 417 (1999); Atlas Corporation (Moab, Utah), LBP-00-4, 51 NRC 53, 63 (2000); International Uranium (USA) Corporation (White Mesa Uranium Mill), , LBP-02-6, 55 NRC 147, 154 (2002).

⁵ 64 Federal Register 24531 (May 7, 1999).

The NOPR further stated that “[t]o reflect the anticipated discontinuance of NRC support of libraries serving as LPDRs, references to NRC LPDRs would be deleted in 10 CFR 2.1231(a)(1)(ii), and (b)...” and in numerous other sections of the Commission’s regulations. 64 *Federal Register* at 24532. Since the September 9, 1999 publication of the Final Rule, ADAMS has become the NRC’s official record keeping system. See Exhibit 2, NRC Office of Public Affairs news release, “ NRC Implementation of ADAMS Document Management System,” dated March 31, 2000.

The NRC Staff wishes to create the Hearing File and notify the Presiding Officer, Special Assistant, and parties of updates to its contents through specifically identified ADAMS “packages” that list each document that has been placed into the Hearing File by its ADAMS accession number, its date, and its title. Since each document would be listed in the package by its ADAMS accession number, the document would be readily retrievable using the “ADAMS Find” function. The Staff recognizes that service of the Hearing File may also be accomplished, under the Commission’s regulations, by providing the documents in hard copy, as directed by the Presiding Officer. See, 10 C.F.R. §§ 2.1231(a)(1)(i), 2.1203(e), 2.1205(f) and (k), and 2.712. However, requiring the reproduction, assembling, and distribution of what often is a large volume of documents, in hard copy, is a burden that is no longer required in light of the 1999 modification of the regulations. Staff use of the ADAMS option is also consistent with the intention of the Commission reflected in the 1999 amendment and Exhibit 2 to make ADAMS the NRC’s official record keeping system. Furthermore, the ADAMS option will almost certainly result in more timely provision of the Hearing File and its updates.

The NRC Staff has provided this motion, in draft, to counsel for both Intervenor (certain identified citizens of Quakertown, Pennsylvania) and the Licensee, CFC Logistics. Both have indicated that their clients are not opposed to the grant of this motion. See, Exhibits 3 and 4 (e-mails to Staff Counsel).

CONCLUSION

The NRC Staff, therefore, respectfully moves that the Presiding Officer amend LBP-03-20 to reflect that the Hearing File will be created and maintained by identified ADAMS packages listing each of the documents by its ADAMS Accession Number, its date, and its title.

Respectfully submitted,

Stephen H. Lewis
Counsel for NRC Staff

Dated at Rockville, Maryland
this 5th day of November, 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the matter)
)
Docket No. 302-362339-ML)
CFC LOGISTICS, INC.)
)
ASLBP No. 03-814-01-ML)
(Materials License))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF MOTION FOR MODIFICATION OF LBP-03-20 WITH RESPECT TO DIRECTIONS REGARDING HEARING FILE" have been served upon the persons listed below by 1st class U.S. mail, or through deposit in the Nuclear Regulatory Commission's internal mail system, as indicated with an asterisk, and by electronic mail, as indicated with a double asterisk, this 5th day of November, 2003.

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Mail Envelope Properties (3FA80782.F7E : 17 : 28822)

Subject: draft motion to simplify Hearing File process
Creation Date: Tue, Nov 4, 2003 3:09 PM
From: Stephen Lewis

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Files

Size

Date & Time

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|----------------------|-------|-----------------------------------|
| CFC hearing file.wpd | 20602 | Tuesday, November 4, 2003 2:47 PM |
| Army_HearingFile.wpd | 2030 | Tuesday, November 4, 2003 9:47 AM |
| STV_Hearing File.wpd | 2671 | Tuesday, November 4, 2003 9:45 AM |
| MESSAGE | 1986 | Tuesday, November 4, 2003 3:09 PM |

Options

| | |
|-----------------------------|----------|
| Expiration Date: | None |
| Priority: | Standard |
| Reply Requested: | No |
| Return Notification: | None |

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|---------------------------|----------|
| Concealed Subject: | No |
| Security: | Standard |