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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 01/14/04

BEFORE THE COMMISSION

In the Matter of)	
)	
NUCLEAR FUEL SERVICES, INC.)	Docket No. 70-143-MLA-3
)	SNM License 124
Blended Low Enriched Uranium Project)	
(Request for Material License Amendment for)	ASLBP No. 02-803-04
Oxide Conversion Building and Effluent)	
Processing Building))	

NRC STAFF RESPONSE TO
KATHY HELMS-HUGHES' MOTION FOR EXTENSION OF TIME

Marian L. Zobler
Counsel for NRC Staff

January 13, 2004

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INTRODUCTION

The Staff of the Nuclear Regulatory Commission (Staff) hereby responds to "Kathy Helms-Hughes' Motion for Extension of Time," (Motion). In her Motion, Ms. Helms-Hughes requests an extension of time of 60 days for the public to request a hearing concerning a request from Nuclear Fuel Services, Inc. (NFS) to amend its license to authorize certain operations at its facility related to the Blended Low-Enriched Uranium (BLEU) project. As discussed below, the request for a 60-day extension should be denied, however, the Staff does not oppose a brief extension of time.

BACKGROUND

NFS is the holder of Special Nuclear Materials License No. SNM-124 and is currently manufacturing high-enriched nuclear reactor fuel at its facility in Erwin, Tennessee. See *Nuclear Fuel Services, Inc.; Notice of Receipt of Amendment Request and Opportunity to Request a Hearing for Oxide Conversion Building and Effluent Processing Building in the Blended Low-Enriched Uranium Complex*, 68 Fed. Reg. 74653 (2003). On October 23, 2003, NFS filed a request for an amendment to its license to authorize processing operations in the Oxide Conversion

Building and the Effluent Processing Building. *Id.* This request is the third of three license amendment requests planned to support operations associated with downblending and conversion of high-enriched uranium material to low-enriched oxides.¹ *Id.* On December 24, 2003, the opportunity to request a hearing on this amendment request was published in the *Federal Register*. 68 Fed. Reg. at 74653. Pursuant to 10 C.F.R. § 2.1205(d) the *Federal Register* notice provided that any request for a hearing be filed within 30 days of the date of the notice, *i.e.*, no later than January 23, 2004. *Id.* On December 31, 2003, Kathy Helms-Hughes filed her Motion before the Presiding Officer designated in the other two pending NFS proceedings. Upon advice from the Presiding Officer, Ms. Helms-Hughes refiled her Motion with the Commission and the NRC Staff on January 2, 2004. On January 5, 2004, NFS filed “Applicant’s Opposition to Kathy Helms-Hughes’ Motion for Extension of Time” (Applicant’s Opposition) in which NFS opposes Ms. Helms-Hughes’ request for a 60-day extension of time to request a hearing, but indicates that it would not oppose a 10-day extension to file a hearing request.

¹ The first and second amendment requests were submitted on February 28, 2002 and October 11, 2002, respectively. See Letter from M. Marie Moore to Office of Nuclear Materials Safety and Safeguards (Feb. 28, 2002) (ADAMS Accession No. ML020730343); 67 Fed. Reg. 79667 (2002) and Letter From M. Marie Moore to Office of Nuclear Materials Safety and Safeguards (Oct. 11, 2002)(ADAMS Accession No. ML 022960038); 68 Fed. Reg. 796 (2003). Hearing requests on both of these amendments were received, however, the Presiding Officer designated to rule on the requests held both proceedings in abeyance pending the submission of the third and final amendment request. See *Nuclear Fuel Services, Inc.* (Erwin, Tennessee), LBP-03-01, 57 NRC 9 (2003). The Staff declined to be a party in both of these proceedings.

DISCUSSION

Ms. Helms-Hughes requests a 60-day extension of time for the public to file “responses” to NFS’ third license amendment request.² Motion at 1. Ms. Helms-Hughes bases her request on the fact that the *Federal Register* notice of the receipt of the amendment request and the opportunity to request a hearing was published during the holiday season. *Id.* at 2. Ms. Helms-Hughes also claims that in addition to the amendment request itself, there are “several supporting documents” that must be reviewed. *Id.*

Ms. Helms-Hughes’ request for a 60-day extension is excessive. Under the Commission’s regulations at 10 C.F.R. Part 2, subpart L any request for a hearing must be filed within 30 days of the date of the publication in the *Federal Register* of a notice referring or relating to an application. 10 C.F.R. § 2.1205(d)(1). Nothing in the Motion supports an extension that would result in the tripling of the time of what is generally afforded members of the public to request a hearing. The holiday season generally only extends from December 25 - January 1 (New Year’s Day), an eight-day period. However, the Staff would not oppose a short extension of ten days.³

Ms. Helms-Hughes also claims that the an extension is necessary so that there will be sufficient time to review the documentation filed by NFS. Motion at 2. Ms. Helms-Hughes refers to the Non-Proprietary version of the Integrated Safety Analysis (ISA) Summary, a 367-page document. However, Ms. Helms-Hughes fails to explain why she could not review the relevant documents in a timely fashion, given the modest pleading burden in a subpart L proceeding. See *Sequoyah Fuels Corp.*, CLI-01-02, 53 NRC 9, 16 (2001). Thus, Ms. Helms-Hughes’ Motion should be denied.

² Ms. Helms-Hughes refers to “responses” and “public comment.” See Motion at 1. The Staff assumes she is referring to requests for hearing on the third license amendment request. See Motion at 1, 3.

³ An 8-day extension would have the deadline fall on a Saturday, January 31, thus, the deadline should be moved to Monday, February 2, 2004, which would be a ten-day extension.

CONCLUSION

For the reasons discussed above, Ms. Helms-Hughes' motion for an extension of time should be denied. However, the Staff would not oppose a brief extension of time for Ms. Helms-Hughes to file a request for a hearing concern NFS' license amendment application.

Respectfully submitted

/RA/

Marian L. Zabler
Counsel for NRC Staff

Dated at Rockville, Maryland
this 13th day of January, 2004

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO KATHY HELMS-HUGHES' MOTION FOR EXTENSION OF TIME" in the above-captioned proceeding have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), and by electronic mail as indicated by a double asterisk (**) on this 13th day of January, 2004.

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