

RAS 7678

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

DOCKETED 04/28/04

SERVED 04/28/04

Before Administrative Judges:

Alan S. Rosenthal, Presiding Officer
Dr. Richard F. Cole, Special Assistant

In the Matter of

NUCLEAR FUEL SERVICES, INC.

(Erwin, Tennessee)

Docket Nos. 70-143-MLA, 70-143-MLA-2,
70-143-MLA-3

ASLBP Nos. 02-803-04-MLA, 03-810-02-MLA,
04-820-05-MLA

April 28, 2004

MEMORANDUM AND ORDER
(Memorializing Pre-Hearing Conference Determinations)

Earlier today, Judge Cole and this presiding officer conducted a pre-hearing conference by telephone for the principal purpose of scheduling the filing and service of the written presentations in this materials license amendment proceeding involving the Nuclear Fuels Services' Blended-Low-Enriched Uranium (BLEU) Project. The participants in the conference included counsel for the Licensee, the four organizations (headed by State of Franklin Group of the Sierra Club) whose hearing requests were granted in LBP-04-05, 59 NRC__ (March 17, 2004), and the NRC Staff.

In our April 9, 2004 order calling for the conference, we encouraged the parties to confer among themselves in advance of the conference in an endeavor to obtain agreement on a proposed schedule for the filing and service of the written presentations. By April 26 letter, Licensee's counsel informed us that an agreement in that regard had been reached by the parties. Specifically, the parties propose the following schedule:

Sierra Club et al are to file and serve their initial presentation either (1) sixty days after the date upon which the NRC Staff publishes either an environmental impact statement relating to the proposed third license amendment for the BLEU Project or a finding to the effect that no

such statement is required; or (2) by October 1, 2004, whichever is later. In that connection, the Staff currently estimates that the results of its environmental review will be published sometime in July 2004.

The Licensee and NRC Staff responsive written presentations will be due sixty days thereafter.

The Sierra Club would then have thirty days within which to file and serve a rebuttal presentation, which (by reason of the holiday season) would in no event be due before January 15, 2005.

Finally, if the Sierra Club rebuttal presentation were to raise new matter to which the Licensee and the Staff had not had a prior opportunity to address, within thirty days thereafter those parties would have the option of filing and serving a reply confined to the new matter.

In addition to this proposed schedule, the April 26 letter disclosed the intention of the parties to file a joint motion for a protective order limiting access to certain information said by the Licensee to be proprietary. Still further, the letter noted the Licensee's intention to request clarification of the issues to be heard, "particularly with respect to past and ongoing operations at [Licensee's] facilities, as opposed to the proposed BLEU Project operations."

1. As seen, the parties are proposing a schedule for the filing of written presentations that necessarily will assure that the adjudication of the issues presented by the Sierra Club and its co-Petitioners will not take place until some time in the next calendar year. Although, as reflected in the April 9 order, it had been our contemplation that the last written presentation would be in hand at a much earlier date, with some reluctance we have agreed to the proposed schedule and it is hereby adopted in full. There does appear to be good reason to defer the submission of the Petitioners' initial presentation until after the Staff has completed its environmental review and published its results. And, while each of the proposed filing periods might appear rather generous, it is to be borne in mind that under consideration are three sought license amendments covering three different phases of a rather complex project.

Needless to say, however, given the liberal time periods being provided, it is our expectation that every effort will be made to meet the prescribed deadlines. Motions for extensions of time will be disfavored and granted only upon a convincing showing that intervening and unanticipated circumstances made it impossible to meet the deadline in question. In that connection, the press of other business will not be deemed an adequate ground for seeking an extension.¹

2. The joint motion for a protective order is to be filed no later than May 17, 2004.

3. Any request for clarification of the scope of the issues to be heard is to be filed by the Licensee no later than May 24, 2004. The request shall develop with particularity the Licensee's position with regard to the proper scope of the proceeding. If in disagreement with that position, other parties may respond to it in a submission to be filed and served by June 14, 2004.

It is so ORDERED.

BY THE PRESIDING OFFICER²

/RA/

Alan S. Rosenthal
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 28, 2004

¹ Currently pending before the Commission is the appeal of Kathy Helms-Hughes from so much of LBP-04-05 as denied her hearing requests in this matter for lack of standing. (Although improvidently filed with this presiding officer, the appeal was referred by him to the Commission on April 7 in LBP-04-06, 59 NRC___). Should Ms. Helms-Hughes ultimately obtain admission to the proceeding as a party, it is possible that some adjustment of the schedule for the filing of the written presentations might be necessary to accommodate that fact

² Copies of this order were sent this date by e-mail transmission to the counsel or other representative of each of the participants in the proceeding.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
NUCLEAR FUEL SERVICES, INC.)	Docket Nos. 70-143-MLA
)	70-143-MLA-2
)	70-143-MLA-3
(Erwin, Tennessee))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (MEMORIALIZING PRE-HEARING CONFERENCE DETERMINATIONS) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Alan S. Rosenthal, Presiding Officer
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Richard F. Cole, Special Assistant
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Jack R. Goldberg, Esq.
Marian L. Zobler, Esq.
Angela B. Coggins, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Louis Zeller
Blue Ridge Environmental Defense League
P.O. Box 88
Glendale Springs, NC 28629

Diane Curran, Esq.
Harmon, Curran, Spielberg
& Eisenberg, L.L.P.
1726 M Street, NW, Suite 600
Washington, DC 20036

Docket Nos. 70-143-MLA
70-143-MLA-2
70-143-MLA-3

LB MEMORANDUM AND ORDER (MEMORIALIZING
PRE-HEARING CONFERENCE DETERMINATIONS)

Daryl M. Shapiro, Esq.
D. Sean Barnett, Esq.
ShawPittman, LLP
2300 N Street, NW
Washington, DC 20037

Kathy Helms-Hughes
P.O. Box 2394
Fort Defiance, AZ 86504

C. Todd Chapman, Esq.
King, King & Chapman, P.L.L.C.
125 South Main Street
Greeneville, TN 37743

Neil J. Newman
Vice President and General Counsel
Nuclear Fuel Services, Inc.
1700 Rockville Pike
Rockville, MD 20852

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 28th day of April 2004