

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 10/05/07

In the Matter of

Nuclear Fuel Services, Inc.

Special Nuclear Facility
(Confirmatory Order)

Docket No. 70-143-CO

ASLBP No. 07-857-01-CO-BD01

October 5, 2007

ORDER

(Granting in Part, Sierra Club's Request for Extension of Time)

On September 26, 2007, the Sierra Club, National Radiation Committee, Jonesborough, TN (Sierra Club) filed a Request for Extension of Time to Reply to the NRC Staff's Answer to the Sierra Club's Request for Hearing.¹ As will be explained below, the Sierra Club's request for an additional seventy-five calendar days to file its Reply was excessive. Therefore, the Sierra Club's Motion is granted only in part. It is given an extension of seven calendar days from the date of service of this Order within which to file a Reply to the NRC Staff's Answer.

The Sierra Club filed a timely Request for Hearing on August 20, 2007, which was served on the NRC Staff via fax on the same day.² On September 14, 2007, the NRC Staff filed its timely Answer to the Sierra Club's Request for Hearing, which was served on the Sierra Club via electronic mail and via first class US mail.³ Because service was made via electronic mail,

¹ Sierra Club Request for Extension of Deadline to Reply to NRC Staff's Response to Hearing Request of the Sierra Club's National Radiation Committee and We the People, Inc. (Sept. 26, 2007) at 1 [hereinafter Sierra Club Request for Extension of Time].

² Sierra Club Request for Hearing (Aug. 20, 2007) at 3 [hereinafter Hearing Request].

³ NRC Staff's Response to Hearing Request of the Sierra Club's National Radiation Committee and We the People, Inc., Certificate of Service (Sept. 14, 2007) at 1-2 [hereinafter (continued...)]

NRC Regulations provide that the Sierra Club had seven days (until September 21, 2007) from the date of service of the Answer to file its Reply.⁴ However, in its Motion, the Sierra Club stated that computer difficulties and the inability to access electronic mail prevented the Sierra Club from timely filing a Reply to the NRC Staff's Answer.⁵

The Sierra Club, however, failed to acknowledge that the NRC Staff's Answer was also served via first class mail.⁶ NRC Regulations presume that the Sierra Club received a copy of the NRC Staff's Answer sent via first class mail no later than September 19, 2007, or five days after it was sent.⁷ Seven days from the receipt of the Answer by mail was September 26, 2007, which is the presumptive time set by NRC Regulations⁸ within which the Sierra Club should file its Reply.

Furthermore, the scope of a Reply is limited, narrowly focused on the arguments presented in the Answer;⁹ in the majority of cases, seven days would be enough time to

³(...continued)
NRC Staff Response].

⁴ See 10 C.F.R. § 2.309(h)(2) ("The requestor/petitioner may file a reply to any answer within seven (7) days after service of that answer."); 10 C.F.R. § 2.306 ("No time is added when the notice or paper is served in person, by courier, electronic mail or facsimile transmission.").

⁵ Sierra Club Request for Extension of Time at 2 ("The time that has been expended fixing the problems caused to my personal computer and internet account, the time spent using an older, slower computer, and the inefficiencies of dial-up . . . have cost me the time that would have otherwise been spent with counsel reviewing NRC Staff's Response.").

⁶ See generally Sierra Club Request for Extension of Time.

⁷ See 10 C.F.R. § 2.306.

⁸ See 10 C.F.R. § 2.309(h)(2).

⁹ 69 Fed. Reg. 2182, 2203 (Jan. 14, 2004) ("Any reply should be narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC staff answer; a seven-day period to prepare such a focused reply is not unreasonable. If there are special circumstances, the requestor/petitioner may request a short extension from the presiding

(continued...)

respond to an Answer. Petitioners have not demonstrated that this case should be an exception to the general rule. The Sierra Club's Request for Hearing consisted of only two pages of text.¹⁰ The NRC Staff's Answer consisted of only nine pages of text.¹¹ Seventy-five days to respond to a nine page Answer is clearly excessive considering the limited scope of the Reply. However, although the seven days provided in the NRC Regulations should have been enough time even considering the Sierra Club's stated computer difficulties, in the interest of allowing the Sierra Club an opportunity to file a Reply, the Board grants the Sierra Club an additional seven calendar days from the date of service of this Order to file a Reply to the NRC Staff's Answer (until October 15, 2007).

The Board also notes that the Sierra Club's Motion was not accompanied by a certificate that the Sierra Club consulted with the other parties prior to filing its Request for Extension of Time as required under NRC Regulations.¹² In the future, any party to this proceeding intending to file a motion shall comply with NRC Regulations by consulting with the other parties in the proceeding to attempt to resolve the issues before filing the motion.¹³ If consultation with the other parties is unsuccessful, the moving party shall file a certification stating that a "sincere effort" was made to contact the other parties and resolve the issue.¹⁴ Failure to do so will result in denial of the motion without further consideration.

⁹(...continued)
officer.").

¹⁰ See Hearing Request at 1-2.

¹¹ See NRC Staff Response at 1-9.

¹² See 10. C.F.R. § 2.323(b).

¹³ See id.

¹⁴ See id.

Due to the Sierra Club's computer difficulties, the Board directs that the NRC Staff and NFS serve via first class mail, express mail, or expedited delivery service, any document that exceeds twenty-five pages, and that it also serve via fax, any document that is fewer than twenty-five pages in length.¹⁵

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹⁶

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

October 5, 2007

¹⁵ See 10 C.F.R. § 2.305(c).

¹⁶ Copies of this Order were sent this date by Internet electronic mail transmission to: (1) counsel for NFS and (2) counsel for the NRC Staff. Copies of this Order were also sent to (1) the Sierra Club, (2) Dr. Ken Silver, (3) A. Christine Tipton, (4) R. Feher, (5) Wanda Sue Kelley, and (6) Barbara A. O'Neal via Federal Express, Overnight Delivery.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket No. 70-143-CO
NUCLEAR FUEL SERVICES, INC.)	
)	
Special Nuclear Materials Facility)	
(Confirmatory Order))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (GRANTING IN PART, SIERRA CLUB'S REQUEST FOR EXTENSION OF TIME) was served by Federal Express, Overnight Delivery to the Sierra Club, Barbara O 'Neal, Dr. Ken Silver, A. Christine Tipton, R. Feher, and Wanda Sue Kelley on 10/05/07. All other parties were served by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 70-143
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 9th day of October 2007