

ATOMIC SAFETY AND LICENSING BOARD

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 No. 70-143-MLA

ASLBP No. 02-803-04-MLA

September 23, 2002

MEMORANDUM AND ORDER(Suspending Further Proceedings Pending Issuance of
Revised Federal Register Notice)

1. In hand are several hearing requests concerned with the application of Nuclear Fuel Services, Inc. (Licensee) for an amendment to its outstanding special nuclear materials license (SNM-124). If granted, the amendment would authorize the construction and operation of a Uranyl Nitrate Storage Building at the Licensee's site in Erwin, Tennessee.

The hearing requests were filed in response to a Federal Register notice published on July 9, 2002. 67 Fed. Reg. 45,555. That notice recited that the NRC Staff had prepared an Environmental Assessment (EA) and had made a Finding of No Significant Impact (FONSI) with regard to the proposed action. The notice then went on to provide an opportunity to seek a hearing "on the license amendment." 67 Fed. Reg. at 45,558.

Although summarizing the content of the EA in some detail, the July Federal Register notice made scant mention of the license amendment application itself. More specifically, as one of the hearing requestors noted, the reader was left entirely in the dark regarding when the application was filed and, more important, how its content might be located for examination and appraisal. In an unpublished September 11, 2002 order, I therefore called upon the NRC Staff

(otherwise currently not a participant in the proceeding) to explain this seeming departure from customary practice.

In its September 19 response, the Staff has informed me that the notice of opportunity for hearing in connection with the proposed license amendment should not have been published along with the notice of the preparation of the EA and issuance of the FONSI. Rather, an opportunity for hearing on the license amendment should have been accorded in a notice published upon the receipt and docketing of the license amendment application (which had been filed several months earlier on February 28, 2002). The Staff's response went on to acknowledge that the July notice of opportunity for hearing that accompanied the summary of the EA and the announcement of the FONSI issuance was insufficient to accomplish its intended purpose. This was because it "did not notice the proposed action, failed to provide the necessary information with regard to the license amendment application, and failed to identify the scope of the opportunity for hearing." Response at 3.

In these circumstances, the Staff intends now to issue a revised Federal Register notice of opportunity for hearing that "will describe the proposed action and identify all related information, documents and references." Id. at 3-4. In the Staff's view, however, the current hearing requestors should not be required to file entirely new requests in response to the revised notice (although that option manifestly would be open to them). Instead, as the Staff sees it, it will be enough if those requestors are allowed to supplement their submissions now on file once they have had the opportunity to review the pertinent documents described in the revised notice. Id. at 4.

I agree that the Staff's proposed course of action is entirely reasonable in this most unusual situation and also concur in the Staff's belief (at fn. 2) that the issuance of the revised

notice will not affect my jurisdiction over the adjudication of the existing hearing requests.¹ Accordingly, within 30 days of the date of the publication of the revised notice in the Federal Register, in lieu of filing a new and substitute hearing request (which is an option) each hearing requestor now before me may either (1) file a supplement to the hearing request now on file that takes into account information obtained as a consequence of the revised notice; or (2) inform me in writing of an election to stand on the already-filed hearing request. The Licensee may reply to any supplements or new hearing requests within 10 days of their filing. In the meantime, all further consideration of the current hearing requests is suspended.

2. Subsequent to the issuance of the September 11 order, I called upon the Staff also to address in its response to that order the additional question of whether the entire license amendment application is currently available for public inspection. (This question had come to my attention as a result of an exchange of correspondence between Licensee's counsel and counsel for one group of hearing requestors.) According to the Staff (Response at 4-5), the original application filed in February 2002 contained proprietary information that could not be released for public inspection and thus it was not made available for such inspection in its entirety. As a consequence, the Licensee filed a non-proprietary version on May 9 at the Staff's request and submitted a revised application thereafter on August 23. I am told that the latter two documents are now available for full public inspection.² The same is true regarding "all other documents related to or referenced in the license amendment application or EA, including

¹Should, however, the revised notice produce additional hearing requests, it might well be necessary for the Commission and/or Chief Administrative Judge to enlarge my jurisdiction to encompass them.

²In this connection, the Staff listed the accession numbers for the various versions of the license amendment application in the NRC's Agencywide Documents Access and Management System (ADAMS). Consequently, the hearing requestors should encounter relatively little difficulty in examining their content.

Requests for Additional Information and the [Licensee's] response to those requests." This being so, I am satisfied that the Staff has fulfilled its obligation with respect to public disclosure of the content of license amendment applications such as that at bar.

IT IS SO ORDERED.

BY THE PRESIDING OFFICER³

/RA/

Alan S. Rosenthal
ADMINISTRATIVE JUDGE

Rockville, Maryland

September 23, 2002

³Copies of this memorandum and order were sent this date by e-mail transmission to the counsel or other representative of each of the participants in the proceeding, as well as to counsel for the NRC staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
NUCLEAR FUEL SERVICES, INC.)	Docket No. 70-143-MLA
ERWIN, TENNESSEE)	
)	
(Material License Amendment))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (SUSPENDING FURTHER PROCEEDINGS PENDING ISSUANCE OF REVISED FEDERAL REGISTER NOTICE) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 70-143-MLA
LB MEMORANDUM AND ORDER (SUSPENDING
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 23rd day of September 2002