

RAS 5004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 11/19/02
SERVED 11/19/02

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

November 19, 2002

MEMORANDUM AND ORDER
(Ruling on Motion for Clarification
of Scope of Hearing)

At hand is the February 28, 2002, application of Nuclear Fuel Services, Inc. (Licensee) for an amendment to its Special Nuclear Material License (SNM-124) that would authorize the construction and operation of a Low-Enriched Uranyl Nitrate Storage Building at Licensee's site in Erwin, Tennessee. This proposed action is part of the Blended Low-Enrichment Uranium (BLEU) project, which in turn is part of a Department of Energy program to reduce stockpiles of surplus high enriched uranium through re-use or disposal as radioactive waste.

Although there will be two further proposed license amendments in connection with the BLEU project, as reported in a Federal Register notice published on July 9, 2002, the NRC Staff prepared an Environmental Assessment (EA) that addressed the actions covered by all three proposed amendments. The EA led to the issuance of a Finding of No Significant Impact. 67 Fed. Reg. 45,555.

The July 2002 Federal Register notice produced several hearing requests in response to the opportunity provided therein to seek a hearing on the February 2002 license amendment application. For reasons that need not be detailed here, however, a revised Federal Register

notice providing a new such opportunity was published on October 30, 2002 (67 Fed. Reg. 66,172) and thereafter corrected on November 12, 2002 (67 Fed. Reg. 68,699). By virtue of my October 31, 2002 order (unpublished), if they so desire, the current hearing requestors may now either file a new request or supplement their request previously submitted.

In hand is Licensee's November 12, 2002, motion requesting that, in the interest of avoiding repetitious litigation, I interpret the October 30 revised Federal Register notice of opportunity for hearing as requiring the current hearing requestors, and presumably any additional ones responding to that notice, to address in this proceeding the entire EA. Licensee would have it that the requestors should be precluded from raising concerns regarding the EA when, at some later point, the second and third amendment requests come before the NRC Staff for its consideration.

At this juncture at least, the Staff is not a party to the proceeding. Because, however, it was responsible for the issuance of the Federal Register notice that the Licensee seeks to have clarified, I informally called upon the Staff to respond to the motion on an expedited basis.

In its November 18 response, the Staff takes the position that the scope of the hearing is necessarily limited to areas of concern related to the February 2002 license amendment application now before me and cannot extend to areas of concern that relate to future license amendment applications. In this connection, it notes among other things that the October 2002 Federal Register publication did not notice the entire BLEU project or either the second or third license amendment applications. Thus, it could not, in any event, serve to bar the future assertion of environmental issues by persons with an interest in the BLEU project but not in the first license amendment. This being so, the Staff observes, requiring the current hearing requestors to raise all of their areas of concern related to the EA at this time would not accomplish the Licensee's desire to avoid repetitious litigation.

As the promulgator of the Federal Register notice, the Staff's view as to its meaning and scope are entitled to great, if not decisive, weight. Beyond that, for the reasons it assigns, no other interpretation makes good sense. Accordingly, it is hereby determined that the scope of this proceeding is limited to those safety and environmental areas of concern that directly relate to the February 2002 license amendment application. Any areas of concern pertaining to portions of the EA relating to the actions that will be the subject of the yet unsubmitted second and third amendment applications need not be now advanced.

IT IS SO ORDERED.

BY THE PRESIDING OFFICER¹

/RA/

Alan S. Rosenthal
ADMINISTRATIVE JUDGE

Rockville, Maryland

November 19, 2002

¹Copies 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 (RULING ON MOTION FOR CLARIFICATION OF SCOPE OF HEARING) 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 (RULING ON
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 19th day of November 2002