

**RAS 5364**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**DOCKETED 01/21/03**  
**SERVED 01/21/03**

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

January 21, 2003

ORDER

(Directing the Holding of the  
Proceeding in Abeyance)

This license amendment proceeding being conducted under Subpart L of the Commission's Rules of Practice, 10 C.F.R. § 2.1201 et seq, involves the portion of the Blended Low-Enriched Uranium (BLEU) project that is to be performed on the Nuclear Fuel Services, Inc. (Licensee) site in Erwin, Tennessee. Rather than cover all activities associated with the project in a single comprehensive license amendment application, the Licensee has chosen to address them in three separate amendment applications.

The first application was submitted early last year but not properly noticed in the Federal Register until the end of October (see 67 Fed. Reg. 66,172 (October 30, 2002)). It led to the filing of several hearing requests, all of which are opposed by the Licensee. The second amendment application, submitted in October, received its Federal Register notice of opportunity for hearing earlier this month and the deadline for filing hearing requests in response to that notice is February 6, 2003. See 68 Fed. Reg. 796 (January 7, 2003). The third application apparently will not be submitted to the NRC Staff for several additional months.

At current issue is whether all further adjudicatory action should now be held in abeyance until the third license amendment has been submitted to the Staff and the time established in a Federal Register notice for the filing of hearing requests with regard thereto has expired.<sup>1</sup> Stated otherwise, Judge Cole and I are called upon to decide whether the three proposed license amendments and the challenges to them should be adjudicated piecemeal or, instead, collectively once all are in hand.

We have given full consideration to the arguments advanced in favor of and in opposition to each option, as those arguments were presented in written submissions as well as at a telephone conference held with the parties and the NRC Staff on January 17, 2003. On the basis of that consideration, it is hereby directed sua sponte in the exercise of the authority conferred upon the presiding officer by 10 C.F.R. § 2.1209:

1. All further action with regard to the hearing requests now on file pertaining to the first license amendment shall abide the event of the filing of the third license amendment application and the expiration of the period set forth in the Federal Register notice of opportunity for hearing pertaining to that proposed amendment.
2. Assuming that any hearing requests filed in response to the now pending second license amendment application are assigned to this presiding officer, the consideration of those requests similarly shall be held in abeyance.
3. Hearing requests addressed to the second or third license amendment application may incorporate by reference all or a part of any hearing request previously filed by that hearing requestor.

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<sup>1</sup>Although that issue surfaced in the form of a motion on the part of one group of hearing requestors, Judge Cole and I deemed it worthy in any event of consideration on our own initiative.

Because, as above noted, the deadline for the filing of hearing requests addressed to the second proposed amendment rapidly approaches, it seems advisable to announce this determination without further delay. A memorandum setting forth in greater detail the basis for the determination will issue later. It suffices for present purposes to note that Judge Cole and I are convinced that, in the totality of circumstances, it makes good sense from a case management standpoint to consider all aspects of the BLEU project as an entity.

It is so ORDERED.

BY THE PRESIDING OFFICER<sup>2</sup>

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Alan S. Rosenthal  
ADMINISTRATIVE JUDGE

Rockville, Maryland

January 21, 2003

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<sup>2</sup>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, 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 ORDER (DIRECTING THE HOLDING OF THE PROCEEDING IN ABEYANCE) 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 ORDER (DIRECTING THE HOLDING OF  
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[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 21<sup>st</sup> day of January 2003