

February 26, 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE PRESIDING OFFICER

DOCKETED
USNRC

March 6, 2003 (2:51PM)

In the matter of)

Nuclear Fuel Services, Inc.)

(Materials License SNM-124))

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket No. 70-143

**MOTION BY FRIENDS OF THE NOLICHUCKY RIVER VALLEY,
STATE OF FRANKLIN GROUP OF THE SIERRA CLUB,
OAK RIDGE ENVIRONMENTAL PEACE ALLIANCE, AND
TENNESSEE ENVIRONMENTAL COUNCIL
FOR LEAVE TO REPLY TO NFS'S RESPONSE
TO PETITIONERS' SECOND HEARING REQUEST**

Petitioners, Friends of the Nolichucky River Valley ("FNRV"), the State of Franklin Group of the Sierra Club, Oak Ridge Environmental Peace Alliance ("OREPA"), and Tennessee Environmental Council ("TEC"), hereby request leave to reply to Nuclear Fuel Services' ("NFS's") response to their hearing request regarding Nuclear Fuel Services's ("NFS's") second license amendment application for the "BLEU Project" at NFS's facility in Erwin, Tennessee.¹ Although the Nuclear Regulatory Commission's ("NRC's" or "Commission's") regulations in Subpart L of 10 C.F.R. Part 2 do not provide for replies to hearing requests, a grant of leave to reply is warranted in

¹ See Second Request for Hearing by Friends of the Nolichucky River Valley, State of Franklin Group of the Sierra Club, Oak Ridge Environmental Peace Alliance, and Tennessee Environmental Council (February 6, 2003) (hereinafter "Petitioners' Second Hearing Request"); Applicant's Answer to Second Request for Hearing by Friends of the Nolichucky River Valley, State of Franklin Group of the Sierra Club, Oak Ridge Environmental Peace Alliance, and Tennessee Environmental Council (February 21, 2003) (hereinafter "NFS Response").

order to permit Petitioners to reply to legal and factual arguments that they could not have anticipated in their second hearing request. *Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521, 525 (1979). In *Allens Creek*, the Appeal Board analogized a response to a petitioner's contentions to a motion to dismiss, and held that fairness therefore required giving the petitioners an opportunity to respond. This reasoning is equally applicable to Petitioners' areas of concerns, which are akin to contentions; and to Petitioners' claim to have standing to request a hearing. The Presiding Officer should not consider what amounts to a motion to dismiss Petitioners' case, without considering Petitioners' response to NFS's arguments.

NFS raises a number of new standing arguments that Petitioners were not able to anticipate in their second hearing request. For instance, NFS argues that Petitioners' argument that their standing is demonstrated in part by NFS's past record of contaminating the environment is "irrelevant" because the contamination occurred "over 25 years ago." NFS's Response at 9. Petitioners seek to address the accuracy of both the legal and factual elements of this argument. Petitioners also seek to respond to NFS's citation of a recent Licensing Board decision, *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC ___ (Dec. 2, 2003), for the proposition that radiation doses from the proposed BLEU Project will be too small to support a finding that Petitioners have standing. NFS Response at 10. In addition, Petitioners seek to respond to NFS's new legal arguments regarding the significance of cumulative effects of past and present operations, the

relevance of loss in property value to standing, and the question of whether discrepancies in NFS's estimates of future effluent emissions are sufficient to constitute "concrete" injury. NFS Response at 9-13. Finally, Petitioners seek leave to respond to NFS's argument that information in the expert declaration of Dr. Arjun Makhijani, which Petitioners submitted in support of their second hearing request, is both "wrong" and inconsequential. NFS Response at 13-14.

With respect to the admissibility of Petitioners' concerns, NFS has objected to each and every concern submitted by Petitioners, on the grounds that they either are legally invalid, not germane to the proposed license amendment, or inadequately particularized. Petitioners seek leave to respond to these arguments, which they could not have anticipated in their hearing request.

Respectfully submitted,



Diane Curran
Harmon, Curran, Spielberg & Eisenberg, LLP
1726 M Street N.W., Suite 600
Washington, DC 20036
202/328-3500
FAX: 202/328-6918
e-mail: dcurran@harmoncurran.com

Dated: February 26, 2003

CERTIFICATE OF SERVICE

I certify that on February 26, 2003, copies of MOTION BY FRIENDS OF THE NOLICHUCKY RIVER VALLEY, STATE OF FRANKLIN GROUP/SIERRA CLUB, OAK RIDGE ENVIRONMENTAL PEACE ALLIANCE, AND TENNESSEE ENVIRONMENTAL COUNCIL FOR LEAVE TO REPLY TO APPLICANT'S RESPONSE TO PETITIONERS' SECOND HEARING REQUEST were served on the following by first-class mail, and by e-mail if so designated:

Alan S. Rosenthal, Presiding Officer Atomic Safety and Licensing Board Mail Stop T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555 By e-mail to: rosnthl@aol.com Sam4@nrc.gov	Office of Appellate Adjudication U.S. Nuclear Regulatory Commission Washington, D.C. 20555
Richard F. Cole, Administrative Judge Atomic Safety and Licensing Board Mail Stop T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555 By e-mail to: rfl1@nrc.gov	Daryl Shapiro Shaw Pittman, LLP 2300 N Street N.W. Washington, D.C. 20037 By e-mail to: Daryl.Shapiro@shawpittman.com
Rules and Adjudications Branch Office of the Secretary U.S. Nuclear Regulatory Commission Washington, D.C. 20555 By e-mail to: hearingdocket@nrc.gov	C. Todd Chapman, Esq. King, King and Chapman, PLLC 125 South Main Street Greeneville, TN 37743 By e-mail to: chapman@xtn.net

<p>Neil J. Newman, Esq. Nuclear Fuel Services 1205 Banner Hill Road Erwin, TN 37650-9718</p>	<p>Kathy Helms-Hughes P.O. Box 58 Hampton, TN 37658 khelms@mounet.com</p>
<p>Jennifer Euchner, Esq. David Cummings, Esq. Office of General Counsel U.S. Nuclear Regulatory Commission Washington, D.C. 20555 By e-mail to: jme@nrc.gov, dac3@nrc.gov</p>	<p>Louis Zeller Blue Ridge Environmental Defense League P.O. Box 88 Glendale Springs, NC 28629 By e-mail to: BREDL@skybest.com</p>



Diane Curran