

RAS 6698

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE PRESIDING OFFICER

**DOCKETED
USNRC**

August 6, 2003 (11:31AM)

**OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF**

In the Matter of:

FANSTEEL, INC.

**(Request to Amend Source Material
License No. SMB 911)**

Docket No. 40-7580-MLA-2

ASLBP No. 03-813-04-MLA

July 29, 2003

**THE STATE OF OKLAHOMA'S MOTION FOR LEAVE TO REPLY
TO FANSTEEL AND NRC STAFF'S RESPONSE**

OFFICE OF THE OKLAHOMA ATTORNEY GENERAL

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July 29, 2003

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NUCLEAR REGULATORY COMMISSION**

BEFORE THE PRESIDING OFFICER

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**STATE OF OKLAHOMA'S MOTION FOR LEAVE TO REPLY TO FANSTEEL
AND NRC STAFF'S RESPONSE**

The Attorney General of the State of Oklahoma, W.A. Drew Edmondson, by and through the undersigned, Sarah E. Penn, Assistant Attorney General, on behalf of the State of Oklahoma ("State"), hereby moves the Presiding Officer for leave to reply to Fansteel and NRC Staff's Responses to the State of Oklahoma's Objection and Show of Harm to Fansteel Inc.'s Withdrawal of Decommissioning Plan" which was served by electronic mail on July 24, 2003 and July 25, 2003 respectively ("Fansteel Response", "Staff Response"). The basis for this motion is that Fansteel takes the position that the Presiding Officer has no authority to "disapprove" withdrawal of Fansteel's decommissioning plan and that both, Fansteel and Staff take the position that despite these arguments, because of Fansteel's re-submittal of a supplemented Decommissioning Plan ("DP"), the State's Objection to Fansteel's Withdrawal is moot. The State would argue, as discussed more fully below, that even if the Presiding Officer has no authority to "disapprove" a withdrawal, he does have the authority to retain jurisdiction over the

proceeding. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-93-20, 38 NRC83, 84 (1993). In addition, the supervening events described by Fansteel's Response (Response at 7) demonstrate that the proceeding is not moot. These issues have not been fully addressed in the Objection filed by the State on July 17, 2003. The State requests that it be heard on these issues before the Presiding Officer makes any ruling based on them.

DISCUSSION

It is the presiding officer board or officer that has jurisdiction to terminate proceedings under such circumstances. Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), ALAB 605, 12 NRC 153, 154 (1980) By focusing on the withdrawal of the application, Fansteel attempts to confuse the issue of the entire proceeding, whether the proceeding itself should continue or should Fansteel be allowed to start over with the now "perfected" filing of a supplemented decommissioning plan.

On July 24, 2003, Fansteel filed a proposed "Joint Reorganization Plan of Fansteel Inc. and Subsidiaries, ("Plan") together with the associated "Disclosure statement With Respect to Joint Reorganization Plan of Fansteel Inc., et al." in the United States Bankruptcy Court for the District of Delaware in which, Fansteel makes several misstatements if not sanctionable statements about its negotiations with the State to the Court. Contemporaneously with this filing, Fansteel requested that the NRC resume its review of the January 14, 2003 Decommissioning Plan ("DP"). As part of this request, Fansteel supplemented the DP with information concerning financial assurance for its

decommissioning of the Muskogee, Oklahoma site. Fansteel Response at 8. This very statement demonstrates that Fansteel considers this re-submitted plan as merely a revision to its previously submitted plan *not* a new DP. Although the Commission in Vermont Yankee, found the approval of the withdrawal request made the proceeding moot and thereby terminated, the facts in this proceeding demand a different outcome. The combination of these two filings demonstrate Fansteel's effort to delay and ultimately deny the State any opportunity to be heard in any meaningful way on the subject of the funding of the DP. This violates every tenet of fundamental fairness and therefore must be addressed more fully in a Reply.

The State also requests that it be allowed to have the opportunity to comment to the extent any changes, revisions or supplements are submitted in connection with Fansteel's DP. Finally, the public should have an opportunity to review and comment on the DP and its subsequent changes, to that end a Notice should be published in the Federal Register as soon as possible to allow the appropriate public review.

CONCLUSION

A reply from the State would provide the Presiding Officer with a more complete basis for ruling, and would assure that a proper understanding is had of the issues before they become the basis for decisions in this proceeding. Accordingly, the State requests leave to file a Reply to Fansteel and NRC Staff's Responses.

Respectfully Submitted,

**W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA**

A handwritten signature in cursive script, reading "Sarah E. Penn". The signature is written in black ink and is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 29th day of July, 2003, a true and correct copy of the foregoing, State of Oklahoma's Motion For Leave to Reply to Fansteel and NRC Staff's Response, was served upon the persons listed below by U.S. mail, first class, postage prepaid, and by electronic mail where indicated with a single asterisk. A copy was also sent by facsimile transmission to the Office of the Secretary.

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SARAH E. PENN

** Original and 3 copies



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

July 29, 2003

Via Facsimile and U.S. Mail First Class

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemakings and Adjudications Staff

Re: **In the Matter of Fansteel, Inc., Request to Amend Source Materials License No. SMB-911, U.S. Nuclear Regulatory Commission, Docket No. 40-7580-MLA-2**

Sir or Madam:

Enclosed please find an original State of Oklahoma's Motion For Leave to Reply to Fansteel and NRC Staff's Response, and three conformed copies thereof, prepared for filing with the U.S. Nuclear Regulatory Commission in the referenced matter. Pursuant to 10 C.F.R. 2.708(f) (2002), only one Request to Respond is being transmitted by facsimile as the original and three conformed copies will be transmitted by certified U.S. mail.

Upon receipt, please return the remaining file-stamped copies of the enclosed to this office in the self-addressed, stamped envelope enclosed for that purpose.

Thank you in advance for your assistance in this matter. Should you have any questions, please do not hesitate to call me at (405) 521-4274.

Sincerely,

A handwritten signature in cursive script that reads "Sarah E. Penn".

SARAH E. PENN
ASSISTANT ATTORNEY GENERAL

KHB/jb
Enclosures