

ATOMIC SAFETY AND LICENSING BOARD PANEL
Before Administrative Judges:Michael C. Farrar, Presiding Officer
Dr. Charles N. Kelber, Special Assistant¹

In the Matter of CFC LOGISTICS, INC. (Materials License)
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Docket No. 30-36239-ML
ASLBP No. 03-814-01-ML
September 3, 2003PREHEARING ORDER

(Revising Filing Schedule and Announcing Oral Argument)

In light of last week's flurry of phone calls, document filings and other activities, we convened another prehearing teleconference yesterday (Tuesday, September 2) among the litigants in this Subpart L proceeding, which involves a proposed food processing irradiator in Quakertown, Pennsylvania. During that call, a number of procedural steps were taken; this Prehearing Order memorializes those actions and also announces the location of the oral argument to be held next Wednesday evening, September 10.

The following revised schedule was adopted:

- In light of the delay in counsel's receipt of proprietary documents, the time for Petitioners to file a stay motion was extended from noon Wednesday, September 3 to 5:00 PM on Thursday, September 4. The Applicant's and Staff's response time was concomitantly extended from 6:00 PM on Monday, September 8 to noon on Tuesday, September 9.
- The Staff was given the opportunity to file by noon on Wednesday, September 3, a short analysis on a matter not covered in its original brief on standing and germaneness (see Aug. 7 Tr. at 33, 74-75, 81, and Sept. 2 Tr. at 92-93, 115-18).

¹ Judge Kelber was unavailable to participate in the call that is the subject of this Order.

That abbreviated deadline was necessary so that a rejoinder to the Staff's position could be included in the Applicant's and Petitioners' briefs still due at 5:00 PM on Friday, September 5 (see Sept. 2 Tr. at 93, 114-18).

- In response to the Applicant's motion filed last Friday (August 29) regarding the handling of proprietary material ("Motion for Redacted Pleadings and Closed Courtroom for Oral Argument"), the Presiding Officer took two steps. He first reviewed with the litigants the manner in which filings describing such material should be handled so as not to be made public, leaving open for future consideration the question of whether redacted versions that could be made publicly available should later be prepared (Sept. 2 Tr. at 98-102). Second, after hearing from opposing counsel, he rejected as unnecessary the Applicant's suggestion that the oral argument be closed to the public to protect proprietary information; instead, the litigants agreed to observe at the oral argument other norms that will preserve confidentiality while permitting the public to observe at least a substantial part of the proceedings (Sept. 2 Tr. at 102-08).² In light of those steps, no further action remained to be taken on the Applicant's motion.
- After the teleconference concluded, arrangements were finalized to hold next Wednesday evening's oral argument in Courtroom 1A of the Historic Courthouse in Allentown. The Lehigh County Court of Common Pleas, through the Honorable William Platt, President Judge, has graciously provided us that space,

² As noted in a previous order, the September 10 oral argument will be presented by counsel for the three litigants, with members of the public welcome to attend that session as observers, not as participants. At the oral argument, the views of those opposed to the Applicant's proposal will in effect be represented by counsel for the Petitioners, who triggered this matter by presenting their opposition in the formal request they filed seeking a hearing. If a hearing is granted on their pending formal request, others will thereafter also have the opportunity to seek to participate formally therein (see 10 C.F.R. § 2.1205(j), (k)).

which has substantial capacity for members of the public to observe the proceeding.

- As previously scheduled, the oral argument by counsel for the three litigants will begin at 5:30 PM and conclude by 8:00 PM. The three issues that will then be before us -- whether Petitioners have standing to intervene; whether the "areas of concern" they seek to raise are germane; and whether a stay of the license should be granted pending the outcome of our proceeding -- will be argued in that sequence. As to each issue, the order of proceeding will be Petitioners, NRC Staff, and Applicant, with Petitioners allowed to reserve time for rebuttal. The amount of time allocated to each issue, and to each litigant on that issue, will be determined by the Presiding Officer and communicated to the litigants shortly after receipt of the last pre-argument filings next Tuesday noon.

Other collateral matters discussed during the teleconference, such as making documents available to Petitioners and to the Presiding Officer, are not being memorialized here but may be found in the Transcript of the call.

The Historic Courthouse is located at 501 Hamilton Street in Allentown; Courtroom 1A is on the second floor. Members of the public wishing to observe are urged to arrive early because of the security precautions, commonplace in this era, that will be taken.

It is so ORDERED.

BY THE PRESIDING OFFICER

/RA/

Rockville, Maryland
September 3, 2003

Michael C. Farrar
ADMINISTRATIVE JUDGE

Copies of this Order were sent this date by Internet e-mail transmission to counsel for (1) Applicant CFC; (2) Petitioners; and (3) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
CFC LOGISTICS, INC.) Docket No. 30-36239-ML
QUAKERTOWN, PENNSYLVANIA)
)
(Materials License))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB PREHEARING ORDER (REVISING FILING SCHEDULE AND ANNOUNCING ORAL ARGUMENT) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 30-36239-ML
LB PREHEARING ORDER (REVISING FILING
SCHEDULE AND ANNOUNCING ORAL
ARGUMENT)

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 3rd day of September 2003