

RAS 6859



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

September 10, 2003

DOCKETED
USNRC

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Via Facsimile and U.S. Mail First Class

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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 Transfer Source Materials
License No. SMB-911, U.S. Nuclear Regulatory Commission, Docket
No. 40-7580

Sir or Madam:

Enclosed please find an original Request for Hearing, 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 for Hearing 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.

Sincerely,

A handwritten signature in black ink that reads "Sarah E. Penn".

SARAH E. PENN
ASSISTANT ATTORNEY GENERAL

SEP/jb
Enclosures

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE PRESIDING OFFICER

In the Matter of:

FANSTEEL, INC.

(Request to Transfer,
License No. SMB 911)

Docket No. 40-7580-MLA-2

ASLBP No. 03-813-04-MLA

September 10, 2003

**THE STATE OF OKLAHOMA'S REQUEST
FOR HEARING**

OFFICE OF THE OKLAHOMA ATTORNEY GENERAL

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September 10, 2003

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of)	
)	
FANSTEEL, INC.,)	Docket No. 40-7580
)	
(License Amendment Request)	
for Transfer of Muskogee, Oklahoma)	
Facility License SMB-911))	

STATE OF OKLAHOMA'S REQUEST FOR HEARING

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 ("Oklahoma"), hereby submits its Request for Hearing pursuant to 10 C.F.R. § 2.1306(b) on the matter of Fansteel, Inc.'s ("Fansteel") request for Transfer of its Muskogee, Oklahoma Facility License (the "Fansteel Facility"). Herein, Oklahoma requests a hearing to show evidence as to why Fansteel's request for approval of a Transfer of its Muskogee, Oklahoma Facility License is not in compliance with U.S. Nuclear Regulatory Commission ("NRC") statutes and regulations, and to detail the dangerous consequences that would result from any approval of the License Transfer Request.

I. BACKGROUND

A. FACTUAL HISTORY

The Fansteel Facility is located on 110 acres of land located directly on the western bank of the Arkansas River (Webbers Falls Reservoir) in eastern Oklahoma near the City of Muskogee. It is bounded on the west by State Highway 165 (a/k/a the Muskogee Turnpike)

and on the south by U.S. Highway 62. From 1958 until 1989, the Fansteel Facility was a rare metal extraction operation, producing tantalum and columbium metals from raw and beneficiated ores, and tin slag feedstock. EARTH SCIENCES CONSULTANTS, INC., REMEDIATION ASSESSMENT, FANSTEEL, INC. - MUSKOGEE, OKLAHOMA 1-2 (1993). The raw materials used for tantalum and columbium production contained uranium and thorium as naturally occurring trace constituents in such concentrations that Fansteel was required to obtain an NRC license. *Id.* The Fansteel Facility was licensed by NRC in 1967 to process ore concentrates and tin slags in the production of refined tantalum and niobium products. U.S. NUCLEAR REGULATORY COMMISSION, ENVIRONMENTAL ASSESSMENT-LICENSE AMENDMENT FOR MATERIAL LICENSE NO. SMB-911, 1-1 (December 1997). Processing operations at the Fansteel Facility substantially ceased in December of 1989. *Id.*

As a result of operations and various accidents and releases, the Fansteel Facility, including its soils, groundwater, and surface waters have been and continue to be contaminated by uranium, thorium, ammonia, arsenic, chromium, metals, cadmium, ammonia, methyl isobutyl ketone (MIBK), and fluoride. EARTH SCIENCES CONSULTANTS, INC., REMEDIATION ASSESSMENT, FANSTEEL, INC. - MUSKOGEE, OKLAHOMA 1-2 (1993).

B. PROCEDURAL HISTORY

On January 13, 2000 Fansteel, Inc's appealed from the Presiding Officer's Decision to Grant a Hearing to Oklahoma. On February 2, 2000, NRC Staff responded to Fansteel's appeal to the Presiding Officer's decision, stating that Oklahoma was properly granted a hearing, as it successfully demonstrated both standing and injury-in-fact, as well as areas of

concern germane to the proceeding. Oklahoma filed its Counter-Statement in Opposition to Fansteel Inc.'s Appeal on February 2, 2000.

On May 9, 2000 Fansteel, Inc. requested that the NRC staff discontinue review of Fansteel's Restricted Release DP and on July 25, 2000, the NRC staff agreed to discontinue review of Docket No. 40-7580-MLA, ASLBP No. 00-772-01-MLA. Pursuant to the agreement of NRC staff to discontinue review of the Restricted Release DP, Fansteel, Inc., Oklahoma and the NRC staff filed a joint motion to dismiss on January 2, 2001. On January 31, 2001, the Presiding Officer determined Fansteel Inc.'s appeal moot and accordingly, dismissed the case.

On January 14, 2003, Fansteel submitted a new DP to terminate the License No. SMB-911 for unrestricted use in accordance with 10 C.F.R. §20.1402. On January 15, 2003 Fansteel, Inc., filed for Chapter 11 bankruptcy protection.

On April 28, 2003 NRC staff member Daniel M. Gillen, (Gillen) Chief, Decommissioning Branch, Division of Waste Management sent a letter to Gary Tessitore, (Tessitore) Chief Executive Officer, Fansteel, Inc. indicating the Results of Preliminary Review of Fansteel's Decommissioning Plan dated January 2003. The letter stated that NRC staff had concluded that the DP did not contain sufficient information to conduct a detailed review at this time, and further added that many sections, chapters were conceptual only and that the radiological status of the site was incomplete, nor did the DP demonstrate how the estimated cost of remediation was reduced to less than half of the previous estimate of Fansteel's bankruptcy filing.

On May 8, 2003 Tessitore sent a letter to Gillen which stated it was a follow-up to the April 28, 2003 letter, as well as the discussions and meeting held between the NRC and Fansteel regarding the licensee's bankruptcy. This letter outlined, in one page, a four-phased approach to decommissioning the Fansteel Facility, Muskogee site by a new entity MRI (a wholly-owned subsidiary of Reorganized Fansteel). On May 9, 2003, Gillen responded to Tessitore's letter of May 8, 2003, stating NRC staff had now reviewed Fansteel's one page submittal of May 8, 2003 and concluded that Fansteel had now submitted sufficient information to proceed with the detailed technical review of the DP.

On May 15, 2003, Oklahoma received the May 9, 2003 letter indicating acceptance of the Fansteel DP for Technical Review.

On June 16, 2003, the State filed a Request for Hearing in connection with Fansteel's January 14, 2003, DP. Thereafter, Gary Tessitore, CEO of Fansteel, indicated the withdrawal of Fansteel's DP due to NRC Staff's ("Staff") suspension of review in Fansteel's letter of June 26, 2003. The reasons for Staff's suspension of review are stated in a July 8, 2003, letter to Tessitore.

On July 9, 2003, a Presiding Officer was designated to rule on, inter alia, petitions for leave to intervene and/or requests for hearing in this proceeding. Also on July 9, the Presiding Officer issued an Order directing the State of Oklahoma to show cause, in light of Fansteel's withdrawal of its DP, why this proceeding should not be dismissed.

On July 15, 2003, Fansteel filed a Notification to request the Presiding Officer to suspend the show cause schedule to allow Fansteel until July 25, 2003, to decide whether it

would resubmit its DP for NRC consideration. The State objected on the same day to Fansteel's request for abeyance. Staff filed a response on July 16, 2003, stating it did not object to the request for abeyance.

On July 16, 2003, the Presiding Officer denied Fansteel's request for abeyance indicating that the schedule established in the Presiding Officer's July 9, 2003, Order to Show Cause would remain in effect. On July 17, 2003 the State filed its Objection and Show of Harm to Fansteel Inc.'s Withdrawal of DP. On July 24 and 25, 2003, Fansteel and Staff filed a Response. Also, on July 24, 2003, Fansteel submitted a request for license amendment to approve the site DP submitted on January 14, 2003, as amended by letter dated May 8, 2003. In addition to its NRC filing, on July 24, 2003, Fansteel filed its Re-Organization Plan and Disclosure Statement with the United States Bankruptcy Court in the District of Delaware. The State filed a Motion for Leave to Reply based on the resubmission of the DP and its supplements and the filings in the Bankruptcy Court. Leave to file a reply was granted by the Presiding Officer on July 31, 2003. The State filed its Reply on August 7, 2003.

In the Disclosure Statement filed by Fansteel on July 24, 2003, Fansteel indicates that it has with the agreement NRC counsel, devised certain measures designed to minimize the disruptive effect of any such challenge (referring to Oklahoma's objections to Fansteel's proposed Decommissioning Plan on which Oklahoma filed a Request for Hearing on June 16, 2003) to the Amended Decommissioning Plan or the requisite licensing actions.

On August 21, 2003, NRC caused to be published in the Federal Register its Notice of Consideration of an Amendment Request for the Fansteel Facility in Muskogee,

Oklahoma and Opportunity for a Hearing (the "Notice") subjecting Oklahoma to 10 CFR Subpart M rather than Subpart L.

II. REQUEST FOR HEARING

A. REQUIREMENTS FOR REQUESTS FOR HEARING

The provisions of 10 C.F.R. Part 2, Subpart M, titled Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications govern any adjudication initiated by a request for hearing in a domestic licensing proceeding according to 10 C.F.R. Part 2. This Request for Hearing relates to Fansteel's request to transfer its license to the Fansteel Facility to MRI, Inc. ("MRI") a proposed subsidiary of Re-organized Fansteel. Therefore, this Request for Hearing is subject to Subpart M.

In Subpart M adjudications, a request for a hearing by a person whose interest may be affected by the Commission's action on the application must (1) State the name, address and telephone number of the requestor or the petitioner; (2) Set forth the issues sought to be raised and (i) demonstrate that such issues are within the scope of the proceeding on the license transfer; and (ii) Demonstrate that such issues are relevant to the findings the NRC must make to grant the application for license transfer, (iii) Provide a concise statement of the alleged facts or expert opinions such support the petitioner's position on the issues and on which petitioner intends to rely at hearing, iv) Provide sufficient information to show that genuine dispute exists with applicant on a material issue of law or fact; 3) Specify both the

facts pertaining to the petitioner's interest and how the interest may be affected, with particular reference to the factors in §2.1308(a) and the circumstances establishing the timeliness of the hearing request.10 C.F.R. § 2.1306(a-c).

1. Name, Address and Telephone Number

The Petitioner for this Hearing is 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 ("Oklahoma"). The address is 4545 N. Lincoln Blvd., Suite 260 Oklahoma City, Oklahoma 73105. The telephone number is 405.522.4413.

2. Issues to be raised

Fansteel, pursuant to its Re-organization Plan filed in the United States Bankruptcy Court in the District of Delaware, has requested that it be allowed to transfer its license SMB911 to a subsidiary of its Re-organized company. The subsidiary, MRI, will be the sole holder of the Muskogee, Oklahoma site and will have as its business purpose the remediation of the site. The issue to be raised is whether the license transfer to an unfunded subsidiary constitutes unreasonable risk to the health and safety of the public. This question falls directly with the scope of the proceeding on the license transfer application.

NUREG 1156, Volume 15 states, in relevant part,

that the NRC must make a finding that issuance of the license for ...source material... would not be "inimical to the common defense and security, and would not constitute unreasonable risk to the health and safety of the public"

This issue is relevant to the findings the NRC must make when granting a transfer of license. The NRC must make a finding that by transferring a license and thereby control, that the new licensee is able to meet its obligations under the Atomic Energy Act. The transfer of a license to an unfunded, no asset, non-revenue generating company, MRI, does not ensure that the company will be able to provide adequate financial protection to the public nor will it be able to respond to any dangers posed by the contamination on site. For this reason, the question of a license transfer to MRI is relevant to the findings the NRC must make.

The Re-Organization Plan submitted by Fansteel outlines the financial status of MRI and how it is to be funded in order to accomplish remediation of the Muskogee site. This Re-organization Plan demonstrates that the financial promises made by Fansteel are illusory and are unlikely to be fulfilled if Fansteel's economic projections are not met. The State will rely on Fansteel's Re-Organization Plan and the extensive body of law interpreting contract law.

Fansteel believes that its promise to pay unsecured notes with "excess available cash", and insurance proceeds, if available ensures that the notes to be used to fund remediation will actually be funded. The State argues that such promises are illusory at best and can be manipulated to ensure the notes do not get funded and still comply with the letter of the agreement. If this is true, then the Muskogee site will not be remediated, will continue to contaminate the State's land and water and as such will constitute an unreasonable risk to public health and safety. Fansteel, however, argues that its commitment is binding and will

result in the successful remediation of the site. Such interpretations constitute a genuine dispute of fact and should be the subject of a hearing.

3. Oklahoma's Interests in the Proceeding

Oklahoma has significant property, financial, and other interests, such as the air, land, waters, environment, natural resources, wildlife, and citizens of Oklahoma, that will be affected by the results of the Proceeding. Oklahoma seeks to protect these interests through the above-captioned adjudication. Oklahoma has a right to participate in the Proceeding to protect all of its interests.

Oklahoma has a duty to protect the general welfare of its citizens, and therefore an interest in protecting the health, safety, and welfare of its citizens, many of whom live, work, travel, or recreate near the Fansteel Facility. As sovereign, Oklahoma is parens patriae, i.e., guardian and trustee for all of its citizens, and may act to prevent or repair harm to its quasi-sovereign interests. Hawaii v. Standard Oil Co. of California, 405 U.S. 251, 258 (1972). Further, Oklahoma has a quasi-sovereign interest in the physical and economic health and well-being of its citizens. Alfred L. Snapp & Son v. Puerto Rico, 458 U.S. 592, 600-607 (1982). Indeed, it is well-established that states may appear before NRC to protect the interests of their citizens and their air, lands, waters, wildlife, and other natural resources. In the Matter of International Uranium (USA) Corporation (Receipt of Material from Tonawanda, New York), LBP-98-21, 48 N.R.C. 137, 145 (1998); In the Matter of Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 N.R.C. 142, 169 (1998). This includes protecting the integrity of both groundwater and surface

water, at, near, and downstream of the Fansteel Facility, used by residents for irrigation and consumption by livestock and wildlife. The transfer of license to MRI and its lack of resources to implement the inadequate and underfunded DP will result in injury to the health, safety, and welfare of Oklahoma's citizens who rely upon waters in the Arkansas River for drinking, irrigation, and livestock uses, and will injure Oklahoma's natural resources, including its air, land, waters, and wildlife.

In addition to health, safety, and welfare, the interests protected by Oklahoma include the economic welfare of its citizens. It also includes protecting the area's tax base and Oklahoma's tax revenues, which may be adversely affected by decreased tourism and property values and loss of economic development caused by the continued contamination of the air, land, waters, wildlife, and natural resources of Oklahoma. This will be a direct result of the inability of Oklahoma and NRC to hold Re-Organized Fansteel to its alleged financial commitment of funding MRI in order for MRI to remediate the Muskogee site.

Oklahoma also has a proprietary interest in its air, lands, waters, wildlife, and other natural resources, which it has the right to protect. Oklahoma owns the waters in the Arkansas River OKLA. STAT. tit. 60, § 60, Oklahoma Water Resources Board v. Central Oklahoma Master Conservancy District, 464 P.2d 748 (Okla. 1968), which borders the eastern boundary of the Fansteel Facility. The Arkansas River is also hydrologically and geologically connected to groundwater beneath the Fansteel Facility. Moreover, all wildlife in the State of Oklahoma is property of the State. OKLA. STAT. tit. 29, § 7-204. Oklahoma also operates and manages the Webbers Falls Unit of the McClellan-Kerr Wildlife Refuge,

as well as the Cherokee Gruber Wildlife Refuge, each of which is located in close proximity to the Fansteel Facility, and leases certain agricultural rights and privileges in the wildlife refuge to third parties. Oklahoma, and its political subdivisions, derive revenue from income taxes, sales taxes, and ad valorem (i.e., property) taxes, which will be harmed in the event the NRC approves the license transfer. As described in more detail below, the transfer of the license to MRI without sufficient assets to ensure that the DP(inadequate and improper as it is)will even be conducted will negatively impact tourism in the area by allowing continued contamination of the soil and groundwater around the Fansteel Facility, which will reduce tax revenue to Oklahoma. Fansteel can not assure with any degree of confidence that MRI will have the funds to properly remediate the site to the appropriate levels required by 10 C.F.R.§20.1402. Further, Fansteel's request for exemption from the financial assurance mechanisms as required by 10 C.F.R.§ 40.36 further places in jeopardy any guarantee that the site will be properly remediated. Ultimately this will render the Fansteel Facility of no market value, and will lower market values of real property in the area surrounding the Fansteel Facility, thereby lowering ad valorem tax revenues for Oklahoma and its political subdivisions.

In addition to administering its own environmental programs, Oklahoma regulates environmental matters in the State through federal delegations from the U.S. Environmental Protection Agency. For example, Oklahoma administers the National Pollution Discharge Elimination System under the Clean Water Act 33 U.S.C. §1342 (b), and exercises authority under the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. as well. Issues

surrounding the DP implicate and involve Oklahoma's state environmental regulatory jurisdiction pursuant to 27A OS§ 1-1-201(20) and its federal environmental regulatory jurisdiction pursuant to 33 U.S.C. §1342 (b). By attempting to transfer the license of Fansteel to MRI, an unfunded, no asset subsidiary of Re-organized Fansteel, Fansteel itself fails to address its responsibilities with the Oklahoma regulatory agencies.

Oklahoma is owner and trustee for natural resources in Oklahoma and is responsible for protecting the air, land, waters, environment, wildlife, and natural resources of Oklahoma. Oklahoma, therefore, has an interest in protecting the integrity of its wildlife and natural resources, including air, land, ground, and surface water, from continued contamination of the soil and groundwater and other adverse environmental consequences that will certainly be caused as a result of the DP. In addition, Oklahoma is recognized as the trustee for natural resources, including surface and groundwater resources, for damage recovery actions under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607(f).

Lastly, Oklahoma has an interest in the correct application and enforcement of the laws, rules, and regulations governing NRC-licensed facilities in Oklahoma. In Oklahoma, there are several facilities other than the Fansteel Facility under NRC's regulatory jurisdiction. Oklahoma is justifiably concerned that the misapplication of 10 C.F.R. §2.1306 with the consent of NRC counsel will be a precedent for other Oklahoma facilities faced with regulatory hearings at the NRC

A transfer of the license to MRI will negatively affect Oklahoma's interest in the

Fansteel, Muskogee site. By transferring the license the NRC will be allowing Fansteel to avoid its financial obligations to the state of Oklahoma. MRI has no assets and if the Reorganization plan is approved will only have the unsecured notes issued to it by Fansteel. These unsecured notes, besides failing to adequately address the amount of funding necessary to properly remediate the site, provide no financial assurance to NRC as required by NRC's rule 10 C.F.R. §40.36. MRI will be in a position of being dependent upon the willingness of Re-organized Fansteel to fund the notes and complete the remediation. There will be no recourse against MRI because MRI has no assets and the Re-organization Plan filed by Fansteel in the United States Bankruptcy Court provides no real promise to pay the MRI notes.

4. Redressability

Requiring Fansteel to retain the license would redress Oklahoma's injury. In the event Fansteel is permitted to re-organize pursuant to order of the Bankruptcy Court, Re-organized Fansteel would have the necessary assets to pursue in the event it fails to properly fund the remediation of the Muskogee site. In order to properly protect the interests of Oklahoma, the license transfer must not be granted to MRI.

5. Issues to be litigated

The issue to be litigated is whether the lack of funding assurance of the proposed licensee constitutes an unreasonable risk to public health and safety. This issue is directly within the scope of the proceeding and is relevant to the findings the Commission must make

to act on the application for license transfer. The Commission must find that the licensee can adequately protect the health and safety of the public. This requires that enough money is available to accomplish that protection. In this instance, MRI must remediate the Muskogee site in order to remove the radiological contamination from the soil and the groundwater. To do that, MRI must have money and it has none. All the money, such that it is, is reserved to Fansteel, the parent company. Therefore to ensure any degree of safety to the public health and safety the license transfer must be denied.

This issue is appropriate for litigation in the proceeding because ultimately it is the only issue. NRC rules require funding assurance through 10 C.F.R.40.36 for a reason. To ensure that the public is protected from radiological contamination not to punish companies for handling radioactive waste. Adequate funding ensures that the proper procedures will be followed in handling radiological components and that proper cleanup will be performed if there is contamination. In this application for license transfer, there would be no issue if there were adequate funding therefore this is the appropriate issue for litigation.

The documents necessary to support this argument are limited, however, this argument is adequately supported by the statements, allegations and documentation required by §2.1306(b)(2)(iii) and (iv). If one analyzes the Disclosure Statement and Re-Organization Plan submitted by Fansteel in the United States Bankruptcy Court, one can clearly see that the promises for funding are unlikely to be fulfilled and present many opportunities to legitimately escape performance by MRI. This will leave the State and NRC in the unacceptable position of having a contaminated site left to be for by the taxpayers of

Oklahoma and this country.

B. TIMELINESS OF REQUEST FOR HEARING

Where a request for hearing is filed by any person other than the applicant in connection with a materials licensing action under 10 C.F.R Part 2, Subpart M, the request for hearing must describe in detail the circumstances establishing that the request for hearing is timely. 10 C.F.R. § 2.1306(c). As set forth above, the Notice was published in the Federal Register on August 21, 2003. Pursuant to 10 C.F.R. § 2.1306(b), any person whose interest may be affected by the Proceeding for the amendment of Source Materials License No. SMB-911 authorizing the decommissioning of the Fansteel Facility may file a request for a hearing within thirty (20) days of the NRC's publication of the Notice. Pursuant to 10 C.F.R. § 2.710, twenty (20) days has been calculated as September 10, 2003. As set forth in the Certificate of Service below, this Request for Hearing was deposited in the United States mail on September 10, 2003, and was therefore filed on September 10, 2003. Pursuant to 10 C.F.R. § 2.1203(b)(2) (1999), filing by mail is complete as of the time of deposit in the mail. In addition to the mailed copies, a copy has been sent by facsimile transmission to the office of the secretary and by e-mail to secy@nrc.gov to all the parties as set forth in the certificate of service.

C. DESIGNATION FOR PURPOSES OF SERVICE

Pursuant to 10 C.F.R. § 2.1203(c) (1999), service of all pleadings, documents, and correspondence relating to the Proceeding may be served upon Sarah E. Penn, Assistant

Attorney General, Office of the Attorney General, 4545 North Lincoln Boulevard, Suite 260,
Oklahoma City, Oklahoma, 73105.

III. CONCLUSION

The Attorney General of Oklahoma, W.A. Drew Edmondson, by and through the undersigned, Sarah E. Penn, Assistant Attorney General, on behalf of the State of Oklahoma, hereby prays that its Request for Hearing be granted relating to Fansteel's request for Approval of Transfer of its Muskogee, OK Facility License.

Respectfully Submitted,

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



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10th day of September, 2003, a true and correct copy of the foregoing, State of Oklahoma's Request for Hearing, 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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