

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 7065

ATOMIC SAFETY AND LICENSING BOARD PANEL

DOCKETED 11/19/03

SERVED 11/19/03

Before Administrative Judges:

Michael C. Farrar, Presiding Officer
Dr. Charles N. Kelber, Special Assistant

In the Matter of
CFC LOGISTICS, INC.
(Materials License)

Docket No. 30-36239-ML

ASLBP No. 03-814-01-ML

November 19, 2003

PREHEARING ORDER
(Scheduling Further Proceedings)

This proceeding involves CFC Logistics' proposal to operate a cobalt-60 irradiator in conjunction with its food processing warehouse in Quakertown, Pennsylvania. On October 29, we issued a decision holding that at least three of the Petitioners who reside near the facility had standing to seek a hearing on the validity of the Company's application/license, and that several of the "areas of concern" they had raised were germane to the proceeding (LBP-03-20, 58 NRC ____). Consequently, those concerns will be the subject of a hearing, which under NRC Rules will initially involve written evidentiary presentations by the parties. 10 CFR § 2.1233.

Following on the heels of our decision, we held a prehearing conference call last Wednesday, November 12, to plan the future course of the proceeding. As reflected in the transcript of that call (Tr. 269-330), the measures and schedule listed below were adopted [with the developments shown in brackets having occurred since that time]:

Hearing File. In support of its pending November 5 motion (to which the Company has no objection) to be relieved of the obligation to prepare a paper version of the hearing file (see LBP-03-20, slip op. at 32 and footnote 41) and instead to submit an electronic version, the Staff

will file shortly an index to such an electronic version (Tr. 281). [A partial index was filed on November 14.] By Monday, November 17, the Petitioners will file their objections to the motion, indicating with specificity why they believe they need the paper version (Tr. 272-73).¹

[Petitioners duly filed such objections.]

Certification. By oral motion during the call (Tr. 283-85), the Petitioners sought certification to the Commission, under 10 CFR § 2.1239(b), of the question whether certain documents -- such as preliminary correspondence between the Company and the irradiator manufacturer that did not become part of the formal application the Company eventually filed with the NRC Staff (see Tr. 282-83) -- should be available to the Petitioners, as part of the hearing file or otherwise, or whether access to such documents is barred by the apparently all-inclusive ban on discovery in Subpart L proceedings. See 10 CFR § 2.1231(d). We denied that relief (Tr. 284-85), without prejudice to the Petitioners filing a written motion asserting a need for and right to such documents and seeking certification to the Commission if that motion were denied (Tr. 285-86,² 291). Prior to the filing of any such motion, the Petitioners were to seek such documents through informal arrangements with the parties (Tr. 289-91).

Stay Motion. The Company and the Staff, which elected during the call to participate in the stay motion aspect of the case (see Tr. 298-99; compare LBP-03-20, slip opinion at 28, footnote 35, citing LBP-03-16, slip opinion at 16), will file responses to the Petitioners' November 10/11 stay motion by Friday, November 21 (Tr. 302). Petitioners may file a reply by Monday, December 1 (Tr. 302-03).

¹ Given the pendency of this motion, the Staff's November 28 deadline for filing a paper version of the hearing file will be extended if we deny that motion.

² The Presiding Officer's statement at Tr. 285-86, lines 20-21, was incorrectly transcribed (should be "without prejudice"), as was, for example, his question at lines 13-14 of Tr. 278, where he asked about "your computer's system."

Staff Participation. The Staff suggested (and we concurred) that it should initiate briefing of the legal issues involving the decommissioning bond/plan area of concern (see Tr. 312-14). To that end, the Staff will file by Friday, November 21 a brief on the decommissioning issues mentioned in LBP-03-20 (slip opinion at 27), related to the cleanup of another Pennsylvania facility and the amendment of NRC regulations. For its part, the Company will file a short statement by Wednesday, November 26, indicating whether it agrees with that Staff position (Tr. 314-15). The Petitioners will file a response to the Staff and Company position(s) by Monday, December 8 (Tr. 315).

Additional Interventions. The notice of opportunity to intervene we issued on October 30 appeared in the Federal Register on November 5 (68 FR 62638). Based on that publication date, it was noted that the deadline for filing additional interventions was December 5 (Tr. 275). No definitive information was available during the conference call as to any contemplated organizational or individual petitions that might be filed (Tr. 275-76, 319).

Facility Visit and Prehearing Conference. It was decided to hold the next live prehearing conference on Thursday, December 11 (shortly after the filings mentioned above), in public meeting space in the vicinity of Quakertown, in conjunction with another facility visit for the benefit of Petitioners' expert witness (subject to that expert's availability) (see Tr. 303-04). Petitioners were to notify us promptly of his availability for a facility visit on that date and the Company was also to let us know promptly of the acceptability of that visit (Tr. 303-04). [Both parties later confirmed the proposed December 11 facility visit.]

The site visit will be solely for the parties and their associates (see Tr. 306). In contrast, the off-site prehearing conference will be open to the public (see Tr. 305-06, 322-23).

Settlement Possibilities. We used the occasion of the conference call to initiate possible settlement discussions with the parties (Tr. 317). In that off-the-record portion of the call, we set out certain concepts we asked the parties to consider and to be prepared to discuss at the upcoming prehearing conference (see also Tr. 317-18).

In light of the foregoing, the facility visit will begin at 9:30 A.M. on Thursday, December 11, and continue until approximately 11:00 A.M., although if more time is needed the visit will be extended. Each party will inform the Company (as will we) by close of business the previous Monday, December 8, of the names of those who will be entering the facility (see also Tr. 319-22). To complete the Company's security check-in procedures in timely fashion, attendees should arrive on the premises by 9:00 A.M.

To give Petitioners' counsel and expert time to consult with each other before the prehearing conference begins, that conference will not start until 1:30 P.M. It will be held in a suitable location (to be determined) in the Quakertown area and will be open to public attendance (but will not involve public participation). If additional intervention petitions are filed, counsel for those potential parties are, of course, welcome to attend. It appears that -- given the timing and content of the conference, and the Staff's limited role -- the Staff will not be formally represented by its counsel but may have other informal representation (Tr. 311-12).

Matters to be covered at the prehearing conference include (1) narrowing, clarifying or focusing the existing germane "areas of concern" based on the facility visit or any other developments (compare Tr. 309-11); (2) establishing a schedule for the filing of responses to any additional intervention petitions that may have been filed (unless no opposition to such petitions is contemplated) and for our ruling on those petitions; (3) depending on the status of

the matters covered in # 2, above, and on the presence or absence of new petitioners' counsel, discussing measures to avoid duplication of presentations (10 CFR § 2.1205(n)) and a tentative timeframe for the filing of those presentations; (4) conducting off-the-record settlement negotiations, based either on the concepts we put forward during the conference call or on other concepts that may be suggested by the parties; and (5) entertaining any other appropriate business items that may have arisen in the interim or may be suggested at the time.³

It is so ORDERED.

BY THE PRESIDING OFFICER

/RA/

Rockville, Maryland
November 19, 2003

Michael C. Farrar
ADMINISTRATIVE JUDGE

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

³ In the expected absence of Staff counsel, we will not -- contrary to a suggestion we made during the call (Tr. 324) -- be conducting oral argument on any matters in which the Staff has an active interest.

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(Materials License))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB PREHEARING ORDER (SCHEDULING FURTHER PROCEEDINGS) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 19th day of November 2003