

February 26, 2004 (3:42PM)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Before Administrative Judges:
Michael C. Farrar, Presiding Officer
Charles N. Kelber, Special Assistant

In the Matter of:)	Docket No.: 30-36239-ML
)	
CFC Logistics, Inc.)	ASLBP No.: 03-814-01-ML
)	
(Materials License Application))	Date: February 25, 2004
)	
)	License Control No. 132825

**CFC LOGISTICS, INC.'S MOTION FOR LEAVE TO RESPOND TO NRC
STAFF'S MARCH 5, 2004, BRIEF ON FINANCIAL ASSURANCE**

CFC Logistics, Inc., (CFC), by its undersigned counsel of record, hereby submits this Request for Leave to Respond to NRC Staff's March 5, 2004, Brief On Financial Assurance for CFC's NRC-licensed Category III irradiator in Quakertown, PA. For the reasons discussed below, CFC respectfully requests that the Presiding Officer grant CFC leave of seven (7) days after NRC Staff files its brief (i.e., March 12, 2004) within which it may file a response.¹

I. PROCEDURAL HISTORY

On December 11, 2003, the Presiding Officer held a pre-hearing conference in Quakertown, PA, to discuss issues related to three (3) matters currently pending before the Licensing Board: (1) Interveners' second request for a stay of the effectiveness of

¹ For purposes of this Motion, while NRC Staff may file its brief prior to the projected filing deadline, CFC assumes that NRC Staff will file its brief on that date (i.e., March 12, 2004).

CFC's NRC License,² (2) Interveners' request for discovery and reference of such request to the Commission,³ and (3) the justiciability of Interveners' area of concern regarding CFC's financial assurance offering. During the pre-hearing conference, the Presiding Officer requested that CFC and Interveners file a list of specific questions to be posed to NRC Staff for their review and response. On December 15 and 16, 2003, respectively, Interveners and CFC responded to this request.

On February 17, 2004, the Presiding Officer issued an Order in which several of the above-mentioned submitted questions were sent to NRC Staff for their review and response. In this Order, the Presiding Officer directed NRC Staff to file its brief no later than February 27, 2004. The Presiding Officer also allowed CFC and Interveners an opportunity to respond to NRC Staff's brief regarding these questions.⁴

In addition, the Presiding Officer directed NRC Staff to address additional issues regarding CFC's current financial assurance offering, the new Commission regulations regarding financial assurance for irradiator licensees, and the events related to the decommissioning and decontamination (D&D) of the Permagrain facility in Clearfield County, PA (Permagrain). However, while NRC Staff was given an explicit filing deadline of March 5, 2004, to address such issues, the Presiding Officer did not provide CFC with an opportunity to respond to NRC Staff's responses to these issues. In this Motion, CFC requests leave of seven (7) days after NRC Staff files their brief (i.e.,

² See *In the Matter of CFC Logistics, Inc., Interveners' Renewed Motion for Stay*, (November 11, 2003)

³ See *In the Matter of CFC Logistics, Inc., Interveners' Request for Reference to the Commission*, ML 033500294 (December 1, 2003)

⁴ CFC has been allotted one (1) week to respond to NRC Staff's brief, thereby placing its filing deadline on March 5, 2004. Interveners have been allotted one (1) week from the date of CFC's filing deadline to submit its response, thereby placing its filing deadline on March 12, 2004.

March 12, 2004) within which to file such a response. Additionally, CFC has no objection to the Presiding Officer granting Interveners a similar opportunity to respond.

II. ARGUMENT

As noted above, in his February 17, 2004 Order, the Presiding Officer directed NRC Staff to submit a brief describing the relationship between CFC's current financial assurance offering, the Commission's new regulations on financial assurance for irradiator licensees, and the events relating to the D&D of the Permagrain facility. As the Presiding Officer has stated, NRC Staff was directed to provide specific information regarding the Permagrain facility, because their previous filings on this subject, "left unclear precisely how the conditions at that other site [Permagrain] when it faced decommissioning might, or might not, be expected to differ from conditions that might—in light of the sources to be used and the operations to be conducted—be expected at this site when it faces decommissioning." *See In the Matter of CFC Logistics, Inc., Prehearing Order Regarding NRC Staff Participation and Other Matters*, at 4 (February 17, 2004).

With respect to this issue, there have been no specific discussions, to date, of the events relating to the Permagrain facility's D&D activities/financial assurance or the similarities and/or differences between that facility and the CFC irradiator. In addition, a member of CFC's staff is a former employee of the Permagrain facility and is, therefore, positioned to provide useful information regarding that facility and its history. Thus, given that the Presiding Officer has noted that NRC Staff's previous filings on Interveners' area of concern regarding financial assurance "leaves some key questions

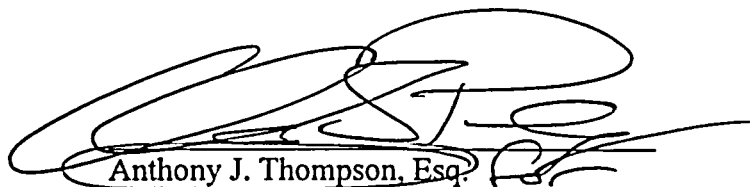
unanswered”⁵ and that the pending issue before the Licensing Board regarding Interveners’ financial assurance area of concern is a dispositive one, CFC asserts that the Presiding Officer should permit a response to NRC Staff’s brief to be filed.

Further, allowing CFC to respond to NRC Staff’s brief will not cause any undue delay in this proceeding, because Interveners already are required to file their response to NRC Staff’s and CFC’s brief regarding the Presiding Officer’s questions on CFC’s proposed filing deadline (i.e., March 12, 2004). Thus, deadlines for these pre-hearing filings will not extend beyond the Presiding Officer’s projected filing schedule. Interveners also will not suffer any undue prejudice, because, as noted above, CFC does not object to allowing Interveners an opportunity to respond to NRC Staff’s brief.

III. CONCLUSION

For the reasons described above, CFC respectfully requests that the Presiding Officer grant CFC leave of seven (7) days after the filing of NRC Staff’s brief within which to file a response.

Respectfully Submitted,



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⁵ See *In the Matter of CFC Logistics, Inc., Prehearing Order Regarding NRC Staff Participation and Other Matters*, at 4 (February 17, 2004).

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CFC Logistics, Inc.

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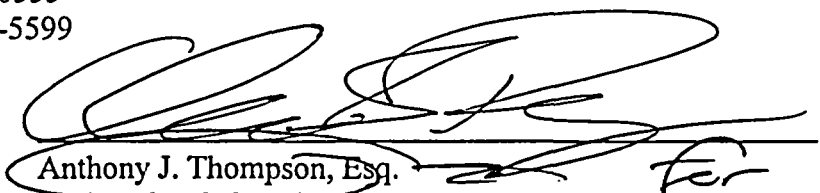
CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing Response of CFC Logistics, Inc. Motion for Leave to Respond to NRC Staff's March 5, 2004, Brief on Financial Assurance in the above-captioned matter has been served upon the following via electronic mail, facsimile and U.S. First Class Mail on this 25th day of February, 2004.

1. Robert J. Sugarman, Esq.
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(CFCCERTIFICATEOFSERVICE.DOC)

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February 25, 2004

BY ELECTRONIC MAIL, FACSIMILE AND U.S. FIRST CLASS MAIL

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One White Flint North
11555 Rockville Pike
Rockville, MD 20852

Re: In the Matter of: CFC Logistics, Inc.
Docket No: 3036239-ML
ASLBP No. 03-814-01-ML
License No. 132825

Dear Sir or Madam:

Please find attached for filing Response of CFC Logistics, Inc. Motion for Leave to Respond to NRC Staff's March 5, 2004, Brief on Financial Assurance in the above-captioned matter. Copies of the enclosed have been served on the parties indicated on the enclosed certificate of service. Additionally, please return a file-stamped copy in the self-addressed, postage prepaid envelope attached herewith.

If you have any questions, please feel free to contact me at (202) 496-0780.
Thank you for your time and consideration in this matter.

Sincerely,



Anthony J. Thompson, Esq. *for*
Christopher S. Pugsley, Esq.
Law Offices of Anthony J. Thompson, P.C.
Counsel of Record to IUSA

Enclosures

(CFCCOVERLETTTER1.DOC)