

January 26, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE PRESIDING OFFICER

DOCKETED
USNRC

March 9, 2004 (10:51AM)

In the matter of

Nuclear Fuel Services, Inc.

(Materials License SNM-124)

)
)
)
)
)
)

Docket No. 70-143

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

SIERRA CLUB ET AL.'S MOTION FOR EXTENSION OF TIME
TO FILE APPLICATION FOR STAY OF ISSUANCE
OF SECOND LICENSE AMENDMENT TO NFS

Petitioners, the State of Franklin Group of the Sierra Club, Friends of the Nolichucky River Valley, Oak Ridge Environmental Peace Alliance, and Tennessee Environmental Council hereby request an extension of one business day for filing an application to stay the Nuclear Regulatory Commission ("NRC" or "Commission") Staff's issuance of Amendment 47 to Nuclear Fuel Services' ("NFS's") license for its facility in Erwin, Tennessee. The NRC Staff issued the amendment on January 13, 2004.¹ The license amendment is the second of three license amendments for NFS's proposed Blended Low Enrichment Uranium ("BLEU") Project, under which NFS would convert high-enriched uranium ("HEU") to blended low-enriched uranium ("BLEU").

NRC regulation 10 C.F.R. § 2.1263 provides that an application for a stay of a Staff decision to issue a license must be filed within ten days of "the staff's action."

¹ See letter from Gary S. Janosko, NRC, to Marie Moore, NFS, re: Nuclear Fuel Services, Inc. Amendment 47 – to Authorize Operations in the Blended Low-Enriched Uranium preparation Facility, to Approve Integrated Safety Analysis Summary for Existing Processes in BPF 9TAC No. L31693), and to Approve Revised ISA Summary Schedule (TAC No. L31782) (hereinafter "Janosko Letter").

While the Staff's action occurred on January 13, Petitioners did not receive notice of the Staff's action until 6:00 p.m. on Friday, January 16, when the Staff sent Board Notification 2004-02 via e-mail.² Because the e-mail arrived after Petitioners' counsel had left the office for the weekend, she did not learn of the Staff's action until Monday, January 19.

Petitioners are filing this application within ten days of the posting of Board Notification 2004-02 on the e-mail service list, and within seven days of actually learning of the license amendment. Thus, this application is timely in relation to the date when notice was received. Petitioners' counsel was not able to file the stay motion by the due date, January 23, due to major obligations in other cases.³ Therefore Petitioners request that the Presiding Officer exercise his discretion, as permitted by 10 C.F.R. § 2.711, to allow the filing of this stay application one business day late.

Petitioners's counsel has consulted counsel for NFS, who stated that NFS intends to oppose this motion. Petitioners' counsel also attempted to contact counsel for the NRC Staff, but was unable to reach her.

² E-mail from Valentina Cheny (January 16, 2004), enclosing Board Notification 2004-02, Memorandum to Administrative Judge Alan S. Rosenthal from Gary s. Janosko re: New Information Potentially Relevant and Material to Licensing Board Proceeding in the Matter of Nuclear Fuel Services, Inc., Erwin, Tennessee (January 15, 2004).

³ These obligations included an oral argument on January 11, 2004, in an NRC proceeding regarding Duke Energy Corporation's application to test plutonium fuel at the Catawba nuclear power plant, Docket No. 50-143 and 50-144; and preparation of a reply brief due January 23 in an NRC proceeding regarding the U.S. Department of Energy's application for an export license to ship plutonium to France, Docket No. 110-540.

Respectfully submitted,



Diane Curran

Harmon, Curran, Spielberg & Eisenberg, LLP

1726 M Street N.W., Suite 600

Washington, DC 20036

202/328-3500

FAX: 202/328-6918

e-mail: dcurran@harmoncurran.com

Dated: January 26, 2004

CERTIFICATE OF SERVICE

I certify that on January 26, 2004, copies of SIERRA CLUB ET AL'S APPLICATION FOR STAY OF NRC STAFF DECISION TO ISSUE SECOND LICENSE AMENDMENT FOR NFS BLEU PROJECT and SIERRA CLUB ET AL'S MOTION FOR EXTENSION OF DEADLINE FOR FILING APPLICATION FOR STAY OF ISSUANCE OF SECOND LICENSE AMENDMENT TO NFS were served on the following by first-class mail, and by e-mail if so designated:

Alan S. Rosenthal, Presiding Officer Atomic Safety and Licensing Board Mail Stop T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555 By e-mail to: rosnthl@aol.com Sam4@nrc.gov	Office of Appellate Adjudication U.S. Nuclear Regulatory Commission Washington, D.C. 20555
Richard F. Cole, Administrative Judge Atomic Safety and Licensing Board Mail Stop T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555 By e-mail to: rfl1@nrc.gov	Daryl Shapiro Shaw Pittman, LLP 2300 N Street N.W. Washington, D.C. 20037 By e-mail to: Daryl.Shapiro@shawpittman.com
Rules and Adjudications Branch Office of the Secretary U.S. Nuclear Regulatory Commission Washington, D.C. 20555 By e-mail to: hearingdocket@nrc.gov	C. Todd Chapman, Esq. King, King and Chapman, PLLC 125 South Main Street Greeneville, TN 37743 By e-mail to: chapman@xtn.net

Neil J. Newman, Esq. Nuclear Fuel Services 1205 Banner Hill Road Erwin, TN 37650-9718	Kathy Helms-Hughes P.O. Box 2394 For Defiance, AZ 86504 khelms@frontiernet.net
Marian L. Zobler, Esq. Office of General Counsel U.S. Nuclear Regulatory Commission Washington, D.C. 20555 By e-mail to: mlz@nrc.gov ceb4@nrc.gov	Louis Zeller Blue Ridge Environmental Defense League P.O. Box 88 Glendale Springs, NC 28629 By e-mail to: BREDL@skybest.com



Diane Curran