

December 27, 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of	)	Docket Nos.	70-143-MLA,
	)		70-143-MLA-2,
	)		70-143-MLA-3
NUCLEAR FUEL SERVICES, INC.	)	ASLBP Nos.	02-803-04-MLA,
(Erwin, Tennessee)	)		03-810-02-MLA,
	)		04-820-05-MLA

NRC STAFF RESPONSE TO MEMORANDUM AND ORDER

INTRODUCTION

Pursuant to the Memorandum and Order (Order), issued December 21, 2004, in the above-captioned proceeding, the Staff of the Nuclear Regulatory Commission hereby responds to the two questions posed by the Presiding Officer. The two questions relate to a motion filed by the Staff on December 20, 2004. See "NRC Staff Motion for Protective Order Governing Disclosure of Sensitive Information," December 20, 2004 (Motion). The Staff's responses are set forth below.

BACKGROUND

On October 25, 2004, the Presiding Officer was informed that the Commission had temporarily blocked public access to all documents through the Agencywide Document Access and Management System ("ADAMS"), including those related to this proceeding.<sup>1</sup> As a result, public access to the Electronic Hearing Docket ("EHD") for this proceeding was also blocked. The shut-down of ADAMS was ordered to facilitate a security review of publicly available documents to ensure that potentially sensitive unclassified information be removed from the NRC website so that any information which might provide assistance to terrorists would be inaccessible. So that all parties might be afforded prompt access to relevant documents and filings in order to continue the

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<sup>1</sup>See Letter from Angela B. Coggins, Counsel for NRC Staff, to the Administrative Judges dated Oct. 25, 2004.

conduct of this proceeding in these unusual circumstances, the Staff filed a motion for a protective order on December 20, 2004. The protective order and the accompanying confidentiality and non-disclosure agreement would cover all documents in the hearing docket and/or hearing file to date, as well as documents subsequently added to the hearing docket and hearing file. Counsel for Nuclear Fuel Services (NFS) notified Staff Counsel that it supported the approach taken in this motion. Counsel for Sierra Club, et al. (Intervenors) responded that it opposed the approach taken in this motion. On December 21, 2004, the Presiding Officer issued its Order.<sup>2</sup>

#### DISCUSSION

In its Order, the Presiding Officer stated that the Staff's Motion raised two questions to which it requested written responses. Noting that the Motion was filed two days before the due date of the Staff's written presentation, the Presiding Officer's first question asked "[w]hy was the motion not submitted weeks ago to enable its consideration (following receipt of the Sierra response) well in advance of the deadline for the Staff's presentation?" Order at 2.

The Staff was diligent in addressing this matter. On October 14, 2004, the Intervenors filed "Legal and Evidentiary Presentation by State of Franklin Group of the Sierra Club, Friends of the Nolichucky River Valley, Oak Ridge Environmental Peace Alliance, and Tennessee Environmental Council Regarding U.S. Nuclear Regulatory Commissions Staff's Failure to Comply with National Environmental Policy Act in Licensing the Proposed BLEU Project," October 14, 2004. Subsequently, on October 25, 2004, the Staff informed the Presiding Officer and the parties that the Commission had temporarily blocked public access to ADAMS. On November 17, 2004, Staff Counsel informed the Presiding Officer and parties that the security review was still ongoing.<sup>3</sup>

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<sup>2</sup>On December 22, 2004, the Staff filed its response to the Sierra Club's written presentation. See "NRC Staff Response to the Legal and Evidentiary Presentation of the Sierra Club, et al." (Response). As indicated in the Motion, the Staff's Response attached as exhibits documents that contained redactions.

<sup>3</sup> See Letter from Michael A. Woods, Counsel for NRC Staff, to the Administrative Judges dated Nov. 17, 2004.

On December 9, 2004, the Staff completed its initial review of documents related to the BLEU project. As a result of this review, certain documents were identified as sensitive, other documents required further review. After this initial review, Staff Counsel determined that some of the documents it would rely upon in its Response were sensitive. After determining that a protective order and a confidentiality and non-disclosure agreement would be necessary to protect these sensitive documents, Staff Counsel on December 15, 2004, contacted counsels for NFS and the Intervenor to determine whether they would agree to a motion for a protective order and sign a confidentiality and non-disclosure agreement. Drafts of these documents were e-mailed to the parties' counsels on December 16, 2004. On December 20, 2004, Intervenor's counsel advised Staff Counsel that it could not agree to the protective order. Thereafter, on the same day, Staff Counsel filed the Motion.

The Presiding Officer also notes, in its Order, that the Staff's motion "leaves uncertain whether there is a real issue here." Order at 2. Accordingly, the Presiding Officer asks whether "the security review of the publicly available documents pertaining to the BLEU project now been completed and has it been determined that, in fact, there are some documents that must be removed from the website to preclude their availability to possible terrorists?" *Id.* On December 16, 2004, the Staff completed its review of documents pertaining to the BLEU project. As a result of its review, the Staff has determined that some documents should be withheld from public disclosure. A list of those documents is attached. Accordingly, the Staff continues to believe that a protective order in this proceeding would be appropriate.

CONCLUSION

The Staff's responses to the questions posed by the Presiding Officer are set forth above. The Staff believes it has been diligent in addressing the matter of the withholding of certain sensitive documents and that a protective order would be appropriate.

Respectfully submitted,

*/RA/*

Marian L. Zabler  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 27<sup>th</sup> day of December, 2004

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	)		04-820-05-MLA

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO MEMORANDUM AND ORDER" in the above-captioned proceeding have been served on the following by deposit in the Nuclear Regulatory Commission's internal mail system as indicated by an asterisk (\*), or by U.S. Mail, first class, and electronic mail as indicated by a double asterisk (\*\*) on this 27th day of December, 2004.

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<b>Accession Number</b>	<b>Title/Description Includes Est. Page Count</b>	<b>Document Date</b>	<b>Document Type</b>	<b>Author Affiliation(s)</b>	<b>Addressee Affiliation(s)</b>	<b>Docket Number</b>
ML020290471	01/15/02-Additional Information to Support an Environmental Review for BLEU Project..  70 Page(s)	1/15/2002	Letter	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143
ML040280209	01/31/04-NFS - BPF - Safety Evaluation Report For Nuclear Fuel Services, Inc. License Amendment 47 Blended Low-Enriched Uranium Preparation Facility - Non Proprietary Version - January 2004..  93 Page(s)	1/31/2004	Safety Evaluation Report	NRC/NMSS/FCSS/FCOB		07000143
ML030500196	02/04/2003, Meeting with Nuclear Fuel Services - Handouts..  26 Page(s)	2/4/2003	Meeting Briefing Package/Handouts	NRC/NRR	Nuclear Fuel Services, Inc	07000143
ML040480515	02/06/04-Commitment Letter to Address NRC Licensing Review Questions Pertaining to Instrumentation and Controls at the Oxide Conversion Building (OCB) and Effluent Processing Building (EPB)..  15 Page(s)	2/6/2004	Letter	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143

ML040560200	02/06/04-Revision 1 to 21T-04-0049, "Integrated Safety Analysis Summary, Blended Low-Enriched Uranium Preparation Facility."  451 Page(s)	2/6/2004	Report, Technical	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143
ML030450267	02/10/03-Reply to Request for Additional Information Concerning Nuclear Criticality Safety Evaluation & Integrated Safety Analysis Summary for Uranyl Nitrate Building..  26 Page(s)	2/10/2003	Letter	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143
ML040480518	02/11/04-Commitment Letter to Address NRC Licensing Review Questions Pertaining to Nuclear Criticality Safety at the Oxide Conversion Building (OCB) and Effluent Processing Building (EPB)..  13 Page(s)	2/11/2004	Letter	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143
ML030570318	02/14/03-Additional Commitments Regarding Licensing of Uranyl Nitrate Building..  21 Page(s)	2/14/2003	Letter	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143

ML030570461	02/21/03-Applicant's Answer to Second Request for Hearing by Friends of the Nolichucky River Valley, State of Franklin Group of the Sierra Club, Oak Ridge Environmental Peace Alliance and Tennessee Environmental Council.  25 Page(s)	2/21/2003	Legal- Intervention Petition, Responses and Contentions	Nuclear Fuel Services, Inc, ShawPittman, LLP	NRC/ASLBP	07000143
ML020730343	02/28/02-Nuclear Fuel Services, Inc, License Amendment Request to Support the Uranyl Nitrate Building at the BLEU Complex..  6 Page(s)	2/28/2002	License- Application for License (Amend/Ren ewal/New) DKT 70	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143
ML030720209	03/06/03-Additional Information to Support NRC Review of ISA Summary for the Uranyl Nitrate Building..  68 Page(s)	3/6/2003	Letter	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143
ML040750448	03/11/04-Memo Re: In-Office Verticle Slice Review of NFS Integrated Safety Analysis Summary for Oxide Conversion Building and Effluent Process Building on February 10-11, 2004..  5 Page(s)	3/11/2004	Memoranda	NRC/NMSS	NRC/NMSS/FCSS	07000143



ML040780594	03/12/04-NFS, Commitment Letter to Address NRC Licensing Review Pertaining to Integrated Safety Analysis Summary for the OCB and EPB..  14 Page(s)	3/12/2004	Letter	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143
ML020810213	03/15/02-Letter to NRC re NFS Response to NRC's Request for Additional Information to Support and Environmental Review for the BLEU Project..  162 Page(s)	3/15/2002	Letter	Nuclear Fuel Services, Inc	NRC/NMSS	07000143
ML040760124	03/15/04-Nuclear Fuel Services License SNM-124, Amendment 49..  20 Page(s)	3/15/2004	License-Special Nuclear Material Amendment DKT 70	NRC/NMSS/FCSS	Nuclear Fuel Services, Inc	07000143
ML040780580	03/15/04-Nuclear Fuel Services, Inc., Revision to Commitment Letter to Address NRC Licensing Review Item Nos. 2, 4 and 12 Pertaining to Instrumentation & Control at the OCB and EPB..  8 Page(s)	3/15/2004	Letter	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143

ML040790238	03/16/04-Commitment Letter to Address NRC Licensing Review Questions Pertaining to Chemical Safety for the OCB and EPB..  18 Page(s)	3/16/2004	Letter	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS/FCSS	07000143
ML040790241	03/17/04-Commitment Letter to Address NRC Licensing Review Questions Pertaining to Baseline Design Criteria for the OCB and EPB..  10 Page(s)	3/17/2004	Letter	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143
ML040850548	03/18/04-Commitment Letter to Address NRC Licensing Review Questions Pertaining to Fire Safety for the OCB and EPB..  12 Page(s)	3/18/2004	Letter	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143
ML040850551	03/19/04-Commitment Letter to Address NRC Licensing Review Questions Pertaining to Radiation Safety and Emergency Preparedness for the OCB and EPB..  35 Page(s)	3/19/2004	Letter	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143
ML041180165	04/22/04-Applicant's Opposition to Motion for Appeal of Kathy Helms-Hughes.  23 Page(s)	4/22/2004	Legal-Motion	Nuclear Fuel Services, Inc, ShawPittman, LLP	NRC/OCM	07000143

ML041600516	06/03/04-Applicant's Request for Clarification of the Issues to be Heard and Statement of Position on the Scope of the Hearing.  18 Page(s)	6/3/2004	Legal-Motion	Nuclear Fuel Services, Inc, ShawPittman, LLP	NRC/ASLBP	07000143
ML031890837	07/07/04-Safety Evaluation Report: Nuclear Fuel Services, Inc., Amendment 39 (TAC Nos. L31688, L31739, L31721 and L31748) - To Authorize Uranyl Nitrate Building At The Blended Low-Enriched Uranium Complex And Possession Limit Increase..  124 Page(s)	7/7/2003	Safety Evaluation	NRC/NMSS/FCSS		07000143
ML032030415	07/21/03-IR 07000143-03-004 on 06/02/03 - 06/06/03 for Nuclear Fuel Services, Inc. No Violations Noted..  27 Page(s)	7/21/2003	Inspection Report, Letter	NRC/RGN-II/DNMS/FFB	Nuclear Fuel Services, Inc	07000143
ML032260765	07/30/03-Request For Additional Information For The Blended Low-Enriched Uranium Preparation Facility - Non Proprietary..  18 Page(s)	7/30/2003	Request for Additional Information (RAI)	NRC/NMSS/FCSS	Nuclear Fuel Services, Inc	07000143

ML042660407	07/30/04-NFS, Amendment 51 to Authorize Operations in the Blended Low-Enriched Uranium Oxide conversion Building and Effluent Processing Building License..  24 Page(s)	7/30/2004	License-Special Nuclear Material Amendment DKT 70	NRC/NMSS/FCSS	Nuclear Fuel Services, Inc	07000143
ML042540349	07/30/04-Nuclear Fuel Services, Inc., Safety Evaluation Report, License Amendment 51, Blended Low-Enriched Uranium Oxide Conversion Building and Effluent Processing Building..  92 Page(s)	7/30/2004	Safety Evaluation Report	NRC/NMSS/FCSS		07000143
ML022480108	08/30/02-Nuclear Fuel Services, Inc. Amendment 36 - Revisions To Fundamental Nuclear Material Control Plan (TAC NO.. L31615)..  27 Page(s)	8/30/2002	Letter, License-Special Nuclear Material Amendment DKT 70	NRC/NMSS/FCSS	Nuclear Fuel Services, Inc	07000143
ML022960038	10/11/02-License Amendment Request for BLEU Preparation Facility, dated 10/11/2002..  97 Page(s)	10/11/2002	License-Application for (Amend/Renewal/New) for DKT 30, 40, 70	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143

ML023090025	10/14/02-Part 1 of 2 - 21T-02-0992, Revision 0, Integrated Safety Analysis Summary Blended Low-Enriched Uranium Preparation Facility..  208 Page(s)	10/14/2002	Report, Technical	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143
ML023090170	10/14/02-Part 2 of 2 - 21T-02-0992, Revision 0, Integrated Safety Analysis Summary Blended Low-Enriched Uranium Preparation Facility..  145 Page(s)	10/14/2002	Report, Technical	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143
ML043170659	10/14/04-Legal and Evidentiary Presentation by State of Franklin Group of the Sierra Club, Friends of the Nolichucky River Valley, Oak Ridge Environmental Peace Alliance, and Tennessee Environmental Council....  47 Page(s)	10/14/2004	Legal-Brief	Friends of the Nolichucky Valley, Harmon, Curran, Spielberg & Eisenberg, LLP, Oak Ridge Environmental Peace Alliance, Sierra Club, Tennessee Environmental Council	NRC/ASLBP	07000143
ML033420721	10/23/03-Attachment I to 10/23/03 Letter, Page Changes to SNM-0124..  82 Page(s)	10/23/2003	License-Application for (Amend/Renewal/New) for DKT 30, 40, 70	NRC/NMSS	NRC/Document Control Desk, NRC/NMSS	07000143

ML033490408	10/23/03-License Amendment Request for Oxide Conversion Building and Effluent Processing Building at BLEU Complex..  90 Page(s)	10/23/2003	Letter, License-Application for (Amend/Renewal/New) for DKT 30, 40, 70	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143
ML033320417	11/07/03-Non-Proprietary Responses to Remaining Questions Regarding License Amendment Request for BLEU Preparation Facility..  34 Page(s)	11/7/2003	Letter	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143
ML013330459	11/09/01-Supplemental Environmental Report for Licensing Actions to Support BLEU Project..  61 Page(s)	11/9/2001	Environmental Monitoring Report, Letter	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143
ML033140312	11/12/03-Nuclear Fuel Services, Inc., - Amendment 45 for License No. SNM-0124..  22 Page(s)	11/12/2003	License-Special Nuclear Material Amendment DKT 70	NRC/NMSS/FCSS	Nuclear Fuel Services, Inc	07000143

ML033380535	11/14/03-Non-Proprietary Version of Integrated Safety Analysis (ISA) Summary for the BLEU Project Oxide Conversion and Effluent Processing Buildings..  376 Page(s)	11/14/2003	Letter, Report, Technical	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143
ML033320415	11/19/03-Nuclear Fuel Services, Inc., Non-Proprietary Revised Response to Question Number 39 Regarding License Amendment Request for BLEU Preparation Facility..  10 Page(s)	11/19/2003	Letter	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143
ML033320034	11/26/03-IR 07000143-03-205, on 11/03/2003 - 11/07/2003, Nuclear Fuel Services, Inc..  13 Page(s)	11/26/2003	Inspection Report, Letter	NRC/NMSS/FCSS	Nuclear Fuel Services, Inc	07000143
ML033490196	12/10/03-Revised Response to Question 34 and Additional Information for Question 32 and 33 Regarding License Amendment Request for BLEU Preparation Facility..  15 Page(s)	12/10/2003	Letter	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143

ML042510424	Nuclear Fuel Services, Inc - 30-Day Written Notification of Event (NRC Event No. 40901)..  6 Page(s)	8/27/2004	Letter, Licensee 30-Day Written Event Report	Nuclear Fuel Services, Inc	NRC/Document Control Desk	07000143
ML040400070	Revision 3 to 55T-04-1001, "Integrated Safety Analysis Summary, Blended Low Enriched Uranium (BLEU) Project Uranyl Nitrate Building (UNB).".  87 Page(s)	1/31/2004	Topical Report	Nuclear Fuel Services, Inc	NRC/Document Control Desk, NRC/NMSS	07000143