

December 20, 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 MOTION FOR PROTECTIVE ORDER
GOVERNING DISCLOSURE OF SENSITIVE INFORMATION

INTRODUCTION

Pursuant to 10 C.F.R. § 2.730, the NRC Staff ("Staff") files this motion requesting that the Presiding Officer issue a Protective Order governing access to and disclosure of certain sensitive information in the above captioned proceeding. The Staff requests that the Presiding Officer adopt the attached draft Protective Order (with the attached Confidentiality and Non-Disclosure Agreement). Counsel for Applicant Nuclear Fuel Services, Inc. ("NFS"), and Intervenors State of Franklin Group of the Sierra Club et al. ("Sierra Club") were provided a copy of a draft of this motion and Protective Order, and were given an opportunity to comment. Counsel for NFS notified the Staff that it supports the approach taken in this motion. Counsel for Sierra Club responded that it opposes the approach taken in this motion.

BACKGROUND

On October 25, 2004, the Presiding Officer was informed that the Commission had blocked public access to all documents through the Agencywide Document Access and Management System ("ADAMS"), including those related to this proceeding.¹ As a result, public access to the

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

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 may be afforded prompt access to relevant documents and filings in order to continue the conduct of this proceeding in these unusual circumstances, the issuance of a Protective Order is appropriate. The Protective Order 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. In essence, the terms of the Protective Order would set forth provisions on handling and treatment of protected sensitive information and restrict the distribution of such information to authorized persons pursuant to a Confidentiality and Non-Disclosure Agreement. While the Protective Order remains in effect, the Staff will provide parties with a compact disc containing new documents with each update of the hearing file.

If a Protective Order is not place when the Staff files its Response to Sierra Club’s Written Presentation, the Staff will provide redacted versions of its Response and any attachments, to the extent that these are determined to contain protected sensitive information.

CONCLUSION

For the foregoing reasons, the Staff requests that the Board issue a Protective Order in the form attached.

Respectfully submitted,

/RA/

Shelly D. Cole
Michael A. Woods
Counsel for NRC Staff

Dated at Rockville, Maryland
this 20th day of December, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Alan S. Rosenthal, Presiding Officer
Dr. Richard F. Cole, Special Assistant

In the Matter of
NUCLEAR FUEL SERVICES, INC.
(Erwin, Tennessee)

Docket Nos. 70-143-MLA, 70-143-MLA-2,
70-143-MLA-3

ASLBP Nos. 02-803-04-MLA, 03-810-02-MLA,
04-820-05-MLA

MEMORANDUM AND ORDER
(Protective Order)

This Protective Order governs the disclosure and use of certain protected sensitive information¹ potentially relevant to the application of Nuclear Fuel Services, Inc. (“NFS”) for license amendments to support the Blended Low Enriched Uranium Project (“BLEU Project”) at its Erwin,

¹Protected sensitive information is defined as any document, in its entirety, currently in the Electronic Hearing Docket (“EHD”) and/or hearing file and any document, in its entirety, subsequently entered into the EHD and/or hearing file that has not been screened and approved by the NRC Staff as not containing sensitive information. Protected sensitive information includes DOE Official Use Only (OUO) information regarding NFS that the NRC has committed to DOE to protect from public release. This includes all noncommercial information concerning NFS and any document containing commercial information relating to NFS that NFS has identified as containing OUO information and for which NFS has provided a copy with the OUO information redacted. A document that has been screened and approved by the NRC Staff as suitable for public release is not protected sensitive information under this Order, even if the Agencywide Document Access and Management System (“ADAMS”) or the EHD for NFS have not been restored in full. The Presiding Officer previously issued a Protective Order on May 18, 2004, which covers proprietary information (“protected information”) in connection with this proceeding. Therefore, even if a document has been screened for protected sensitive information and approved for public release by the NRC Staff, if it contains protected information as defined by the May 18, 2004 Order, it will remain such until that Order is lifted. The definition of protected sensitive information in this Order does not include classified or safeguards information which would be the subject of separate provisions with respect to handling, use and disclosure; it includes information that is unclassified, but potentially sensitive.

Tennessee, facilities.

Specifically, counsel, consultants, and others representing NFS and State of Franklin Group of the Sierra Club et al. ("Sierra Club") shall be permitted access to protected sensitive information upon the following conditions:

1. Any person permitted access to protected sensitive information on behalf of NFS or Sierra Club shall execute the attached Confidentiality and Non-Disclosure Agreement.

2. Only individual counsel, consultants, and others representing a party² who have executed the attached Confidentiality and Non-Disclosure Agreement may have access to protected sensitive information. Protected sensitive information shall not be used except as necessary for the conduct of this proceeding, nor shall it be disclosed in any manner to any person except to the minimum number of counsel, consultants, or other party representatives who are engaged in the conduct of this proceeding and who need to know the information in order to carry out their responsibilities in this proceeding. Individuals with access to protected sensitive information pursuant to this Order may make copies of and take notes on the protected sensitive information, but such copies and notes become protected sensitive information. Such notes and copies will not be included in ADAMS or the EHD for this proceeding unless submitted for inclusion by the designated representative of that party.

3. Counsel, consultants, and others representing a party who receive any protected sensitive information shall maintain its confidentiality as required in the attached Confidentiality and Non-Disclosure Agreement, the terms of which are hereby incorporated in this Protective Order.

4. All pleadings and correspondence in this proceeding that contain protected sensitive information shall:

²The term "party" shall mean NFS and Sierra Club. For the purposes of this protective order, the term "party" does not include the NRC staff. The provisions of this Protective Order, unless expressly stated, do not apply to NRC employees, contractors, or consultants.

a. be served by electronic mail, with an additional paper copy served in a single, opaque envelope by United States first class, registered, express, or certified mail, internal NRC mail, or messenger-courier or overnight delivery service (e.g. , Federal Express);

b. include an attached cover sheet identifying the pleading or correspondence as protected sensitive information and a cover letter that summarizes the contents of the pleading or correspondence without reference to any protected sensitive information; and

c. be served only on the Presiding Officer and Special Assistant, NRC's Office of the Secretary, and persons authorized to receive protected sensitive information under this Protective Order.

5. Counsel shall take all reasonable precautions necessary to assure that protected sensitive information is not distributed to unauthorized persons. Counsel are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

6. The terms of this Protective Order apply to protected sensitive information notwithstanding any prior releases in which this information was treated as public. A public release of protected sensitive information before this Order became effective shall not serve as grounds for subsequent distribution of protected sensitive information to unauthorized persons.

7. Protected sensitive information shall remain available to all parties until the later of the date that an order terminating this proceeding is no longer subject to judicial review, or the date that any other Commission proceeding relating to the protected sensitive information is concluded and no longer subject to judicial review. The parties shall, within fifteen (15) days of the later date described above, return the protected sensitive information (excluding notes of protected sensitive information) to the party that produced them, or shall destroy the information, except that copies of filings, official transcripts, and exhibits in this proceeding that contain protected sensitive information, and notes of protected sensitive information may be retained, if they are maintained

in a secure place.³ Within such time period, each party shall also submit to the producing party an affidavit stating that, to the best of its knowledge, all protected sensitive information and all notes of protected sensitive information have been returned or have been destroyed or will be maintained in accordance with the above. To the extent protected sensitive information is not returned or destroyed, it shall remain subject to the provisions of this Protective Order.

8. Counsel, consultants, or any other individual representing a party who has reason to suspect that protected sensitive information may have been lost or misplaced or that protected sensitive information has otherwise become available to unauthorized persons during the pendency of this proceeding shall notify this Presiding Officer promptly of those suspicions and the reasons for them.

9. Any violation of the terms of this Protective Order or a Confidentiality and Non-Disclosure Agreement executed in furtherance of this Protective Order may result in the imposition of sanctions as the Presiding Officer or the Commission may deem appropriate, including but not limited to referral of the violation to appropriate bar associations and/or other disciplinary authorities.

10. The Presiding Officer may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

It is so ORDERED.

BY THE PRESIDING OFFICER

³Counsel are responsible for determining what measures are necessary to assure that protected sensitive information is kept in a secure place such that no distribution of protected sensitive information to unauthorized individuals will occur.

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Under penalty of perjury, I hereby certify my understanding that access to protected sensitive information is provided to me pursuant to the terms and restrictions of the Presiding Officer's Protective Order, dated December __, 2004, in this proceeding, that I have been given a copy of and have read this Protective Order, and that I agree to be bound by it. I understand that the contents of the protected sensitive information, any notes or other memoranda, or any form of information that copies or discloses protected sensitive information shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this Declaration or the Protective Order, which incorporates the terms of this Declaration, constitutes a violation of an order of the Nuclear Regulatory Commission and may result in the imposition of sanctions as the Presiding Officer or Commission may deem to be appropriate, including, but not limited to, referral of the violation to appropriate bar associations and other disciplinary authorities.

WHEREFORE, I do solemnly agree to protect such protected sensitive information as may be disclosed to me in this NRC proceeding, in accordance with the terms of this declaration.

Name (printed): _____

Title: _____

Representing: _____

Signature: _____

Date: _____

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

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(Erwin, Tennessee))		03-810-02-MLA,
)		04-820-05-MLA

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

Name: Marian L. Zabler

Address: U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15 D21
Washington, D.C. 20555-0001

Telephone Number: (301) 415-1570

Facsimile: (301) 415-3725

E-mail Address: mlz@nrc.gov

Admissions: New York State Supreme Court,
Appellate Division, Second Dept.
District of Columbia Court of Appeals

Name of Party: NRC Staff

Respectfully submitted,

/RA/

Marian L. Zabler
Counsel for NRC Staff

Dated at Rockville, Maryland
this 20th day of December, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

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)		04-820-05-MLA

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF MOTION FOR PROTECTIVE ORDER GOVERNING DISCLOSURE OF SENSITIVE INFORMATION" and "NOTICE OF APPEARANCE" for Marian L. Zobler 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 20th day of December, 2004.

Administrative Judge
Alan S. Rosenthal, Presiding Officer * **
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: rsnthl@comcast.net; sam4@nrc.gov

Administrative Judge
Richard F. Cole, Special Assistant * **
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: rfc1@nrc.gov

Office of the Secretary * **
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Office of Commission Appellate Adjudication *
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/RA/

Shelly D. Cole
Counsel for NRC Staff