

January 12, 2005

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
SAFETY LIGHT CORPORATION	)	Docket Nos. 30-5980-EA
Bloomsburg, Pennsylvania Site	)	30-5982-EA
	)	
(Materials License Suspension)	)	ASLBP No. 05-835-01-EA

NRC STAFF RESPONSE TO MOTION  
FOR LEAVE TO REPLY AND OTHER RELIEF

INTRODUCTION

By motion dated January 10, 2005, Safety Light Corporation (SLC) requested leave to reply to the January 4, 2005, NRC Staff response<sup>1</sup> to SLC's motion to set aside the immediate effectiveness of the "Order Suspending License (Effective Immediately)," issued December 10, 2004. Motion for Leave to Reply and Other Relief (Motion). Specifically, SLC asked the Board to direct the Staff to make "available promptly" to SLC certain records and grant SLC further opportunity to supplement its reply based on SLC's review of such records. Motion at 1.<sup>2</sup>

For the reasons discussed below, the Staff opposes SLC's motion.

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<sup>1</sup> NRC Staff Response to Safety Light Corporation Motion to Set Aside the Immediate Effectiveness of Order Suspending License, dated January 4, 2005 (Staff Response). SLC filed its motion to set aside the immediate effectiveness of the Suspension Order as well as an answer and hearing request on the Suspension Order. Safety Light Corporation Motion to Set Aside Immediate Effectiveness of Order Suspending License, dated December 29, 2004; Safety Light Corporation Answer to and Request for Hearing on Order Suspending License (Effective Immediately), dated December 29, 2004.

<sup>2</sup> Appended to the Motion is the "Safety Light Corporation Proposed Reply," dated January 10, 2005. Although the Motion was filed on January 10, 2005, the Staff did not receive a complete copy of the Motion until the following afternoon.

## DISCUSSION

The Staff opposes the motion for leave to reply because the Motion is defective in that the Motion does not include the certification required by 10 C.F.R. § 2.323(b). That regulation provides that “[a] motion must be rejected if it does not include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact the other parties in the proceeding and resolve the issues raised in the motion, and that the movant’s efforts have been unsuccessful.”<sup>3</sup> Counsel for SLC did not contact counsel for the NRC staff and try to resolve this matter without the need for a motion.

The Staff further opposes the Motion because the relief sought is not specifically provided for in 10 C.F.R. § 2.202. Absent from that regulation is any provision permitting a reply to a Staff response to a motion to set aside immediate effectiveness. That regulation only provides for a motion, based on a showing of good cause, to delay the hearing on the immediately effective order for such period that is consistent with due process. See 10 C.F.R. § 2.202(c)(2)(ii). SLC does not seek any delay. To the contrary, SLC requests that “oral argument scheduled for January 13, 2005 be conducted on the present schedule.” Motion at 1.<sup>4</sup>

The grounds for the Motion are largely based on SLC’s lack of access to a complete copy of the Office of Investigations (OI) Report (No. 1-2003-056) before SLC filed its motion to set aside immediate effectiveness. See, e.g., Motion at 1-2. An examination of the report reveals, however, that very little information was redacted from the report or the accompanying exhibits. See Motion at 5. The redactions made were to protect the privacy of four individuals (three of them SLC officials/managers) and predecisional information. As for SLC’s complaint that the Staff did not

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<sup>3</sup> A licensing board recently noted the importance of this provision in avoiding burdening the board and parties with disputes that are amenable to negotiation. *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), Docket No. 50-271-OLA, “Order Denying Intervenor Motion for Procedural Protections Due to Unavailability of ADAMS,” dated December 21, 2004 (unpublished), at 4.

<sup>4</sup> Although the Staff opposes the Motion on procedural grounds, the Staff does not concede the merits of matters raised in the January 10 filings.

provide financial documents referenced on page seven of the OI Report, see Motion at 5, failure to provide the SLC 2003 Accounts Payable information (*e.g.*, the accounting general ledger for accounts payable and vendor check registers) obtained from SLC should not give rise to a right of reply since SLC should possess this information and could have used such information in filing its motion to set aside immediate effectiveness of the December 10, 2004 Suspension Order.

After further review, and prior to receipt of the Motion, the Staff determined that additional OI Report information may be disclosed and that some information previously disclosed, should be redacted. The Staff was in the process of conforming the report when it received SLC's Motion.

As a matter of discretion and to provide information that was unnecessarily redacted, the Staff is disclosing the information previously redacted on page 12 of the OI Report. Additional personal information on page 4 of Exhibit 8 of the OI Report has also been redacted to protect privacy. Copies of replacement pages for insertion in the Staff Response have been provided to the Board and parties by letter this same date.<sup>5</sup>

In the Staff's view, the additional information disclosed is not significant enough to warrant a written reply by SLC.

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<sup>5</sup> Due to the temporary unavailability of ADAMS because of ongoing reviews for sensitive information, the OI Report has not been made available to the general public. The NRC is continuing to process the SLC Freedom of Information Act request referenced in Attachment 1 of the Motion.

CONCLUSION

For the foregoing reasons, the Motion should be rejected because it does not comply with the 10 C.F.R. § 2.323(b) certification requirement and the relief sought is not specifically allowed by 10 C.F.R. § 2.202.

Respectfully submitted,

**/RA/**

Mitzi A. Young  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 12th day of January, 2005

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO MOTION FOR LEAVE TO REPLY AND OTHER RELIEF" in the above-captioned proceeding have been served on the following by deposit in the United States mail or by deposit in the Nuclear Regulatory Commission's internal system, and by electronic email as indicated by an asterisk (\*) on this 12th day of January, 2005.

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