

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 10/05/07

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

Nuclear Fuel Services, Inc.

Special Nuclear Facility
(Confirmatory Order)

Docket No. 70-143-CO

ASLBP No. 07-857-01-CO-BD01

October 5, 2007

ORDER

(Determining that O'Neal Request for Hearing Was Timely Filed)

On August 27, 2007, Ms. Barbara O'Neal submitted a Request for Hearing in the above captioned matter.¹ Thereafter, on September 19, 2007, the NRC Staff and Nuclear Fuel Services, Inc. (NFS or Licensee), submitted Answers to O'Neal's petition in which they, inter alia, alleged that the O'Neal Hearing Request was not timely filed and, accordingly, that it should be dismissed.²

On September 28, 2007, Ms. O'Neal submitted an explanation of why she did not submit her Request for Hearing within 20 days of the publication of the Notice of Hearing in the Federal Register on July 30, 2007³ as is required pursuant to 10 C.F.R. § 2.309(b). Ms. O'Neal explained that she was told by the reference librarian at the NRC Public Document room that she had 20 business days, as opposed to 20 calendar days within which to file her petition.⁴ In

¹ O'Neal Request for Hearing (August 27, 2007).

² NRC Staff Response to Hearing Request of Barbara A. O'Neal (Sept. 19, 2007) [NRC Answer] at 5-6. Licensee's Answer to Hearing Request of Barbara A. O'Neal (Sept. 19, 2007) [NFS Answer] at 2-3.

³ Nuclear Fuel Services, Inc., Notice of Publication of Confirmatory Order and Opportunity for Hearing, 72 Fed. Reg. 41,528 (July 30, 2007).

⁴ O'Neal Reply (Sept. 28, 2007) at 1.

support of her claim, Ms. O'Neal submitted a copy of an e-mail that was sent by the NRC Reference Librarian.⁵

While the advice given to Ms. O'Neal was erroneous and, as a result, she did not comply with Section 2.309(b), we find that her explanation for the late filing is adequate, good cause for the late filing has been established and, pursuant to 10 C.F.R. 2.309(c), the O'Neal Hearing Request is accepted and will be considered on its merits by the Board.

If Ms. O'Neal has any additional responses to the NRC Answer or the NFS Answer, she may file them on or before October 15, 2007.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁶

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

October 5, 2007

⁵ Id. at 2.

⁶ Copies of this Order were sent this date by Internet electronic mail transmission to: (1) counsel for NFS and (2) counsel for the NRC Staff. Copies of this Order were also sent to (1) Barbara A. O'Neal, (2) Dr. Ken Silver, (3) A. Christine Tipton, (4) R. Feher, (5) Wanda Sue Kelley, and (6) the Sierra Club via Federal Express, Overnight Delivery.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket No. 70-143-CO
NUCLEAR FUEL SERVICES, INC.)	
)	
)	
Special Nuclear Materials Facility)	
(Confirmatory Order))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (DETERMINING THAT O'NEAL REQUEST FOR HEARING WAS TIMELY FILED) was served by Federal Express, Overnight Delivery to Barbara O 'Neal, Dr. Ken Silver, A. Christine Tipton, R. Feher, Wanda Sue Kelley, and the Sierra Club on 10/05/07. All other parties were served by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Lawrence G. McDade, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Peter S. Lam
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Bradley W. Jones, Esq.
Michael J. Clark, Esq.
Jody C. Martin, Esq.
Tison A. Campbell, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Daryl M. Shapiro, Esq.
John H. O'Neill, Esq.
Blake J. Nelson, Esq.
Stefanie M. Nelson, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037

Docket No. 70-143
LB ORDER (DETERMINING THAT O'NEAL
REQUEST FOR HEARING WAS TIMELY FILED)

Kenneth Silver, Assistant Professor
East Tennessee State University
Department of Environmental Health
P.O. Box 70682
Johnson City, TN 37614

R. Feher
489 Arnold Road
Jonesborough, TN 37659

Linda C. Modica, Chair
Sierra Club Radiation Committee
266 Mayberry Road
Jonesborough, TN 37659

John and Wanda Sue Kelley
123 Rolling Hills Rd.
Erwin, TN 37650

Barbara A. O'Neal
173 Roy Duncan Lane
Erwin, TN 37650

A. Christine Tipton
312 New Ave.
Erwin, TN 37650

Ann M. Ward, Esq.
General Counsel
Nuclear Fuel Services, Inc.
1205 Banner Hill Rd.
Erwin, TN 37650

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 9th day of October 2007