

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

(Granting In Part, Silver Request for Extension of Time)

On September 25, 2007, Dr. Ken Silver submitted a Request for Extension of Time to Reply to NRC Staff Response to the Silver Hearing Request.¹ As will be explained below, Dr. Silver's request for an additional thirty business days to file his Reply is excessive. Therefore, Dr. Silver's request is granted only in part. Dr. Silver is given an extension of seven calendar days from the date of service of this Order within which to file a reply to the NRC Staff's Answer.

Dr. Silver filed a timely Request for Hearing in the above captioned matter on August 17, 2007, and served his request on the NRC Staff the same day.² The NRC Staff filed its Answer to Dr. Silver's request for hearing on September 11, 2007, and served Dr. Silver via first class US mail the same day.³ On September 12, 2007, the NRC Staff filed an amended Answer,

¹ Petitioner, Ken Silver, Request for Extension of Deadline for Reply to NRC Staff Response to Hearing Request (Sept. 25, 2007) at 1 [hereinafter Silver Request for Extension of Time].

² Hearing Request of Ken Silver (Aug. 17, 2007) at 3.

³ NRC Staff's Response to Hearing Request of Ken Silver, Certificate of Service (Sept. 11, 2007) at 1-2.

which was also sent, same day, to Dr. Silver via first class mail.⁴ Because service was made via first class mail, NRC Regulations provide that Dr. Silver had a total of twelve days (until September 24, 2007) from the date of service of the Answer to file his reply.⁵

The scope of a Reply is limited, narrowly focused on the arguments presented in the Answer.⁶ In the majority of cases, the presumptive time allotted in the NRC Regulations should be enough time to respond to an Answer. In his Motion, Dr. Silver explains that thirty business days would be a reasonable period of time to (1) “seek advice of counsel”; (2) “conduct further research on laws applicable to ASLB hearings”; and (3) “secure additional documents pertinent to this proceeding.”⁷ Petitioner has not, however, demonstrated that this case should be an exception to the general rule. Dr. Silver’s Request for Hearing consisted of only two pages of text.⁸ The NRC Staff’s Answer consisted of only seven pages of text.⁹ Thirty business days to

⁴ Corrections to NRC Staff’s Response to Hearing Request of Ken Silver, Certificate of Service (Sept. 12, 2007) at 1-2.

⁵ See 10 C.F.R. § 2.309(h)(2) (“The requestor/petitioner may file a reply to any answer within seven (7) days after service of that answer.”); 10 C.F.R. § 2.306 (“Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served upon by first class mail, five (5) days are added to the prescribed period.”). Counting the days from either the original Answer served on September 11, 2007 or the amended Answer served on September 12, 2007 achieves the same result of a September 24, 2007 reply deadline under NRC Regulations. See 10 C.F.R. § 2.306 (“The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday.”).

⁶ 69 Fed. Reg. 2182, 2203 (Jan. 14, 2004) (“Any reply should be narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC staff answer; a seven-day period to prepare such a focused reply is not unreasonable. If there are special circumstances, the requestor/petitioner may request a short extension from the presiding officer.”).

⁷ Silver Request for Extension of Time at 1.

⁸ See Hearing Request of Ken Silver at 1-2.

⁹ See NRC Staff’s Response to Hearing Request of Ken Silver at 1-7.

respond to a seven page Answer, considering the limited scope of the Reply, is beyond a request for a "short extension from the presiding officer."¹⁰

Although the total of twelve days provided in the NRC Regulations should have been enough time to respond to the NRC Staff's Answer, in the interest of allowing Dr. Silver an opportunity to file a Reply,¹¹ the Board grants Dr. Silver an additional seven calendar days from the date of service of this Order to file a Reply to the NRC Staff's Answer (until October 15, 2007).¹²

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹³

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

October 5, 2007

¹⁰ See 69 Fed. Reg. at 2203.

¹¹ On October 4, 2007, the NRC Staff filed a Motion in Opposition to Dr. Silver's Request for an Extension of Time, arguing, *inter alia*, that Dr. Silver's Motion should be denied because he filed his Request for an Extension of Time one day after the time that he would have been required to file his Reply (September 25, 2007, instead of September 24, 2007). NRC Staff's Opposition to Ken Silver's Request for Extension of Time in Which to File a Reply (Oct. 4, 2007) at 3-4; Certificate of Service (Oct. 4, 2007) at 1-2. Notwithstanding the delay in filing his Motion, the Board grants in part Dr. Silver's Request for an extension of time.

¹² Because this Order has been served on Dr. Silver via Federal Express, Overnight Delivery, two additional days are added to the time permitted for a Reply. See 10 C.F.R. § 2.306.

¹³ 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) Dr. Ken Silver (2) Barbara A. O'Neal, (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)
)
NUCLEAR FUEL SERVICES, INC.)
)
)
Special Nuclear Materials Facility)
(Confirmatory Order))

Docket No. 70-143-CO

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (GRANTING IN PART, SILVER REQUEST FOR EXTENSION OF TIME) was served by Federal Express, Overnight Delivery to Dr. Ken Silver, Barbara O 'Neal, 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.

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Docket No. 70-143
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

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