

RAS 14934

January 14, 2008 [4:09pm]

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RULEMAKINGS AND  
ADJUDICATIONS STAFF

January 14, 2008

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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

**LICENSEE'S ANSWER TO REQUEST FOR A HEARING  
OF THE SIERRA CLUB NATIONAL RADIATION COMMITTEE**

**I. INTRODUCTION**

Pursuant to 10 C.F.R. § 2.309(h), Nuclear Fuel Services, Inc. ("Licensee" or "NFS") hereby answers and opposes the request for a hearing of the Sierra Club National Radiation Committee ("Sierra Club") dated December 17, 2007 ("Sierra Club Hearing Request") regarding the Notice of License Amendment Request published by the United States Nuclear Regulatory Commission ("Commission" or "NRC") in the above-captioned docket. The Sierra Club Hearing Request should be denied because the Sierra Club has not demonstrated standing, seeks to litigate matters outside the scope of this proceeding, and has failed to identify any admissible contention.

**II. PROCEDURAL BACKGROUND**

On May 15, 2007, NFS submitted its application requesting a license amendment to increase the uranium-235 possession limit at its facility site located in Erwin, Tennessee. License No. SNM-124 (the "Application"). On October 18, 2007, the Commission published a Notice of License Amendment Request of Nuclear Fuel Services, Inc., Erwin, TN, and Opportunity to Request a Hearing ("Notice") regarding

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this Application. 72 Fed. Reg. 59,117 (Oct. 18, 2007). The Notice permits any person whose interest may be affected to file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing. Id. at 59,117.

The Notice directs that any petition must set forth with particularity the interest of the petitioner and how that interest may be affected, as well as the specific contentions sought to be litigated. Id. The Notice states:

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;
2. Provide a brief explanation of the basis for the contention;
3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;
4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;
5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and
6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

Id.

### III. THE SIERRA CLUB LACKS STANDING

The Sierra Club does not provide any argument or evidence to establish that it has standing to request a hearing in this proceeding. In passing, the Sierra Club asserts that its proffered first contention is made “on behalf of its members in the Erwin area as well as other concerned citizens . . . .” Sierra Club Hearing Request at 1. This assertion, however, fails to meet the Commission’s standards for establishing standing to intervene in a proceeding.

To determine whether a petitioner’s interest provides a sufficient basis for intervention, “the Commission has long looked for guidance to current judicial concepts of standing.” Quivira Mining Co. (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 N.R.C. 1, 5-6 (1998) (citation omitted). Judicial concepts of standing require a petitioner to establish that:

- (1) it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute; (2) that the injury can be fairly traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision.

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 N.R.C. 1, 6 (1996) (citation omitted).

The required injury may be either actual or threatened. See Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-98-21, 48 N.R.C. 185, 195 (1998) (citing Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 102-04 (1998); Kelley v. Selin, 42 F.3d 1501, 1508 (6th Cir. 1995)). However, the injury must lie within the “zone of interests” protected by the statutes governing the proceeding. CLI-98-21, 48 N.R.C. at 195-96 (citing Ambrosia Lake Facility, CLI-98-11, 48 N.R.C. at 6).

The Sierra Club has failed to demonstrate that it has standing to request a hearing in this proceeding. An organization seeking to obtain standing in a representative capacity must demonstrate standing as to “at least one of its members, who has authorized the organization to represent his or her interest.” Sequoyah Fuels Corp. & General Atomics (Gore, Oklahoma Site), CLI-94-12, 40 N.R.C. 64, 72 (1994); PPL Susquehanna LLC (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-04, 65 N.R.C. 281, 294-96 (2007); see also Private Fuel Storage, L.L.C., CLI-99-10, 49 N.R.C. 318, 323 (1999). The Sierra Club Hearing Request does not provide the identity of any member authorizing the Sierra Club to represent his or her interests, nor does it describe how any member would have standing that would allow the Sierra Club to represent him or her.

The Sierra Club’s generic referral to “members in the Erwin area” not only fails to identify such members or their proximity to the facility, but also fails to provide any basis for asserting an “injury in fact” to such members, which is required for standing in a representative capacity. See e.g., Northern States Power Co. (Monticello Nuclear Generating Plant), CLI-00-14, 52 N.R.C. 37, 47 (2000); Curators of the University of Missouri, LBP-90-18, 31 N.R.C. 559, 565 (1990). Unlike nuclear power reactor licensing proceedings, in materials licensing proceedings there is no presumption that a petitioner has standing merely because he or she lives in or frequents a location at a particular distance from a facility. See, e.g., Atlas Corp. (Moab, Utah Facility) LBP-97-9, 45 N.R.C. 414, 426 (1997); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-91-7, 33 N.R.C. 179, 193 (1991). To show injury-in-fact, petitioners “must provide some

evidence of a causal link between the distance they reside from the facility and injury to their legitimate interests.” Babcock & Wilcox (Appollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 N.R.C. 72, 83-84, 87 (1993) (rejecting per se standing for petitioners living as close as one-eighth of a mile from and visiting an apartment “within one foot” of the facility). The petitioner must demonstrate that the subject licensing action “is deficient in a manner so as to cause the injuries described.” Northern States Power Co. (Pathfinder Atomic Plant), LBP-90-3, 31 N.R.C. 40, 44 (1990). However, Sierra Club does not even allege that any of its members will suffer any injury in fact, nor that any claimed injury is redressable, by this proceeding. Moreover, as addressed in Section IV, none of the Sierra Club’s contentions are within the scope of the proceeding and therefore are not redressable in this license amendment proceeding.

Second, Sierra Club has failed to meet the standard for organizational standing. In order for an organization to demonstrate organizational standing, it must show a discrete injury to the organization itself. See International Uranium (USA) Corp. (White Mesa Uranium Mill), CLI-01-21, 54 N.R.C. 247, 252 (2001). General environmental and policy interests, or informational interests are insufficient to confer organizational standing. Id.; Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 N.R.C. 47, 57-61 (1992) (rejection of “informational interests” as grounds for standing in reactor licensing case). The Sierra Club has failed to allege any particularized injury to the Sierra Club, much less one that is fairly traceable to the Application or one that could be redressed in a hearing on the Application. Accordingly, the Sierra Club Request must be denied because the Sierra Club has failed to demonstrate that it has standing.

#### IV. THE SIERRA CLUB HAS NOT PROFFERED AN ADMISSIBLE CONTENTION

##### A. Standards for the Admissibility of Contentions

###### 1. Contentions Must Be Within the Scope of the Proceeding and May Not Challenge NRC Rules

As a fundamental requirement, a contention is only admissible if it addresses matters within the scope of the proceeding and does not seek to attack NRC regulations governing the proceeding. It is well established that, in a license amendment proceeding, the licensing board has only limited jurisdiction. Only issues within the scope of matters outlined in the Commission's notice of hearing on the licensing action are admissible.

Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), ALAB-739, 18 N.R.C. 335, 339 (1983), citing, Portland General Electric Co. (Trojan Nuclear Plant), ALAB-534, 9 N.R.C. 287, 289 n.6 (1979) and Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 N.R.C. 167, 170-71 (1976).

10 C.F.R. § 2.309(f)(1)(iii)-(iv) requires that a petitioner demonstrate that the issue raised by each of its contentions is within the scope of the proceeding and material to the findings that the NRC must make. Licensing boards "are delegates of the Commission" and, as such, they may "exercise only those powers which the Commission has given [them]." Marble Hill, ALAB-316, 3 N.R.C. at 170 (footnote omitted); accord Trojan, ALAB-534, 9 N.R.C. at 289-90 n.6. Accordingly, it is well established that a contention is not cognizable unless it is material to a matter that falls within the scope of the proceeding for which the licensing board has been delegated jurisdiction. See also Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-616, 12 N.R.C. 419, 426-27 (1980); Commonwealth Edison Co. (Carroll County Site), ALAB-601, 12 N.R.C. 18, 24 (1980).

It is also well established that a petitioner is not entitled to an adjudicatory hearing to attack generic NRC requirements or regulations. Duke Energy Corp. (Oconee

Nuclear Station, Units 1, 2 and 3), CLI-99-11, 49 N.R.C. 328, 334 (1999). “[A] licensing proceeding . . . is plainly not the proper forum for an attack on applicable statutory requirements or for challenges to the basic structure of the Commission’s regulatory process.” Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 A.E.C. 13, 20, aff’d in part on other grounds, CLI-74-32, 8 A.E.C. 217 (1974) (footnote omitted). Thus, a contention which collaterally attacks a Commission rule or regulation is not appropriate for litigation and must be rejected. 10 C.F.R. § 2.335; Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 A.E.C. 79, 89 (1974). A contention which “advocate[s] stricter requirements than those imposed by the regulations” is “an impermissible collateral attack on the Commission’s rules” and must be rejected. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 N.R.C. 1649, 1656 (1982); see also Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-91-19, 33 N.R.C. 397, 410, aff’d in part and rev’d in part on other grounds, CLI-91-12, 34 N.R.C. 149 (1991). Likewise, a contention that seeks to litigate a generic determination established by Commission rulemaking is “barred as a matter of law.” Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 N.R.C. 5, 30 (1993).

## **2. Contentions Must Be Specific and Supported By a Basis Demonstrating a Genuine, Material Dispute**

In addition to the requirement to address issues within the scope of the proceeding, a contention is admissible only if it provides:

- a “specific statement of the issue of law or fact to be raised or controverted;”
- a “brief explanation of the basis for the contention;”

- a “concise statement of the alleged facts or expert opinions” supporting the contention together with references to “specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;” and
- “[s]ufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact,” which showing must include “references to specific portions of the application (including the applicant’s environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner’s belief.”

10 C.F.R. § 2.309(f)(1)(i), (ii), (v) and (vi). The failure of a contention to comply with any one of these requirements is grounds for dismissing the contention. Palo Verde, CLI-91-12, 34 N.R.C. at 155-56.

These pleading standards governing the admissibility of contentions are the result of a 1989 amendment to 10 C.F.R. § 2.714, now § 2.309, which was intended “to raise the threshold for the admission of contentions.” 54 Fed. Reg. 33,168 (Aug. 11, 1989); see also Oconee, CLI-99-11, 49 N.R.C. at 334; Palo Verde, CLI-91-12, 34 N.R.C. at 155-56. The Commission has stated that the “contention rule is strict by design,” having been “toughened . . . in 1989 because in prior years ‘licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation.’” Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 358 (2001) (citation omitted). The pleading standards are to be enforced rigorously. “If any one . . . is not met, a contention must be rejected.” Palo Verde, CLI-91-12, 34 N.R.C. at 155 (citation omitted). A licensing board is not to overlook a deficiency in a contention or assume the existence of missing information. Id.

The Commission has explained that this “strict contention rule” serves multiple purposes, which include putting other parties on notice of the specific grievances and

assuring that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions. Oconee, CLI-99-11, 49 N.R.C. at 334. By raising the threshold for admission of contentions, the NRC intended to obviate lengthy hearing delays caused in the past by poorly defined or supported contentions. Id. As the Commission reiterated in incorporating these same standards into the new Part 2 rules, “[t]he threshold standard is necessary to ensure that hearings cover only genuine and pertinent issues of concern and that issues are framed and supported concisely enough at the outset to ensure that the proceedings are effective and focused on real, concrete issues.” 69 Fed. Reg. 2,182, 2,189-90 (Jan. 14, 2004).

Under these standards, a petitioner is obligated “to provide the [technical] analyses and expert opinion” or other information “showing why its bases support its contention.” Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 N.R.C. 281, 305, vacated in part and remanded on other grounds, CLI-95-10, 42 N.R.C. 1, aff’d in part, CLI-95-12, 42 N.R.C. 111 (1995). Where a petitioner has failed to do so, “the [Licensing] Board may not make factual inferences on [the] petitioner’s behalf.” Id., citing Palo Verde, CLI-91-12, 34 N.R.C. 149. See also Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 N.R.C. 142, 180 (1998) (a “bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient;” rather “a petitioner must provide documents or other factual information or expert opinion” to support a contention’s “proffered bases”) (citations omitted).

Further, admissible contentions “must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application].” Millstone, CLI-01-24, 54 N.R.C. at 359-60. In particular, this explanation must demonstrate that the contention is “material” to the NRC findings and that a genuine dispute on a material issue of law or fact exists. 10 C.F.R. § 2.309(f)(1)(iv), (vi). The Commission has defined a “material”

issue as meaning one where “resolution of the dispute would make a difference in the outcome of the licensing proceeding.” 54 Fed. Reg. at 33,172 (emphasis added).

As the Commission observed, this threshold requirement is consistent with judicial decisions, such as Conn. Bankers Ass’n v. Bd. of Governors, 627 F.2d 245, 251 (D.C. Cir. 1980), which held that:

[A] protestant does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that . . . a dispute exists. The protestant must make a minimal showing that material facts are in dispute, thereby demonstrating that an “inquiry in depth” is appropriate.

Id. (footnote omitted); see also Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 N.R.C. 39, 41 (1998) (“It is the responsibility of the Petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions . . .”). A contention, therefore, is not to be admitted “where an intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which might produce relevant supporting facts.” 54 Fed. Reg. at 33,171.<sup>1</sup> As the Commission has emphasized, the contention rule bars contentions where petitioners have what amounts only to generalized suspicions, hoping to substantiate them later, or simply a desire for more time and more information in order to identify a genuine material dispute for litigation. Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2), CLI-03-17, 58 N.R.C. 419, 424 (2003).

Therefore, under the Rules of Practice, a statement “that simply alleges that some matter ought to be considered” does not provide a sufficient basis for a contention.

<sup>1</sup> See also Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 N.R.C. 460, 468 (1982), vacated in part on other grounds, CLI-83-19, 17 N.R.C. 1041 (1983) (“[A]n intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable [the petitioner] to uncover any information that could serve as the foundation for a specific contention. Stated otherwise, neither Section 189a. of the Act nor Section 2.714 [now 2.309] of the Rules of Practice permits the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or staff.”).

Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 N.R.C. 200, 246 (1993), review declined, CLI-94-2, 39 N.R.C. 91 (1994).

Similarly, a mere reference to documents does not provide an adequate basis for a contention. Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 N.R.C. 325, 348 (1998).

**B. Sierra Club's Contentions Are Beyond the Scope of this Proceeding, Are Collateral Attacks on the Commission's Rules, Lack Basis, and Are Otherwise Inadmissible**

None of the contentions tendered by the Sierra Club meet the admissibility requirements of 10 C.F.R. § 2.309.<sup>2</sup> The issues raised in the Sierra Club Request are wholly outside the scope of the proceeding. The Notice states that: "The NRC hereby provides notice that this is a proceeding on an application for a license amendment regarding a possession limit increase." 72 Fed. Reg. at 59,117. Nowhere in the six contentions proffered by the Sierra Club is the possession limit increase addressed,<sup>3</sup> nor do the contentions controvert any part of the Application. All six of the contentions raised by the Sierra Club involve impermissible challenges to the NRC Staff's oversight of NFS or collateral attacks on the Commission's regulations. The Sierra Club's contentions involve the following assertions about NRC oversight of NFS: (1) the NRC

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<sup>2</sup> Despite counsel for Sierra Club being listed on the Sierra Club's service list, Licensee acknowledges that it appears that the Sierra Club has filed its request for hearing *pro se* and therefore may be granted some lenience on the technical aspects of its pleading. However, the Sierra Club still must comply with the requirements in the opportunity for hearing and all other NRC regulations. See, e.g., Consolidated Edison Co. of N.Y. (Indian Point, Unit 2) & Power Authority of the State of N.Y. (Indian Point, Unit 3), LBP-83-5, 17 N.R.C. 134, 136 (1983) (holding that although *pro se* intervenors are not held to a high degree of technical compliance, they must satisfy the requirements for each contention).

<sup>3</sup> In Contention 5, the Sierra Club, in passing, refers to the "safety of the public living and working . . . along the route of the increased amount of HEU shipments." However, the Sierra Club does not relate this assertion to the increase in possession limit requested in the Application.

Staff granted the license amendment in alleged violation of various rights of “citizens” (Contentions 1 and 2); (2) the NRC Staff is not adequately regulating NFS to protect worker and public health and safety (Contentions 3, 4 and 5); and (3) the NRC may be being pressured by the Department of Energy (“DOE”) and the Tennessee Valley Authority (“TVA”) to grant license amendments (Contention 6). None of these proffered contentions relate to the Application or the Notice.

**1. Contentions 1 and 2 Are Inadmissible as Beyond the Scope of the Proceeding, Collateral Attacks on the Commission’s Regulations and Do Not Meet the Commission’s Specificity Requirements for Admissible Contentions**

The Sierra Club asserts in Contentions 1 and 2 that “citizens” have had rights violated by the NRC in granting the license amendment before there has been an opportunity for a hearing to be requested (or held if the request were granted). However, the Commission’s regulation at 10 C.F.R. § 2.1202, authorizes the NRC Staff to act on the Application despite the pendency of a hearing request:

During the pendency of any hearing under [Subpart L], consistent with the NRC staff’s findings in its own review of the application or matter which is the subject of the hearing and as authorized by law, the NRC staff is expected to issue its approval or denial of the application promptly, or take other appropriate action on the underlying regulatory matter for which a hearing was provided. . . . The NRC staff’s action on the matter is effective upon issuance by the staff. . . .

10 C.F.R. § 2.1202(a). None of the exceptions to the rule are applicable to this proceeding, nor does the Sierra Club allege that any of them are. As the Commission made clear in promulgating 10 C.F.R. § 2.1202, in Subpart L proceedings:

Similar to the situation in license transfer cases under Subpart M, the NRC staff would be expected to conduct its own reviews and take action on the application or matter that is the subject of the hearing, despite the pendency of the hearing.

69 Fed. Reg. at 2,228. The Commission has expressly authorized the NRC Staff to take action on the Application despite the pendency of any hearing or hearing request.

Contentions 1 and 2 are, therefore, impermissible collateral attacks on a Commission rule and must be rejected.<sup>4</sup> 10 C.F.R. § 2.335; Douglas Point, ALAB-218, 8 A.E.C. at 89.

**2. Contentions 3, 4, 5 and 6 Are Beyond the Scope of this Proceeding and Do Not Meet the Commission's Specificity Requirements for Admissible Contentions**

Contentions 3, 4 and 5 allege that the NRC has failed to adequately regulate NFS to protect "worker and public health and safety." These contentions are unrelated to the license amendment, and are beyond the scope of this proceeding. Likewise, the Sierra Club's unsupported allegation that the NRC may be being pressured by DOE or TVA (Contention 6) is also beyond the scope of this proceeding.

The Sierra Club's allegations that the NRC is not regulating NFS properly are not within the jurisdiction of the Board. A licensing board does not have the authority to direct the NRC Staff in the performance of its independent responsibilities. New England Power Co. (NEP, Units 1 & 2), LBP-78-9, 7 N.R.C. 271, 279-80 (1978); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 N.R.C. 1193, 1263 (1984), rev'd in part on other grounds, CLI-85-2, 21 N.R.C. 282 (1985).

If the Sierra Club is alleging that the NRC Staff's review of the Application is somehow not sufficient, such an allegation is not within the scope of the proceeding. It is a well established principle relative to safety-related matters that the adequacy of the application, not the adequacy of the Staff's review or evaluation, e.g., its Safety Evaluation Report ("SER"), is the focus for a proper contention. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-01-03, 53 N.R.C. 84, 97

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<sup>4</sup> In addition, neither contention meets the pleading requirements of 10 C.F.R. § 2.309(f).

(2001). The adequacy of the manner in which the NRC Staff conducts its review of a technical/safety matter is outside the scope of Commission proceedings. Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-03-11, 58 N.R.C. 47, 66 (2003). Moreover, licensing boards do not have authority over the NRC Staff's application review process. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 2 and 3), LBP-83-36, 18 N.R.C. 45, 48-49 (1983), citing, NEP, LBP-78-9, 7 N.R.C. 271.

In addition, the Sierra Club's proffered contentions lack the required specificity under the Commission's pleading requirements. For example, Sierra Club's assertions in its third proffered contention that NFS "has yet to meet the apparent conditions of its license which requires a Safety Culture at NFS's Erwin facility" is just a broad accusation, providing no specifics concerning the alleged failure to "meet the apparent conditions of its license." The statement does not dispute any material facts in the Application, does not provide an evidentiary basis for the allegation and does not provide a basis for a contention. See, e.g., Calvert Cliffs, CLI-98-14, 48 N.R.C. at 41.

The fourth proffered contention alleges that a reported accident at the "Erwin facility" requires a hearing because it constitutes a failure by NFS and the NRC to protect health and safety. Sierra Club Request at 2. This allegation also fails to provide the requisite specificity under 10 C.F.R. § 2.309(f)(1) because it sets forth no specific facts regarding how the Sierra Club alleges that the reported accident relates to the Application. The Sierra Club fails to explain what alleged safety or legal reason requires the rejection of the Application. See, e.g., Millstone, CLI-01-24, 54 N.R.C. at 359-60.

Similarly, the fifth proffered contention generally asserts that a hearing is required for the "public living . . . around NFS to express its concern regarding the inconsistent actions & statements of NRC staff . . ." Sierra Club Request at 2. The Sierra Club provides no specifics as to how allegedly inconsistent actions and statements (which are

not specified) relate to the Application. Nor does the Sierra Club demonstrate that the contention is “material” to the NRC findings on the license amendment, such that a genuine dispute on a material issue of law or fact exists as required by 10 C.F.R.

§ 2.309(f)(1)(iv), (vi). Moreover, the desire of the public “to express its concern” about the actions of the NRC Staff provides no basis for holding a hearing on the Application.

As to the unfounded claim in Contention 6 that DOE and the TVA “may be pressuring NRC,” the Sierra Club fails to provide a concise statement of the alleged facts that it believes support Contention 6. The Sierra Club likewise fails to explain how its allegations in Contention 6 would make a difference in the outcome of the licensing amendment proceeding. Accordingly, Contentions 3, 4, 5 and 6 are beyond the scope of this proceeding, fail to meet the pleading requirements of the Commission’s regulations and must be rejected.

V. CONCLUSION

For the foregoing reasons, the Presiding Officer should deny the Sierra Club's request for a hearing.

Respectfully submitted,

/s/ Daryl M. Shapiro

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Dated: January 14, 2008

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of	)	
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NUCLEAR FUEL SERVICES, INC.	)	Docket No. 70-143
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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the Licensee's Answer to Request for a Hearing of the Sierra Club National Radiation Committee were served on the persons listed below by U.S. mail, first class, postage prepaid, and by electronic mail as indicated by an asterisk (\*) on this 14th day of January, 2008.

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January 14, 2008

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

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In the Matter of )

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**NOTICE OF APPEARANCE**

The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia and various state and federal courts, hereby enters his appearance as counsel on behalf of licensee Nuclear Fuel Services, Inc., 1205 Banner Hill Road, Erwin, TN, 37650, in any proceeding related to the above-captioned matter.

/s/ Daryl M. Shapiro

Daryl M. Shapiro  
PILLSBURY WINTHROP SHAW PITTMAN, LLP  
2300 N Street, N.W.  
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e-mail: daryl.shapiro@pillsburylaw.com

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
NUCLEAR FUEL SERVICES, INC.	)	Docket No. 70-143
	)	
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the Notice of Appearance of Daryl M. Shapiro were served on the persons listed below by U.S. mail, first class, postage prepaid, and by electronic mail as indicated by an asterisk (\*) on this 14th day of January, 2008.

Administrative Judge  
Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Administrative Judge  
Atomic Safety and Licensing Board  
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Office of the Secretary\*  
Attn: Rulemaking and Adjudications Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16 C1  
Washington, DC 20555  
hearingdocket@nrc.gov

Adjudicatory File  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3 F23  
Washington, DC 20555-0001

Office of Commission Appellate  
Adjudication\*  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16 C1  
Washington, DC 20555  
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Linda C. Modica, Chair  
Sierra Club Radiation Committee  
266 Mayberry Road  
Jonesborough, TN 37659

Ann M. Ward, Esq.\*  
General Counsel  
Nuclear Fuel Services, Inc.  
1205 Banner Hill Road  
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amward@nuclearfuelservices.com

/s/ Blake J. Nelson  
Blake J. Nelson

January 14, 2008

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of )  
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NUCLEAR FUEL SERVICES, INC. ) Docket No. 70-143  
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**NOTICE OF APPEARANCE**

The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia and various state and federal courts, hereby enters his appearance as counsel on behalf of licensee Nuclear Fuel Services, Inc., 1205 Banner Hill Road, Erwin, TN, 37650, in any proceeding related to the above-captioned matter.

/s/ Blake J. Nelson

Blake J. Nelson  
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**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
NUCLEAR FUEL SERVICES, INC.	)	Docket No. 70-143
	)	
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the Notice of Appearance of Blake J. Nelson were served on the persons listed below by U.S. mail, first class, postage prepaid, and by electronic mail as indicated by an asterisk (\*) on this 14th day of January, 2008.

Administrative Judge  
Atomic Safety and Licensing Board  
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Linda C. Modica, Chair  
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Ann M. Ward, Esq.\*  
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Erwin, TN 37650  
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/s/ Blake J. Nelson  
Blake J. Nelson

January 14, 2008

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of )  
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NUCLEAR FUEL SERVICES, INC. ) Docket No. 70-143  
 )  
 )

**NOTICE OF APPEARANCE**

The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia and the State of Maryland, hereby enters her appearance as counsel on behalf of licensee Nuclear Fuel Services, Inc., 1205 Banner Hill Road, Erwin, TN, 37650, in any proceeding related to the above-captioned matter.

/s/ Stefanie M. Nelson  
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**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
NUCLEAR FUEL SERVICES, INC.	)	Docket No. 70-143
	)	
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the Notice of Appearance of Stefanie M. Nelson were served on the persons listed below by U.S. mail, first class, postage prepaid, and by electronic mail as indicated by an asterisk (\*) on this 14th day of January, 2008.

Administrative Judge  
Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

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Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
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Washington, D.C. 20555-0001

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Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
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Washington, D.C. 20555-0001

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Ann M. Ward, Esq.\*  
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/s/ Blake J. Nelson  
Blake J. Nelson