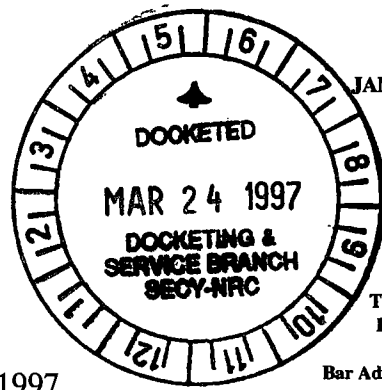


ORIGINAL



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March 24, 1997

Bar Admissions:  
DISTRICT OF COLUMBIA  
OKLAHOMA  
U.S. SUPREME COURT

John C. Hoyle, Secretary  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

In the Matter of  
97 MAR 24 P 2:19  
INNOVATIVE WEAPONRY, INCORPORATED  
Docket No. 030-30266 EA 96-170  
PUBLIC DOCUMENT ID:

Dear Mr. Hoyle:

This is in response to the letter of March 5, 1997, from Catherine L. Marco, NRC Office of General Counsel to you. The letter complains that my letter of February 10, 1997 to the Commission notifying it of my absence from the United States was improperly served upon Ms. Marco and requests "Mr. Tourtellotte be directed to complete service upon the staff." It is interesting to note that Ms. Marco's letter which complains of inappropriate certificate of service, proof of service and service itself contains no certificate of service or proof of service even though the letter requests specific relief in the proceeding.

NRC counsel challenges its own regulations about where service is made when it concludes in the final sentence of paragraph 2 of its March 5, 1997 letter:

Therefore, service to the staff is not complete when a letter is delivered to the PDR.

10 C.F.R. § 1.5(a) states in relevant part:

Facilities for the service of process and papers are maintained within the District of Columbia at 2120 L Street, N.W. . . .

That is the address of the PDR. If that is where facilities are, that is where service can be made. In this case, that is where service on the NRC staff was made by filing a signed original letter, certificate of service and proof of service along with copies of the same for everyone on the service list.

SECY-EHD-001

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U.S. FEDERAL REGULATORY COMMISSION  
DOCKETING & SERVICE SECTION  
OFFICE OF THE SECRETARY  
OF THE COMMISSION

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John C. Hoyle, Secretary  
March 24, 1997  
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In addition, 10 C.F.R. § 2.712(b) states that:

Any paper required to be served upon a party shall be served upon him or upon the representative designated by him or by law to receive service of papers. (Emphasis added).

Because 10 C.F.R. § 1.5 designates the PDR as a place where service can be made and because 10 C.F.R. § 1.25 designates the Secretary of the Commission to direct and administer the PDR [§ 1.25(h)]; to receive, process and control motions and pleadings [§ 1.25(g)]; and receive, process and control Commission mail [§ 1.25(d)]; service on the staff was actually completed on February 10, 1997, when the letter, certificate of service and proof of service were filed by personal delivery with the Office of the Secretary through the PDR.

One of the functions of the PDR in the adjudicatory process is to serve as a filing place and a mail drop. When the documents in question were delivered to and filed in the PDR, they were actually placed in the NRC internal mail system. This is no different than placing these materials in any other mail system authorized by the regulations, except it is more direct.

The real question is, were reasonable steps taken within regulatory standards to provide notification to all interested parties? The foregoing discussion supports an affirmative finding.

Even if service was not proper under the regulations, NRC counsel's request that IWI counsel "be directed to complete service upon the staff" is an improper remedy. NRC counsel apparently already has a copy of the documents in question. Another copy will not provide any new information. Moreover, the letter by its nature did not require any answer from the staff. It was simply a notice to the Commission of impending events and a suggestion that action to be taken, if any, be delayed. The notice was given in the spirit of encouraging regulatory efficiency.

In addition, going through the service ritual at this time serves no useful purpose. Events cited in the letter which were impending have come and gone. Indeed, those events were a *fait accompli* on March 5, 1997, when NRC counsel wrote its letter to the Secretary. The Commission took no action and IWI counsel has returned to the United States.

If the real point of NRC counsel's letter is that she believes that the absence of her specific name from the service list contributed to the 18 day delay her receipt of the letter through the internal mail system, it is regrettable she did not call me to request a revision of the list.

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I certainly would have complied with such a request even though not much could be done about past events. I hope NRC counsel will call me in the future to work out matters such as the one presented here. It could save us all a lot of time.

In any event, I will place NRC counsel's name on the service list for future filings. However, I intend to continue to file and make service through the PDR as authorized by Commission regulations.

Sincerely,

A handwritten signature in black ink that reads "James R. Tourtellotte". The signature is written in a cursive style with a large, sweeping initial "J" and "T".

James R. Tourtellotte  
IWI Counsel

cc: Service List

**Proof of Service**

Service is made in accordance with 10 C.F.R. § 2.701 by delivery to the NRC Public Document Room on March 24, 1997.

A handwritten signature in black ink, appearing to read "James R. Tourtellotte", written in a cursive style with a long horizontal flourish extending to the left.

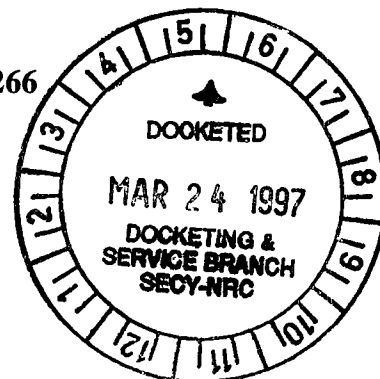
James R. Tourtellotte  
Attorney-at-Law

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
INNOVATIVE WEAPONRY, INC. )  
Fort Worth, Texas )

Docket No. 030-30266

EA 96-170



Certificate of Service

I hereby certify that copies of the foregoing Letter to John C. Hoyle, Secretary, have been served upon the following persons by delivery to the NRC Public Document Room in accordance with the requirements of 10 C.F.R. § 2.701.

Office of Commission Appellate Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Catherine L. Marco  
Office of the General Counsel  
Mail Stop 0-15 B 18  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Office of the Secretary  
ATTN: Docketing and Service  
Mail Stop: 16-G-15 OWFN  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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

U.S. Nuclear Regulatory Commission  
Region IV  
Harris Tower  
611 Ryan Plaza Drive, Suite 400  
Arlington, TX 76011

Dated at Arlington, Virginia, this  
24th day of March, 1997.

A handwritten signature in black ink, reading "James R. Tourtellotte". The signature is written in a cursive style with a large, sweeping initial "J" and "T".

James R. Tourtellotte  
Attorney-at-Law  
IWI Counsel