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UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF:)	
)	Docket No. 030-31765 - EA
Oncology Services Corporation)	
(Byproduct Material License)	EA No. 93-006
No. 37-28540-01))	

RESPONSE OF ONCOLOGY SERVICES CORPORATION TO
 NRC STAFF MOTION FOR EXTENSION OF TIME IN
 WHICH TO FILE SPECIFIC OBJECTIONS TO THE
 PRODUCTION OF CERTAIN DOCUMENTS

INTRODUCTION

Oncology Services Corporation ("OSC"), by and through its counsel Reed Smith Shaw & McClay, hereby responds, pursuant to 10 C.F.R. §2.730, to the Staff's Motion for Extension of Time and respectfully submits the grounds upon which it withheld its consent to that motion.

BACKGROUND

By Memorandum and Order (Establishing Administrative Directives and Scheduling Prehearing Conference) dated December 17, 1993 the Atomic Safety and Licensing Board (the "Board") indicated that the latest of three consecutively granted Staff discovery stay requests had expired and ordered that discovery should proceed. That December 17, 1993 Memorandum and Order additionally set January 26, 1994 as the date for a prehearing conference at which, among other matters, the Board will consider discovery issues. On December 27, 1993 the Staff served its

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Interrogatories And Request For Production Of Documents And Admissions (the "Staff Discovery Requests") on OSC. On January 3, 1994, OSC served the Staff with certain discovery requests, inter alia, requests for production of witness transcripts and interviews which OSC believes are crucial to its defense in this proceeding.

On January 4, 1994, OSC moved the Board for a protective order staying all responses by OSC to the Staff's Discovery Requests until following such time as (i) a discovery management order and timetable can be developed at the forthcoming prehearing conference in this proceeding scheduled for January 26, 1994, (ii) the Staff makes available certain witness transcripts and other discoverable material which it is presently withholding, and (iii) OSC has a reasonable opportunity to review the same. The Staff responded to OSC's Motion for a Protective Order on January 7, 1994 indicating that while it objected to the motion, it did not object to the staying of discovery responses until after the January 26, 1994 prehearing conference.

In a January 10, 1994 Order (Postponing Discovery Responses Pending Prehearing Conference) (the "January 10, 1994 Order"), the Board suspended the deadlines for both parties to respond to the pending discovery requests. However, the Board did order that the Staff file any objections or a motion for a protective order relating OSC's January 3, 1994 discovery requests by January 14, 1994.

DISCUSSION

Rather than include a request for additional time in its filing due January 14, 1994, the Staff filed a separate Motion For An Extension Of Time To File Specific Objections To The Production Of Certain Documents ("Staff Motion"). OSC understands the Staff's filing of a separate motion in this regard arises out of Staff's concern that it not offend the Board by moving for the extension of time with respect to objections Staff may have to the production of specific documents on the same date that Staff understands those specific objections to be due.

With sincere deference to Staff's concern, OSC nonetheless submits the Staff Motion is a totally unnecessary pleading. The Board's January 10, 1994 Order provided that Staff could on January 14, 1994, file a "request for a protective order" relative to OSC's discovery requests. *Id.* Therefore, the Board's January 10, 1994 Order already provides a mechanism for the Staff to request a reasonable period of time within which to review, and respond or object to OSC's requests for production. In addition to its being unnecessary, OSC also objects to the Staff Motion since it imposes a more limited time for response from OSC than envisioned under the Order.

Having said that, OSC adds that it has no intention of attempting to unreasonably assert discovery demands against Staff; to the extent, as Staff asserts, it is "unable to review each document in order to determine its responsiveness to a Licensee's request, determine whether an objection to production would be appropriate, and then make such objection within the time set by the Board in its Order," Staff Motion at 3, OSC has no categorical objection to an extension of time. On the other hand,

however, OSC has concerns that militate against its unqualified consent to the Staff Motion and wishes to take this opportunity to set those concerns before the Board.

As a threshold matter, OSC is sensitive to the continuing denial of its access to documents that it believed it was entitled to and has attempted to procure since the beginning of this proceeding.

That sensitivity is especially great since Staff does not propose a date certain for the time in which it can propound its specific objections. In its motion, Staff indicates that a "preliminary review" of the "other NRC documents" in question has been conducted. Id. Yet Staff does not even suggest an estimate, based on that "preliminary review," of the length of extension of time needed. Given that it is the Staff, rather than the Board or OSC who has conducted the "preliminary review" of these documents, the failure of Staff to provide any guidance as to how much time Staff reasonably needs was fatal to Staff's attempt to procure OSC's consent and should be fatal to the motion before this Board. At present, this Board has no basis, other than conjecture, to schedule an extension; by definition such extension cannot be reasonable.

OSC's concerns are underscored because Staff's request for an unquantified amount of time comes from a discovery period whose length is not known to OSC. OSC has concerns that allowance of too great a proportion of the discovery period allotted to Staff's formulation and statement of objections will stint, to OSC's disadvantage, the period for resolution of any dispute regarding those objections, and subsequent depositions and other discovery by OSC following production of the documents. These concerns also militated against OSC's consent to the motion.

Stated differently, to the extent Staff can reasonably estimate, prior to this Board's ruling on its motion, the time it will require with respect to the production of documents, it should be expected to do so, to enable the Board both to make a reasonable ruling and to set a fair discovery timetable at the prehearing conference. In the absence of such further quantification, Staff's motion should not be granted.

CONCLUSION

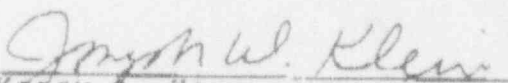
For the reasons set forth above OSC respectfully requests that the Board not grant the Staff's present Motion for an Extension of Time.

Respectfully submitted,

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DATED: January 13, 1994

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UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION
 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF:

ONCOLOGY SERVICES, CORPORATION
 BY-PRODUCT MATERIAL LICENSE

No. 37-28540-01
 Docket No. 30-31765-EA
 E.A. No. 93-006

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the within was furnished to the following this 13th day of January, 1994:

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