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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
ONCOLOGY SERVICES CORPORATION)	Docket No. 030-31765-EA
)	
(Byproduct Material)	EA No. 93-006
License No. 37-28540-01))	

NRC STAFF'S MOTION TO STRIKE RESPONSE OF OSC TO
STAFF MOTION TO COMPEL AND MOTION FOR PROTECTIVE ORDER

INTRODUCTION

Pursuant to 10 C.F.R. § 2.730 of the Commission's regulations, the Staff of the Nuclear Regulatory Commission (Staff) hereby moves the Atomic Safety and Licensing Board (Board) in the above-captioned proceeding to strike "Response of OSC to Staff Motion to Compel and Motion for Protective Order," filed by Oncology Services Corporation (Licensee), dated April 11, 1994 (Licensee's Response). For the reasons set forth below, the Licensee's Response should be stricken as untimely.

BACKGROUND

On December 27, 1993, the Staff served "NRC Staff's Interrogatories and Request for Production of Documents and Request for Admissions" (Discovery Requests) on the Licensee. On March 4, 1994, the Licensee filed its response to the Staff's Discovery Requests. "Response of Oncology Services Corporation to NRC Staff's First Set of

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Interrogatories and Request for Production of Documents and Requests for Admissions." On March 14, 1994, the Staff filed "NRC Staff's Motion to Compel Responses to Staff's Interrogatories and Requests for Admissions and Production of Documents and NRC Staff Motion for Protective Order" (Staff's Motion to Compel).

On March 18, 1994, the Board issued its "Memorandum and Order (Joint Discovery Status Report)." In accordance with the Board's Order, the Staff and the Licensee filed a "Joint Discovery Status Report," (Status Report) on March 29, 1994. On April 5, 1994, the Board issued a "Memorandum and Order (Vacating OSC Protective Order; Denying Staff Motion for Protective Order)," (Board's April 5, 1994 Order), in which the Board denied, without prejudice, the Staff's motion for a protective order filed on March 14, 1994. Board's April 5, 1994 Order at 1. On April 11, 1994, the Licensee filed its Response to the Staff's Motion to Compel which has given rise to the instant motion.

DISCUSSION

The Licensee's Response should be stricken as untimely. The Licensee has failed to provide, in its Response, any good cause why the Board should entertain its unduly late Response. Pursuant to 10 C.F.R. § 2.730(h), a response to a motion to compel filed pursuant to 10 C.F.R. § 2.740(f), must be filed in accordance with section 2.730(c). Section 2.730(c) provides, in part, that a party, other than the Staff, shall have ten days after service of a motion in which to file an answer to a motion. If a motion is served by mail, five days shall be added to the prescribed period of time in which to file an answer. 10 C.F.R. § 2.710. The Staff's Motion to Compel was filed, via mail, on

March 14, 1994. Thus, in order for the Licensee's Response to have been timely, it should have been filed on or before March 29, 1994. The Licensee, however, waited until April 11, 1994, almost two weeks later, to file its Response. The Licensee's Response is inexcusably late, and should not be considered by the Board.¹

The Licensee's excuse for its late filing appears to be that somehow Staff Counsel prevented the Licensee from filing its Response on time. Licensee's Response at 1. The Licensee states that "OSC sought to respond to the Staff's Motion in the Joint Discovery Status Report filed with the Board on March 29, 1994. Because the Staff objected to such a filing and indicated that OSC should file a separate filing. . . , OSC files its response herein."² *Id.* The Licensee makes reference to a letter from Staff Counsel to the Licensee's Counsel dated March 28, 1994 (March 28, 1994 Letter). A copy of this letter was attached to the Status Report as Exhibit A. The Licensee's assertion that Staff Counsel somehow prevented it from filing on time is absurd. As the March 28, 1994 letter indicates, Staff Counsel did not object to "such a filing," but rather, the Staff objected to the filing of the Licensee's Response with the Status Report, since such filing was not in accord with the Board's Order. March 28, 1994 Letter at 1. At no point did

¹ The extreme lateness of the Licensee's Response is further demonstrated by the fact that the Licensee also, in its Response, responded to the Staff's motion for a protective order, which was contained in the Staff's Motion to Compel, despite the fact that the Board had already ruled on the motion six days earlier. Board's April 5, 1994 Order at 1. The Board's Order indicates that the Licensee's counsel was served with the Order on April 5, 1994 via facsimile transmission.

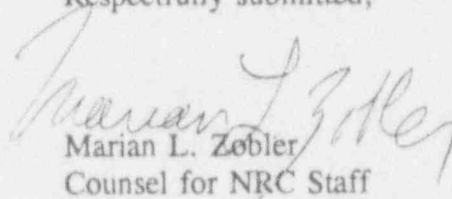
² Despite asserting that it was the Licensee's original intent to file a response to the Staff's Motion to Compel in the Joint Report on March 29, 1994, the Licensee waited thirteen days after the filing of the Joint Report to actually file its Response.

Staff Counsel indicate or even suggest that the Licensee could not or should not file a response to the Staff's Motion to Compel on the same date as the Status Report. The Licensee fails to explain why it could not file its Response on March 29, 1994, as a separate filing.³ The Licensee, therefore, has failed to establish good cause for filing its Response out of time. Thus, its Response should be stricken.

CONCLUSION

For the reasons set forth above, the Staff's Motion to Strike Response of OSC to Staff Motion to Compel and Motion for Protective Order should be granted.

Respectfully submitted,


Marian L. Zabler
Counsel for NRC Staff

Dated at Rockville, Maryland
this 15th day of April, 1994

³ If the Licensee thought that it had good cause to request an extension of time in which to file its Response, it should have requested such an extension from the Board. See "Memorandum and Order (Establishing Administrative Directives and Scheduling Prehearing Conference)," dated December 17, 1993 at 3-4. The Licensee's Counsel, however, neither discussed the possibility of requesting an extension of time with Staff Counsel, as required by the Board's December 17, 1993 Order, nor did the Licensee move the Board for such an extension. See *id.*

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In the Matter of)
)
ONCOLOGY SERVICES CORPORATION) Docket No. 030-31765-EA
)
(Byproduct Material) EA No. 93-006
License No. 37-28540-01)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S MOTION TO STRIKE RESPONSE OF OSC TO STAFF MOTION TO COMPEL AND MOTION FOR PROTECTIVE ORD. ..." in the above-captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by facsimile transmission, as indicated by an asterisk, or by electronic mail with a conforming copy served by deposit in the Nuclear Regulatory Commission's internal mail system, as indicated by a double asterisk, this 15th day of April, 1994:

G. Paul Bollwerk, III, Chairman**
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attn: Docketing and Service Section

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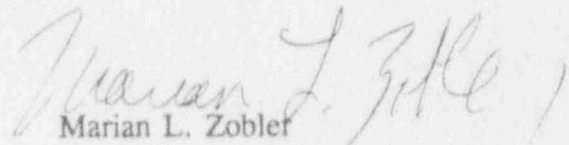
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