

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

G. Paul Bollwerk, III, Chair
William J. Froehlich
Dr. Sue H. Abreu

In the Matter of
NUCLEAR FUEL SERVICES, INC.
(License Amendment Application)

Docket No. 70-143-LA
ASLBP No. 23-976-01-LA-BD02
November 9, 2022

MEMORANDUM AND ORDER
(Initial Prehearing Order)

This proceeding concerns a November 18, 2021 BWXT Nuclear Fuel Services, Inc., (NFS) request to amend the existing 10 C.F.R. Part 70 license for its Erwin, Tennessee nuclear fuel fabrication facility to perform new processes associated with uranium purification and conversion to uranium metal.¹ The NRC published a hearing opportunity notice regarding this amendment request in the August 31, 2022 Federal Register that established an October 31, 2022 deadline for any hearing requests challenging the NFS license amendment application.² On October 31, 2022, the Erwin Citizens Awareness Network, Inc., (ECAN) submitted an

¹ See Letter from Tim Knowles, Director, Safety and Safeguards, NFS, to Director, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission (NRC) at unnumbered pp. 1–2 (Nov. 18, 2021) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML21327A099).

² See [NFS], 87 Fed. Reg. 53,507 (Aug. 31, 2022).

intervention petition.³ By memorandum dated November 4, 2022, the Secretary of the Commission referred the ECAN petition to the Chief Administrative Judge.⁴ In turn, the Chief Administrative Judge on November 7, 2022, assigned the petition to this Licensing Board to rule on standing and contention admissibility matters and preside at any hearing.⁵

Regarding the conduct of this proceeding, the following directives shall apply:

I. BRIEFING SCHEDULE

Pursuant to 10 C.F.R. § 2.309(i), the answers of NFS and the NRC Staff to the pending October 31, 2022 ECAN hearing request are due on Friday, November 25, 2022, while any reply by petitioner ECAN to those answers is due on or before Friday, December 2, 2022.

II. ADMINISTRATIVE MATTERS

A. Notice of Appearance

If they have not already done so, on or before Wednesday, November 16, 2022, each counsel or representative for a participant shall file a notice of appearance complying with the requirements of 10 C.F.R. § 2.314(b) via the agency's E-Filing system.⁶ In each notice of

³ ECAN filed its initial hearing petition on October 31, 2022, which it amended later that same day. See Petition of [ECAN] for Leave to Intervene in [NFS] License Amendment Proceeding, and Request for a Hearing (Oct. 31, 2022); Amended Petition of [ECAN] for Leave to Intervene in [NFS] License Amendment Proceeding, and Request for a Hearing (Oct. 31, 2022). Going forward, the subsequently filed version of petitioner ECAN's submission is what we will reference and utilize in this proceeding.

⁴ See Memorandum from Brooke P. Clark, NRC Secretary, to E. Roy Hawken, Chief Administrative Judge (Nov. 4, 2022).

⁵ See [NFS], Establishment of Atomic Safety and Licensing Board, 87 Fed. Reg. _____ (Nov. 10, 2022) (<https://federalregister.gov/d/2022-24603>).

⁶ For assistance with the NRC's E-Filing system, a participant should contact the Electronic Filing Helpdesk by visiting its webpage (<https://www.nrc.gov/site-help/e-submittals/contact-us-eie.html>); calling (866) 672-7640 between the hours of 9:00 a.m. to

appearance, in addition to providing a business address and telephone number, an attorney or representative should provide a facsimile number and an email address (if any).

B. Limitations on Pleading Length and Reply Pleadings

1. Page Limitation

Absent preapproval by the Board or some other Board directive, any motion filed after the date of this memorandum and order and any related responsive pleadings shall not exceed ten pages in length (including the signature page, but excluding the certificate of service and any attachments/enclosures).⁷ Any request for preapproval to exceed this page limitation shall be submitted in writing no less than three business days prior to the time the motion or responsive pleading is filed or due to be filed. The request must (1) indicate (as is the case with any motion) whether the request is opposed or supported by the other participants to the proceeding;⁸ (2) provide a good faith estimate of the number of additional pages that will be filed; and (3) demonstrate good cause for being permitted to exceed the page limitation.

6:00 p.m. Eastern Time, Monday through Friday (excluding federal government holidays), or send an e-mail from <https://www.nrc.gov/site-help/e-submittals/contact-us-eie.html>.

⁷ Any answers/replies associated with the October 31, 2022 ECAN hearing request are not subject to this page limitation. This is not the case, however, for any subsequent motion for admission of a new or amended contention under section 2.309(f)(2) and answers/replies to such a motion, which are subject to this page limitation. And because the page limit applies regardless of the number of contentions involved, when more than one new/amended contention is being submitted, in lieu of multiple separate motions of 10 pages seeking the admission of each individual contention, it would be preferable to seek leave of the Board to exceed the page limit. If granted, this would permit the participant to file one timely motion that deals with all the new/amended contentions being proffered that are associated with the information that it is asserted triggers the motion.

⁸ See 10 C.F.R. § 2.323(b). Pursuant to section 2.323(b), a motion requires a certification by the moving participant, or the attorney or representative for the moving participant, that a sincere effort has been made to contact the other participants in the proceeding and resolve the matters raised by the motion, but that the movant's efforts in this regard have been unsuccessful. The Board notes that it is inconsistent with the dispute avoidance/resolution purposes of section 2.323(b) for a non-moving participant, or for counsel or the representative for the non-moving participant, to fail to make a sincere effort to be available to consult regarding, or to fail to attempt in good faith to resolve, the factual and legal

2. Reply Pleadings

Except in instances involving a motion to file a new/amended contention, a participant to this proceeding must request permission to file a reply to a response/answer to a motion.⁹ A request for Board preapproval to file a reply shall be submitted in writing no less than three business days prior to the time the reply will be filed.¹⁰ A request to file a reply must (1) indicate whether the request is opposed or supported by the other participants to the proceeding; and (2) demonstrate compelling circumstances exist for permitting the reply to be filed.¹¹

C. Motions for Extension of Time

A motion for extension of time in this proceeding shall be submitted in writing at least three business days before the due date for the pleading or other submission for which an extension is sought.¹² A motion for extension of time must (1) indicate whether the request is

issues raised in the motion. Also, if the consultation mandated by section 2.323(b) is initiated within a reasonable time and the participants believe that all or part of the matter may be resolved amicably if additional time is provided for filing the motion, the participants are encouraged to file a joint motion requesting such a time extension.

⁹ Compare id. § 2.323(c), with id. § 2.309(i)(2).

¹⁰ Although the agency's rules regarding motions practice do not provide for reply pleadings, the Board will presume that for a reply to be timely, it would have to be filed within seven days of the date of service of the answer it is intended to address. See id. § 2.309(i)(2).

¹¹ Section 2.323(c) indicates that "compelling circumstances" might be shown in an instance when the moving participant demonstrates that it could not reasonably have anticipated the arguments to which it seeks to reply. Another "compelling circumstance" may be if a participant files an answer supporting a motion that includes new facts or arguments.

¹² Unless some other time is specified in the agency's rules of practice or by the Board, in accordance with section 2.323(a)(2), (c), motions (other than summary disposition motions) generally are due within 10 days after the occurrence or circumstance from which the motion arises, with any answer to that motion due within 10 days of service of the motion. An exception to this 10-day filing period is a motion seeking the admission of new/amended contentions. See id. § 2.309(f)(2); see also id. § 2.323(a)(1) (motions for new/amended contentions not subject to section 2.323 requirements). For such a motion to be considered timely under section 2.309(c)(1)(iii), the motion (and the accompanying new/amended contention) should be filed within 30 days of the date upon which the information that is the basis of the motion becomes available to the petitioner/intervenor. Moreover, notwithstanding the provisions of section 2.309(i)(1), any answer to a motion seeking the admission of a new/amended contention

opposed or supported by the other participants to this proceeding; and (2) demonstrate appropriate cause that supports permitting the extension.

D. Opposing a Request to Exceed the Page Limitation, to File a Reply, or to Extend the Time for Filing a Pleading

Any opposition to a request to exceed the page limit, to file a reply, or to extend the time for filing a pleading shall be filed and served on the Board, the Office of the Secretary, and the other participants in this proceeding no later than the next business day after the filing of the request.

E. Attachments/Enclosures to Filings and Evidentiary Exhibits

For all future filings, if a participant proffers a pleading or other submission that has additional documents appended to it, these items should be referred to as attachments or enclosures (not exhibits), with a separate alpha or numeric designation given to each appended document (e.g., Attachment A, Enclosure 1), either on the first page of the appended document or on a cover/divider sheet in front of the appended document. Attachments or enclosures to a motion and any related responsive pleadings are not subject to the page limitation set forth in section II.B.1 above, but should be submitted via the agency's E-Filing system as part of a single electronic file consisting of the pleading or other submission, the certificate of service, and all the attachments or enclosures associated with the pleading or submission. In accordance with the agency's electronic submission guidance (at page 6), multiple electronic files should be used for pleadings or submissions with attachments or enclosures only if the filing exceeds 500 megabytes in size.¹³

shall be due within 14 days of service of the motion, and any reply to an answer is due within seven days of service of the response.

¹³ See <https://www.nrc.gov/docs/ML13031A056.pdf> (access link for Guidance for Electronic Submissions to the NRC (rev. 9 Aug. 6, 2021)).

The label “exhibit” should be reserved for use as a designation for those items that are submitted, whether by pre-filing or at the time of an evidentiary hearing, as potential materials a participant will seek to have identified for inclusion in the evidentiary record of the proceeding. Each evidentiary hearing exhibit (including prefiled written testimony) must be submitted via the agency’s E-Filing system as a separate electronic file. See 10 C.F.R. § 2.304(g).

F. Filing Date on Pleadings

The Board requests that the first page of each pleading submitted by a participant include the pleading’s filing date in the upper right-hand corner or as part of the caption.

III. Initial Prehearing Conference and Limited Appearance Statements

The Board has not yet determined whether it will hold an initial prehearing conference to hear argument regarding any disputes over standing or the admissibility of petitioner ECAN’s proffered contentions. The Board would note, however, that if it decides to conduct an initial prehearing conference, that prehearing conference is likely to be done utilizing teleconferencing and/or web conferencing with the opportunity for public access to the conference via a listen-only telephone number and passcode.

Further, if the Board determines that an initial prehearing conference is to be held in this case, the Board would like to conduct the prehearing conference during the week of December 12, 2022. Accordingly, the Board is providing the participants with a list of proposed dates/times for the argument to take place during the week of December 12, 2022, via an e-mail through its law clerk Noel Johnson (noel.johnson@nrc.gov), which is being sent contemporaneously with the issuance of this memorandum and order. The Board requests that on or before noon Eastern Time on Wednesday, November 16, 2022, one representative of the participants to this proceeding send an e-mail to Ms. Johnson, with a copy to the other

participants, listing one or more agreed dates and times during which all the participants will be available for this prehearing conference. The Board, which anticipates the argument will last no longer than three hours, will provide details about the prehearing conference's schedule and procedures in a subsequent order or orders.

Finally, at some point later in this proceeding, the Board will determine whether it intends to conduct an oral limited appearance statements session. At present, however, in accord with 10 C.F.R. § 2.315(a), any person not a participant to this proceeding that wishes to make a statement regarding the issues in the proceeding can do so in writing. Limited appearance statements, which are placed in the docket for the proceeding, provide members of the public with an opportunity to make the Board and/or the participants aware of their concerns about matters at issue in the proceeding.

A written limited appearance statement can be submitted at any time and should be sent to the Office of the Secretary using one of the methods prescribed below:

Mail to:	Office of the Secretary Attn: Rulemakings and Adjudications Staff U.S. Nuclear Regulatory Commission Washington, D.C. 20555-0001
Fax to:	(301) 415-1101 (verification (301) 415-1677)
Email to:	hearing.docket@nrc.gov

In addition, a copy of the limited appearance statement should be sent to the Licensing Board Chair using the same method at the address/fax number/e-mail address below:

Mail to: Administrative Judge G. Paul Bollwerk, III
Atomic Safety and Licensing Board Panel
Mail Stop T-3A02
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Fax to: (301) 415-5206 (verification (301) 415-7550)

E-mail to: paul.bollwerk@nrc.gov

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland

November 9, 2022

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
Nuclear Fuel Services, Inc.) Docket No. 70-143-LA
)
(Application to Amend Special Nuclear)
Materials License SNM-124))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Initial Prehearing Order)** have been served upon the following persons by Electronic Information Exchange.

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Nuclear Fuel Services 70-143-LA

MEMORANDUM AND ORDER (Initial Prehearing Order)

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Dated at Rockville, Maryland,
this 9th day of November 2022.

Office of the Secretary of the Commission