

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-MLA
)	SNM License 124
Blended Low Enriched Uranium Project)	
(Request for Material License Amendment for)	ASLBP No. 02-803-04
Authorization of Storage of Low-Enriched)	
Uranium at the Uranyl Nitrate Building))	

NRC STAFF RESPONSE TO
APPLICANT'S MOTION FOR CLARIFICATION OF SCOPE OF HEARING

INTRODUCTION

On November 13, 2002, the Presiding Officer requested via electronic mail that the Nuclear Regulatory Commission (hereinafter "NRC") Staff respond to the November 12, 2002 "Applicant's Motion for Clarification of Scope of Hearing" no later than Monday, November 18, 2002. The motion by Nuclear Fuel Services, Inc. (hereinafter "NFS") requested that the Presiding Officer clarify the scope of this proceeding to include the entire Environmental Assessment (hereinafter "EA") prepared in support of the February 28, 2002 license amendment application submitted by NFS. It is the Staff's position that the scope of the hearing is limited to areas of concern related to the February 28, 2002 license amendment application and cannot extend to areas of concern that relate to future license amendment applications.

DISCUSSION

On February 28, 2002, NFS submitted a license amendment application requesting authorization to store low-enriched uranium materials at the Uranyl Nitrate Building (hereinafter "UNB") at the NFS facility in Erwin, Tennessee. The license amendment is the first of three amendments that relate to the Blended Low-Enriched Uranium (hereinafter "BLEU") Project. In

order to avoid a segmentation problem, the Staff prepared an EA for the license amendment application, in which it considered not only the environmental impacts of the amendment application for storage of materials at the UNB, but also the cumulative environmental impacts that would result from the entire BLEU Project.

In its Motion, NFS requests that the Presiding Officer require the litigation of all areas of concern related to the EA in this proceeding and bar the current petitioners from raising concerns regarding the EA when the Staff considers the second and third license amendment applications for the BLEU Project.¹ According to NFS, this would avoid repetitious litigation and the unnecessary expenditure of resources by the parties and the Presiding Officer.

The October 30, 2002 Federal Register Notice specifies that the scope of this proceeding is limited to the February 28, 2002 license amendment application, and does not include the other areas of the BLEU Project. 67 *Fed. Reg.* 66,172 (Oct. 30, 2002). Areas of concern, both environmental and safety, related to the second and third license amendments are outside the scope of this proceeding. In a license amendment proceeding, the jurisdiction of the Licensing Board is limited to issues that are within the scope of matters outlined in the Commission's notice of hearing on the licensing action. *Wisconsin Electric Power Co.* (Point Beach Nuclear Plant, Units 1 and 2), ALAB-739, 18 NRC 335, 339 (1983), *citing Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289, n. 6 (1979) and *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976). Under this line of cases, the Presiding Officer lacks jurisdiction to require the petitioners to raise environmental areas of concern for license amendment applications that are not currently before the Commission.

¹ The Staff agrees with NFS that the petitioners could raise concerns arising out of any new material in an EA prepared for the second and third license amendments or challenge a Staff conclusion that the current EA addresses the subsequent license amendment applications.

Additionally, requiring the litigation of all environmental areas of concern related to the entire BLEU project would adversely impact the rights of future petitioners who may be interested only in the second and third license amendment applications. The Federal Register Notice did not notice the entire BLEU Project or either the second or third license amendment applications. Any public participant who had an interest in the BLEU Project, but not in the first license amendment application for the BLEU project would have no notice that they are required to raise environmental issues for future Project license amendments at this time. Requiring the current petitioners to raise all of their areas of concern related to the EA would not avoid repetitious litigation because future petitioners will continue to have the right to raise environmental areas of concern related to the second and third license amendment applications. If NFS had wanted to avoid the possibility of repetitious litigation, it should have submitted a single license amendment application for the entire BLEU project rather than three separate license amendment applications.

The Staff recognizes that some of the environmental impacts identified in the EA may be cumulative impacts from the two future license amendment applications. To the extent that the EA deals with cumulative impacts, those issues may be raised in either this proceeding or in proceedings on future license amendment applications related to the BLEU Project. However, the Staff notes that a number of the environmental impacts discussed in the EA are clearly identified as relating to a particular license amendment for the BLEU Project, and can easily be isolated from issues related to the other two license amendments. Under such circumstances, it is unnecessary to litigate the entire EA in this proceeding.

CONCLUSION

The Staff disagrees with the position of NFS that all areas of concern related to the EA should be litigated during this proceeding. Therefore, the Staff requests that the Presiding Officer determine that the scope of this proceeding is limited to those safety and environmental areas of

concern that directly relate to the February 28, 2002 license amendment application and that the petitioners are not required to raise all concerns related to the EA in this proceeding.

Respectfully submitted

/RA/

Jennifer M. Euchner
Counsel for NRC Staff

Dated at Rockville, Maryland
this 18th day of November, 2002

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-MLA
)	
Blended Low Enriched Uranium Project)	SNM License 124
(Request for Material License Amendment)	
for Authorization of Storage of Low-Enriched)	ASLBP No. 02-803-04
Uranium at the Nitrate Building))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO APPLICANT'S MOTION FOR CLARIFICATION OF SCOPE OF HEARING" in the above-captioned proceeding have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), or by electronic mail as indicated by a double asterisk (**) on this 18th day of November, 2002.

Administrative Judge **
Alan S. Rosenthal
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555
E-Mail: rsnthl@aol.com

Administrative Judge **
Richard F. Cole
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555
E-mail: rfc1@nrc.gov

Office of the Secretary **
ATTN: Rulemakings and Adjudication Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555
E-mail: HEARINGDOCKET@nrc.gov

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555

C. Todd Chapman, Esq.
King, King & Chapman, P.L.L.C.
125 South Main Street
Greenville, TN 37743
Facsimile: 423-639-3629

Louis Zeller **
Blue Ridge Environmental Defense League
P.O. Box 88
Glendale Springs, NC 28629
E-mail: BREDL@skybest.com

Diane Curran
Harmon, Curran, Spielberg & Eisenberg, LLP
1726 M Street, NW, Suite 600
Washington, D.C. 20036
Facsimile: 202-328-6918
Email: dcurran@harmoncurran.com

Neil J. Newman
Vice President and General Counsel
Nuclear Fuel Services, Inc.
205 Banner Hill Road
Erwin, TN 37650
Facsimile: 423-743-9025

Daryl Shapiro **
Shaw Pittman, L.L.P.
2300 N. Street, N.W.
Washington, D.C. 20037
E-mail: daryl.shapiro@shawpittman.com

/RA/

Jennifer M. Euchner
Counsel for NRC Staff