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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Presiding Officer

In the Matter of	)	
	)	Docket No. 70-143
Nuclear Fuel Services, Inc.	)	Special Nuclear Material
	)	License No. SNM-124
(Blended Low Enriched Uranium Project)	)	

APPLICANT'S ANSWER TO DECLARATION OF KATHY HELMS-HUGHES

Applicant Nuclear Fuel Services, Inc. ("Applicant" or "NFS") files this answer to the Declaration of Kathy Helms-Hughes (Nov. 29, 2002) ("Declaration").NFS submits this answer pursuant to 10 C.F.R. § 2.1205(g). Although it is not entirely clear that Ms. Helms-Hughes is requesting a hearing on the NFS license amendment application, NFS respectfully requests that the Presiding Officer reject the Declaration for lack of standing and for failure to submit an area of concern germane to this proceeding. NFS also requests that the Presiding Officer deny Ms. Helms-Hughes' requests to hold this proceeding in abeyance and to put on hold the project of which this application is a part.

I. FACTUAL AND LEGAL BACKGROUND

A. Procedural Background

On February 28, 2002, NFS submitted a request for an amendment to Special Nuclear Material License No. SNM-124 to authorize the storage of low-enriched uranium ("LEU")-bearing materials at the Uranyl Nitrate Building ("UNB") at NFS's nuclear fuel fabrication and uranium recovery facilities in Erwin, Tennessee.[1] The license amendment

[1] Letter from B. Marie Moore, Vice President, Safety and Regulation, NFS, to Director, Office of Nuclear Materials Safety and Safeguards, U.S. NRC (Feb. 28, 2002) ("NFS Letter"); Environmental Statements;

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is the first of three amendments that will be necessary to support process operations associated with the Blended Low-Enriched Uranium ("BLEU") Project. Id. at 66,173. The BLEU Project is part of a Department of Energy ("DOE") program to reduce stockpiles of surplus high enriched uranium ("HEU") through re-use or disposal as radioactive waste.[2] Re-use of the HEU as LEU is the favored option of the DOE program because it converts nuclear weapons grade material into a form unsuitable for weapons, it allows the material to be used for peaceful purposes, and it allows the recovery of the commercial value of the material. Framatome ANP, Inc. has contracted with NFS to downblend surplus HEU material to an LEU nitrate solution, which will be transferred to the UNB. Id.

On July 9, 2002, the NRC Staff published a notice in the Federal Register that it had prepared the EA for the entire project, so as to avoid segmentation of the environmental review, and had made a Finding Of No Significant Impact ("FONSI") for the amendment. Environmental Assessment and Finding of No Significant Impact of License Amendment for Nuclear Fuel Services, Inc. 67 Fed. Reg. 45,555, 45,558 (2002). The Staff also noted that it was in the process of considering the February 28, 2002 license amendment application itself. Id. The Staff noted that it will perform a separate safety evaluation and environmental review for each of the NFS license amendment requests. Id. at 45,555. If the Staff finds that the current EA accurately reflects the effects of the project, then it will perform no further assessment for that request. Id. If it finds that the current EA does not accurately reflect the effects of the project, then it will perform another EA (or potentially an environmental impact statement ("EIS")). Id.

Availability, etc.: Nuclear Fuel Services, Inc., Notice of docketing, etc., 67 Fed. Reg. 66,172 (Oct. 30, 2002).

[2] U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, NMSS, Environmental Assessment for Proposed License Amendments to Special Nuclear Material License No. SNM-124 Regarding Downblending and Oxide Conversion of Surplus High-Enriched Uranium (June 2002) ("EA") at 1-3.

In response to the notice, several petitioners filed requests for a hearing and NFS filed responses opposing the requests. See Memorandum and Order (Raising Questions Regarding Completeness of Federal Register Notice) (Sept. 11, 2002) at 1. One of the petitioners complained that the notice was incomplete. Id. at 2. This ultimately led to the NRC Staff committing to issue a revised notice and the Presiding Officer suspending the proceeding until that point, at which the petitioners would be allowed to amend their petitions or file new petitions as they desired. See Memorandum and Order (Suspending Further Proceedings Pending Issuance of Revised Federal Register Notice) (Sept. 23, 2002) at 2-3.

On October 30, 2002, the NRC Staff published a revised notice of opportunity for hearing. 67 Fed. Reg. at 66,172 (corrected November 12, 2002, 67 Fed. Reg. 68,699). Applicant NFS was concerned that the revised notice remained unclear as to whether the scope of the hearing included only the environmental effects of the instant (first) license amendment request or whether it included the environmental effects of all three amendment requests (i.e., the entire EA) and filed a motion for clarification with the Presiding Officer on November 12, 2002. Applicant's Motion for Clarification of Scope of Proceeding (Nov. 12, 2002). The Presiding Officer ultimately ruled that "the scope of the proceeding is limited to those safety and environmental areas of concern that directly relate to the February 2002 [i.e., first] license amendment application." Memorandum and Order (Ruling on Motion for Clarification of Scope of Hearing) (Nov. 19, 2002).

B. The First License Amendment Application

Pursuant to the first license amendment request and as described in the EA, the UNB will be located on the NFS Site in Erwin, Tennessee, and will store LEU nitrate solutions prepared at and shipped to NFS from the DOE Savannah River Site. EA at 1-2. The UNB will also store solutions prepared at the NFS Site, if license amendments for

such operations are approved. Id. at 2-5. The LEU solutions will be stored in tanks within a diked area of the UNB. Id.

The EA found that none of the proposed amendments would result in significant adverse impacts to the environment. EA at 5-1. Normal operations are not expected to have a significant impact on air quality or water quality. See id. at 5-1 to 5-3. Specifically, discharges from the proposed action (the BLEU Project) are not expected to have a significant impact on the water quality in the Nolichucky River. Id. at 5-2. With respect to potential accidents, the EA found that the safety controls to be employed in plant processes for the BLEU project will ensure that the processes are safe. Id. § 5.1.2. The first license amendment will cause only a fraction of the insignificant impacts caused by the BLEU project as a whole, in that it will result in no discharges of chemical or radiological contaminants to the Nolichucky River and only a small fraction of the total airborne emissions of the project as a whole. See id. at 1-2 (proposed action consists of storage of low-enriched uranyl nitrate in tanks at the UNB); id. Tables 2.2 and 2.3 (UNB airborne emissions will be fraction of BLEU Complex emissions which will be fraction of BLEU project emissions).

C. Ms. Helms-Hughes' Hearing Request

Ms. Helms-Hughes filed her declaration within 30 days of the revised notice of opportunity for hearing. She makes several claims about the harm she and her daughter will suffer as a result of the BLEU Project. Declaration ¶¶ 3, 5, 7. She also cites several notices of violation that NFS has assertedly received as a result of current operations. Id. ¶ 4. She claims that it would be inappropriate to hold hearings on the three NFS license amendment requests separately and that thus a public hearing should be "held in abeyance." Id. ¶¶ 6-8. She also requests that the NRC put the BLEU Project "on hold until a full EIS is produced by NFS." Id. ¶ 8 (unnumbered). Finally, she requests that "the NRC's decision on NFS's license amendment application include adequate measures

for the protection of the health and welfare of [her]self, [her] family, and the surrounding communities." Id.

NFS requests that Ms. Helms-Hughes' declaration be rejected because Ms. Helms-Hughes lacks standing to participate in this proceeding, in that she does not show that she would suffer any injury in fact from the granting of the license amendment. NFS also requests that Ms. Helms-Hughes not be admitted to this proceeding because she has not articulated any areas of concern that warrant a hearing on the requested license amendment.

II. ANALYSIS

Under the notice of opportunity for hearing, requests for a hearing on the NFS license amendment are to be evaluated under 10 C.F.R. Part 2, Subpart L. 67 Fed. Reg. at 66,173. Under Subpart L, a petitioner requesting a hearing must demonstrate the timeliness of its request, that it has standing, and that it has areas of concern "germane" to the subject matter of the proceeding. Atlas Corp. (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 422 (1997); 10 C.F.R. §§ 2.1205(e) and (h). The Commission does not permit "notice pleadings" with respect to standing and areas of concern. Shieldalloy Metallurgical Corp. (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 353-54 (1999). Rather, it "insist[s] on detailed descriptions of the Petitioner's positions on issues going to both standing and the merits." Id. at 354.

A. Ms. Helms-Hughes Lacks Standing

1. Requirements for Establishing Standing

In determining whether to grant a petitioner's request to hold a hearing, the Presiding Officer must first determine whether the petitioner meets the judicial standards for standing and must consider, among other factors:

1) the nature of the requestor's right under the [Atomic Energy] Act to be made a party to the proceeding;

2) the nature and extent of the requestor's property, financial, or other interest in the proceeding; and

3) the possible effect of any order that may be entered in the proceeding on the requestor's interest.

10 C.F.R. § 2.1205(h). This is the test for standing familiar in NRC proceedings. See, e.g., Sequoyah Fuels Corp. (Gore, Oklahoma Site Decommissioning), CLI-01-02, 53 NRC 9, 13 (2001). We show below that Ms. Helms-Hughes fails to meet these applicable standards.

> To demonstrate standing in materials licensing cases under Subpart L, a petitioner must allege: (1) an actual or threatened, concrete and particularized injury, that (2) is fairly traceable to the challenged action, (3) falls among the general interests protected by the Atomic Energy Act (or other applicable statute such as the National Environmental Policy Act) and (4) is likely to be redressed by a favorable decision.

Sequoyah Fuels, CLI-01-02, 53 NRC at 13. The burden of establishing the alleged injuries is on the petitioner. Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility – Decommissioning Plan), LBP-93-4, 37 NRC 72, 81 (1993). Furthermore, "section 2.1205(e) of [the Commission's] procedural regulations requires petitioners seeking a hearing to provide a detailed description as to why they have standing." Shieldalloy, CLI-99-12, 49 NRC at 354.

"Since a licensing amendment involves a facility with ongoing operations, a petitioner's challenge must show that the amendment will cause a 'distinct new harm or threat apart from the activities already licensed.'" White Mesa, CLI-01-21, 54 NRC at 251 (emphasis added). "Conclusory allegations about potential radiological harm from the facility in general, which are not tied to the specific amendment at issue, are insufficient to establish standing." Id.

To provide standing, asserted harms must be more than "unfounded conjecture;" petitioners must show "a realistic threat . . . of direct injury." White Mesa, CLI-01-21, 54 NRC at 253. Even in a reactor license amendment case, a petitioner cannot establish

standing by simply enumerating the proposed license changes and alleging without substantiation that the changes will lead to offsite radiological consequences. Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 & 2), CLI-99-4, 49 NRC 185, 192 (1999). Vague or cryptic statements regarding petitioners' location, their activities, or their potential injuries are clearly insufficient. See Atlas, LBP-97-9, 45 NRC at 426-27. If petitioners claim that there is a potential for injury from accidents, they must show that the accident scenario(s) are credible and that the accident(s) would have a "'particular and concrete' impact" at the distances from the facility at which the petitioners are located. Babcock and Wilcox, LBP-93-4, 37 NRC at 84. Similarly, petitioners alleging harm from facility effluents or contamination must explain how the effluents or contamination would have concrete impact upon them. Id. at 84, 92; see Atlas, LBP-97-9, 45 NRC at 426 (alleged radiological contacts must be concretely delineated); see also White Mesa, CLI-01-21, 54 NRC at 252-53. Furthermore, mere potential exposure to small doses of radiation within regulatory limits is not sufficient, as it does not constitute "distinct and palpable" injury. See Babcock and Wilcox, LBP-93-4, 37 NRC at 87-88; International Uranium (USA) Corp. (Source Material License Amendment), LBP-01-8, 53 NRC 204, 220, aff'd, CLI-01-18, 54 NRC 27 (2001) (negligible likelihood of exposure significantly above background does not constitute "new or increased harm . . . or risk").

Unlike nuclear power reactor licensing proceedings, in materials licensing proceedings there is no presumption that a petitioner has standing merely because he or she lives in or frequents a location some distance from a facility. Informal Hearing Procedures for Materials Licensing Adjudications, Proposed Rule, 52 Fed. Reg. 20,089, 20,090 (1989). To show injury-in-fact, petitioners "must provide some evidence of a causal link between the distance they reside from the facility and injury to their legitimate interests." Babcock and Wilcox, LBP-93-4, 37 NRC at 83-84, 87 (rejecting per se

standing for petitioners living as close as one-eighth of a mile from and visiting an apartment "within one foot" of the facility).

Similarly, close proximity to a radioactive waste transportation route, alone, is not sufficient to establish standing. Northern States Power Co. (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 43-44 (1990); White Mesa, LBP-01-8, 53 NRC at 219; see CLI-01-18, 54 NRC at 31-32. Furthermore, regarding accidents:

> Nuclear waste safely and regularly moves via truck and rail throughout the nation under regulations of the NRC and Department of Transportation (49 C.F.R. Parts 100-179). The mere fact that additional radioactive waste will be transported if decommissioning is authorized does not *ipso facto* establish that there is a reasonable opportunity for an accident to occur [on a route one mile from petitioner's residence], or for the radioactive materials to escape because of accident [sic] or the nature or the substance being transported.

Pathfinder, LBP-90-3, 31 NRC at 43 (emphasis added); White Mesa, CLI-01-21, 54 NRC at 252-53 ("speculation about accidents along feed material's transport routes does not establish standing under our case law"). Rather, the petitioner must demonstrate that the subject licensing action "is defective in a manner so as to cause the injuries described." Pathfinder, LBP-90-3, 31 NRC at 44; see also White Mesa, LBP-02-03, 55 NRC at 45-46 (small increase in truck traffic alone provides no basis for standing).

The fact that Ms. Helms-Hughes asserts that the NRC should have prepared an EIS for the NFS license amendment, Declaration ¶¶ 7-8, does not obviate the need for her to otherwise establish standing. Although having an EIS prepared may be a procedural right, "the petitioner must suffer some concrete injury from the proposed agency action, which must still be shown apart from having any interest in having the procedures observed." Babcock and Wilcox, LBP-97-9, 45 NRC at 93. Petitioners unable to show concrete injury to legitimate health, safety, or environmental interests "are unable to establish their standing to pursue their concerns about the agency's compliance with NEPA's procedural requirements." Id. at 93-94. As the Supreme Court put it, an

individual can assert procedural rights "so long as the procedures in question are designed to protect some threatened concrete interest of his that is the ultimate basis of his standing." Lujan, 504 U.S. at 573 n.8.

Here, Ms. Helms-Hughes fails to demonstrate standing because she fails to show a realistic threat of direct, concrete, and palpable injury that is fairly traceable to the proposed license amendment. She impermissibly points to asserted harms connected to past or ongoing operations at the NFS facility and she makes only impermissibly vague and speculative claims, lacking in all detail, about potential harm arising from the amendment.

2. Ms. Helms-Hughes Does Not Demonstrate Her Standing

Ms. Helms-Hughes states that she lives in Butler, Tennessee, "20 miles downwind" from the NFS plant. Declaration ¶ 1. She also states that her 10-year old daughter attends an elementary school "less than 20 miles downwind" from the NFS plant. Id. ¶ 2. Ms. Helms-Hughes claims that she will be harmed in that "increased levels of radiological contaminants in the air near [her] home and [her] child's school, caused by normal operations and potential accidental releases, will have adverse impacts on the health of [herself], [her] family and community members." Id. ¶ 5. She claims to suffer from chronic asthma and that her child has respiratory problems. Id. She states that prevailing winds from NFS tend to be from the southwest and channel through the valley in her direction (northeast). Id. She also claims that increased airborne contamination from NFS will settle in her area and lead to contamination of the mountain springs that serve as her only source of drinking water. Id. She claims that her property values have the potential to decline as a result of "public perception of increased radioactive contamination from NFS' plant that pose a health risk to the surrounding area." Id. Finally, Ms. Helms-Hughes claims that shipment of uranium product associated with the BLEU process will be primarily via Interstates 81 and 40, which she

"frequently travel[s] on a weekly basis and which have been shut down recently on several occasions due to trucking accidents." Id. ¶ 7. She claims that shipments of HEU along those routes could pose an increased risk of accidents and increased health risks to persons traveling them. Id.

Ms. Helms-Hughes claims do not provide her with standing. While Ms. Helms-Hughes states that she is concerned over BLEU Project airborne emissions affecting her and her child's respiratory conditions and their drinking water supply, that is not sufficient. Airborne radiological emissions from the UNB, which will be part of the BLEU Complex at the NFS Site, will be an extremely small fraction of what is permissible under applicable regulations and NFS' permits. As shown in the EA, Table 5.2, the total radiological dose rate from airborne emissions from the proposed BLEU Complex (which also includes the Oxide Conversion Building and the Effluent Processing Building, EA at 2-9) to the maximally exposed individual is conservatively estimated to be only 8 E-3 mrem per year. EA at 5-6.[3] This is only 8/100,000 of the annual public dose limit of 100 mrem per year in 10 C.F.R. Part 20. Id. at 5-5.[4] It is also only 8/360,000 of the average annual effective dose equivalent to a resident of the United States. See id. at 3-12 (360 mrem/yr). Moreover, the maximally exposed individual with respect to effluents (for total dose, the great majority of which is due to liquid effluents) is located 8 miles from the NFS site, id. at 5-6, not 20 miles away as are Ms. Helms-Hughes and her daughter. Under NRC case law, mere potential exposure to minute doses of radiation within regulatory limits does not constitute "distinct and palpable" injury. See

[3] Radiation dose resulting from UNB emissions, alone, will be less than this, in that it will not emit plutonium, thorium, or americium. EA Table 2.2.

[4] Ms. Helms-Hughes describes the emissions to the river in terms of a percentage increase, e.g., uranium, thorium, plutonium and americium discharges will increase "approximately 395 percent." Helms-Hughes Dec. ¶ 3. Such characterization is irrelevant to whether the she will suffer injury from the project. By that logic, the emission of one molecule of a contaminant into a river could be described as an "infinite percent" increase if the facility were emitting no such contaminants previously. Nonetheless, one molecule clearly would not represent a threat to anyone or anything.

Babcock and Wilcox, LBP-93-4, 37 NRC at 87-88. Stated differently, a negligible likelihood of radiation exposure significantly above background does not constitute the "new or increased harm . . . or risk" that is necessary to provide a petitioner with standing. International Uranium, LBP-01-8, 53 NRC at 220. The infinitesimal increase above background that will result from UNB emissions to the air—even for the maximally exposed individual—is simply insufficient to cause the palpable harm necessary to provide Ms. Helms-Hughes with standing.

Transportation impacts also do not provide Ms. Helms-Hughes with standing. Although she claims she occasionally drives on the interstate highways on which she asserts BLEU project materials will be transported and that truck accidents have occurred on the highways, that alone is not sufficient to obtain standing. The Commission has stated that "speculation about accidents along feed material's transport routes does not establish standing under our case law." White Mesa, CLI-01-21, 54 NRC at 252-53. Furthermore, the mere fact that additional radioactive material will be transported if a license amendment is granted does not ipso facto establish that there is a reasonable opportunity for an accident to occur or for the radioactive materials to escape. Pathfinder, LBP-90-3, 31 NRC at 43; see also Babcock and Wilcox, LBP-93-4, 37 NRC at 84 (asserted accident scenarios must be credible). Transportation effects of the BLEU Project as a whole (only some of which would result from the operation of the UNB, see EA § 2.1.1) were assessed in the Department of Energy EIS for disposition of surplus HEU and are summarized in the Tennessee Valley Authority record of decision. EA at 5-4. "No significant adverse impacts were identified regarding the proposed transportation activities." Id. Here, Ms. Hughes has not shown that the additional material that would be transported as a result of the construction and operation of the UNB (as opposed to NFS's other operations) will pose a realistic threat of direct injury to her. White Mesa, CLI-01-21, 54 NRC at 253. Therefore, this claims does not provide her with standing.

Ms. Helms-Hughes also states that she is concerned, because of asserted past notices of violation issued against NFS, that NFS does not have sufficient control of its operation to ensure that radiological and chemical releases from the proposed downblending operation can and will be contained properly. Declaration ¶ 4. But Ms. Helms-Hughes' concern over alleged past NFS violations completely unrelated to the BLEU Project and to this license amendment do not provide her with standing. NRC case law is very clear that to demonstrate standing "a petitioner's challenge must show that the amendment will cause a 'distinct new harm or threat apart from the activities already licensed.'" White Mesa, CLI-01-21, 54 NRC at 251. Moreover, allegations about past, unrelated violations do not support a conclusion that any unplanned or uncontrolled releases of contaminants will occur during the BLEU Project. In NRC licensing proceedings the Commission will not assume that license applicants will violate applicable regulations. See GPU Nuclear, Inc.(Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 207 (2000). Furthermore, if a petitioner asserts a potential for injury from accidents, e.g., contaminant spills or uncontrolled releases, she must show that the accident scenario(s) are credible and that the accident(s) would have a "'particular and concrete' impact" upon her. Babcock and Wilcox, LBP-93-4, 37 NRC at 84, 92; see also Atlas, LBP-97-9, 45 NRC at 426 (alleged radiological contacts must be concretely delineated). "Unfounded conjecture" about uncontrolled releases clearly does not constitute "a realistic threat . . . of direct injury" that is necessary to demonstrate standing. White Mesa, CLI-01-21, 54 NRC at 253. Here, Ms. Helms-Hughes only refers to past notices of violation; she provides no scenario at all by which material stored at the UNB pursuant to this license amendment could be released and somehow have some particular and concrete impact upon her 20 miles away. Therefore, her claims about past NFS violations do not provide her with standing to challenge this license amendment for the BLEU Project.

Finally, Ms. Helms-Hughes' claims that her property values may be affected by public fear of emissions from NFS, Declaration ¶ 5, does not provide her with standing because the effects of public fear of radiation do not lie within the zone of interests of either the Atomic Energy Act or NEPA. The Commission has held that the "NRC's administration of the Atomic Energy Act will not include psychological effects from the fear of radiation." Babcock and Wilcox Co. (Pennsylvania Nuclear Services Operations, Parks Township, PA), LBP-94-12, 39 NRC 215, 218-19 (1994) (citing Metropolitan Edison Co. (Three Mile Island Unit 1), CLI-82-6, 15 NRC 407 (1982)). The Supreme Court has held that the NRC need not consider psychological effects under NEPA. Id. at 219 n.7. (citing Metropolitan Edison Co. v. People Against Nuclear Energy, 460 U.S. 766 (1983)). Thus claims of potential property value depression based on public fears cannot serve as a basis for holding an NRC hearing. Id. at 219.

In conclusion, Ms. Helms-Hughes' declaration does not show a likelihood that she will suffer injury-in-fact if this license application amendment is granted. Therefore, she lacks standing.

B. Ms. Helms Hughes Has Not Proffered an Admissible Area of Concern

To obtain a hearing under Subpart L, a petitioner must also "describe in detail" "areas of concern" about the licensing activity in question. 10 C.F.R. § 2.1205(e)(3); see Shieldalloy, CLI-99-12, 49 NRC at 354. Areas of concern must be "germane to the subject matter of the proceeding." 10 C.F.R. § 2.1205(h). If the proceeding concerns a license amendment, germane areas of concern are limited to activities to be authorized by the amendment and do not include those authorized by the underlying license. See Energy Fuels Nuclear, Inc. (Source Materials License No. SUA-1358), LBP-94-33, 40 NRC 151, 153-54 (1994).

Areas of concern must have some factual basis. "Prior to acceptance of an area of concern, there must at least be a reference to some authority giving rise to the concern."

Molycorp., Inc. (Washington, Pennsylvania), LBP-00-10, 51 NRC 163, 175 (2000). "'Information and belief' is patently inadequate." Id. Concerns must be particularized in some respect and show some significance so as to "appear that the concern is at least worthy of further exploration." See International Uranium (USA) Corp. (White Mesa Uranium Mill), LBP-02-06, 55 NRC 147, 153 (2002).

It is unclear what Ms. Helms-Hughes wishes to litigate because her declaration does not identify distinct areas of concern as such. On that ground alone, her declaration could be rejected. See Shieldalloy, CLI-99-12, 49 NRC at 354 (petitioners must state areas of concern and their grounds for standing "with reasonable specificity" and "with particularity"). In any event, the apparent concerns advanced by Ms. Helms Hughes are inadmissible because they are devoid of particularity and factual basis, and in some respects, are not germane to the license amendment.

1. Preparation of an EIS

Ms. Helms-Hughes claims that "a full EIS [should be] produced by NFS." Declaration ¶ 8 (unnumbered). Ms. Helms-Hughes claims that the NRC staff "conced[ed] that in the absence of all three license amendment applications it was unable to do a detailed environmental review of the entire project." Declaration ¶ 6. Purportedly to support this claim, she cites the Staff's statement in its Federal Register notice that the Staff will review the second and third BLEU project license amendment requests and determine whether it needs to prepare supplemental EAs on the project. Id.

Under NRC environmental regulations, only "major Federal action[s] significantly affecting the quality of the human environment" or matters where the Commission has decided to do so at its discretion require the preparation of an EIS. 10 C.F.R. § 51.20(a). The Commission has determined that the actions listed in section 51.20(b) require the preparation of an EIS. Amendment to a Part 70 license to possess special nuclear material is not among the listed actions. Other NRC actions either require an EA or no

environmental review at all. 10 C.F.R. § 51.21. Here, the NRC Staff has prepared an environmental assessment and made a finding of no significant impact. Thus, no regulation requires an EIS for the BLEU Project license amendments. Furthermore, Ms. Helms-Hughes has provided no basis to believe that any of the impacts of this license amendment (for the UNB) or even the BLEU Project as a whole will be "significant."

Contrary to Ms. Helms-Hughes' claim, the NRC Staff did not state that it was unable to adequately review the environmental impact of the project. The EA states that "[t]o avoid segmentation of the environmental review, NFS has submitted environmental documentation for three proposed license amendments." EA at 1-1 (emphasis added). "The NFS documentation was used by the NRC staff to prepare this EA pursuant to the Council on Environmental Quality regulations . . . and the NRC regulations . . . which implement the requirements of [NEPA]." Id. The EA states that the NRC staff will perform further reviews when it performs the safety assessments for the second and third license amendments and will prepare additional EAs or an EIS only "if the environmental review indicates that this EA does not fully evaluate the environmental effects." Id. (emphasis added). Thus, the Staff's statements do not indicate any deficiency in this EA. Therefore, Ms. Helms-Hughes has not shown that this concern is "at least worthy of further exploration." White Mesa, LBP-02-06, 55 NRC at 153. Thus, it should not be admitted.

2. NFS' Alleged Notices of Violation

Ms. Helms-Hughes asserts that NFS has been cited for several notices of violation in the past few years and claims that "NFS does not have sufficient control of its operations to ensure that radiological and chemical releases from the proposed downblending operation will be contained properly." Declaration ¶ 4. This claim fails to show that the alleged violations are related in any way to activities that would be conducted under the proposed license amendment. Germane areas of concern are limited

to activities to be authorized by the proposed amendment and do not include those authorized by the underlying license. See Energy Fuels Nuclear, LBP-94-33, 40 NRC at 153-54. Thus the effects of past or ongoing operations at NFS are not germane to this proceeding.

3. Airborne Radiological Contaminants

Ms. Helms-Hughes claims that she will be adversely affected by increased airborne emissions of radionuclides from the BLEU Project. Declaration ¶ 5. As discussed above in relation to Ms. Helms-Hughes claim of standing, the radiological dose from airborne emissions from this license amendment will be minute fractions of regulatory limits and natural background radiation. Ms. Helms-Hughes does not even assert that the EA's assessment of these effects is incorrect. Therefore, this area of concern is invalid as not worthy of further investigation.

4. Transportation Issues

Ms. Helms-Hughes claims that shipment of uranium product associated with the BLEU process will be primarily via Interstates 81 and 40, "which have been shut down recently on several occasions due to trucking accidents." Declaration ¶ 7. She claims that shipments of HEU along those routes could pose an increased risk of accidents and increased health risks to persons traveling them. Id.

Ms. Helms-Hughes, however, does not assert any deficiency in the environmental assessment. The EA states that the transportation impacts of the BLEU Project (of which the impacts arising from operation of the UNB would only be a part) have already been assessed in the Department of Energy EIS for disposition of surplus HEU and are summarized in the Tennessee Valley Authority record of decision. EA at 5-4. "No significant adverse impacts were identified regarding the proposed transportation activities." Id. Because Ms. Helms-Hughes does not even discuss the assessment of

transportation effects in the DOE EIS, she has not suggested in any way that the assessment of the effects of transportation for this license amendment is deficient. Therefore, this concern should be rejected.

5. Other Issues

Ms. Helms-Hughes claims that "an addendum to the original Department of Energy EIS, such as being presented here, does not meet NEPA requirements and take into consideration population growth, new schools, aging population growth, or the lack of an acceptable evacuation plan in the event of an accident." Declaration ¶ 7. These claims are not germane because Ms. Helms-Hughes does not show in any way that they are relevant to the effects of this license amendment. She has merely submitted a list of subjects with no further explanation whatsoever. This is hardly even the "notice pleading" that the Commission has rejected as an invalid basis for an admissible area of concern. See Shieldalloy, CLI-99-12, 49 NRC at 354.

C. Request to Hold Hearing In Abeyance and Put BLEU Project on Hold

In addition to complaining of potential injury from the NFS BLEU Project, Ms. Helms-Hughes asserts that "a public hearing be held in abeyance and that the BLEU Project be put on hold until a full EIS is produced by NFS." Declaration ¶ 8 (unnumbered). She claims with no support that proceeding with a hearing on the first license amendment application alone "would appear to constitute unlawful segmentation under NEPA." Id. ¶ 6.

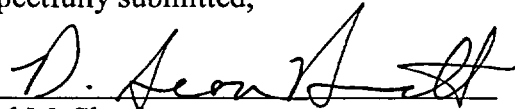
Ms. Helms-Hughes' requests should be denied. In Subpart L proceedings on materials license applications, the filing or granting of hearing requests does not prevent the NRC Staff from acting on the license application. 10 C.F.R. § 2.1205(m). In order to have the BLEU Project be put on hold or to have this hearing held in abeyance, which are presumably requests to stay NRC Staff licensing action and action by the Presiding

Officer, Ms. Helms-Hughes must satisfy the requirements of 10 C.F.R. § 2.788. 10 C.F.R. § 2.1263. Because she has not even attempted to satisfy those requirements, her request must be denied. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-89-6, 29 NRC 348, 354 (1989). Her request to hold this proceeding in abeyance must also be denied because she has not demonstrated that she has standing to participate in the first place. See id.

III. CONCLUSION

For the foregoing reasons, the Presiding Officer should reject the claims in Ms. Helms-Hughes' declaration and deny her request for a hearing on the license amendment application.

Respectfully submitted,



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Dated: December 13, 2002

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Answer To Request By The Friends Of The Nolichucky River Valley, The State Of Franklin Group Of The Sierra Club, The Oak Ridge Environmental Peace Alliance, And The Tennessee Environmental Council To Hold Proceeding In Abeyance; Applicant's Answer To Request For Hearing Of The Friends Of The Nolichucky River Valley, The State Of Franklin Group Of The Sierra Club, The Oak Ridge Environmental Peace Alliance, And The Tennessee Environmental Council; Applicant's Answer To Request For Hearing And Areas Of Concern Of The Blue Ridge Environmental Defense League; and Applicant's Answer To Declaration Of Kathy Helms-Hughes were served on the persons listed below by electronic mail or by facsimile and deposit in the U.S. mail, first class, postage prepaid, this 13th day of December, 2002.

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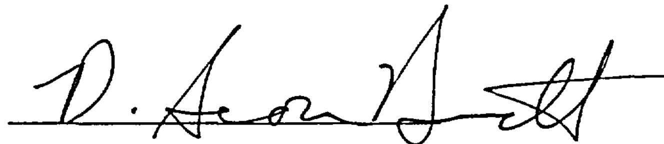

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