

January 16, 2003

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

January 22, 2003 (11:37AM)

Before the Presiding Officer

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of	)	
	)	Docket No. 70-143
NUCLEAR FUEL SERVICES, INC.	)	Special Nuclear Material
	)	License No. SNM-124
(Special Nuclear Material License)	)	

**APPLICANT'S MOTION TO STRIKE PART OF KATHY HELMS-HUGHES  
RESPONSE TO NUCLEAR FUEL SERVICES, INC.'S MOTION TO DENY HELMS-  
HUGHES' REQUEST FOR STANDING AND LEAVE TO INTERVENE**

On January 6, 2003, Ms. Kathy Helms-Hughes filed a response<sup>1</sup> to Applicant Nuclear Fuel Services, Inc.'s ("Applicant" or "NFS") December 13, 2002 answer<sup>2</sup> to her November 29, 2002 request<sup>3</sup> for a hearing in this proceeding. Applicant moves to strike the part of Ms. Helms-Hughes Response that attempts to raise new areas of concern that she did not attempt to raise in her initial hearing request.

**I. NEW ARGUMENTS MAY NOT BE RAISED IN A REPLY TO AN  
ANSWER TO A REQUEST FOR A HEARING**

Under NRC rules of practice for hearings conducted under 10 C.F.R. Part 2, Subpart L, Ms. Helms-Hughes was required to file her request for a hearing within 30 days of the Federal Register notice of opportunity for a hearing. 10 C.F.R. § 2.1205(d)(1). The request must include her showing that she had standing to warrant a hearing and her areas of concern that she believes are germane to the proceeding. 10 C.F.R. § 2.1205(e); see 10 C.F.R. § 2.1205(h). A request submitted more than 30 days after the Federal Register notice is late. See 10 C.F.R. § 2.1205(k).

<sup>1</sup> Kathy Helms-Hughes Response to Nuclear Fuel Services, Inc.'s Motion to Deny Helms-Hughes' Request for Standing and Leave to Intervene ("Response").

<sup>2</sup> Applicant's Answer To Declaration of Kathy Helms-Hughes (Dec. 13, 2002) ("Answer").

<sup>3</sup> Declaration of Kathy Helms-Hughes (Nov. 29, 2002) ("Declaration").

If Ms. Helms-Hughes fails to meet the late-filing requirements and establish that the request otherwise should be entertained (under 10 C.F.R. § 2.1205(l)(1)), then it will not be considered in the context of a potential hearing on the proposed action. 10 C.F.R. § 2.1205(l)(2). Rather, it “will be treated as a petition under § 2.206 and referred for appropriate disposition.” *Id.* In particular, Ms. Helms-Hughes must show that the delay in filing the late material was excusable. 10 C.F.R. § 2.1205(l)(1)(i). Even pro se litigants, such as Ms. Helms-Hughes, are “expected to comply with [the Commission’s] basic procedural rules—especially ones as simple to understand as those establishing filing deadlines.” Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 201 (1998).

Where Presiding Officers have allowed the filing of replies to answers to petitioners’ hearing requests in Subpart L proceedings, they have limited the scope of the replies to the issues raised in the hearing requests; regarding new material not specified in the initial request, the petitioners have had to satisfy the late filing requirements of 10 C.F.R. § 2.1205(l). See Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-92-24, 36 NRC 149, 154 (1992). The purpose of allowing replies to answers to hearing requests in NRC practice generally is to allow petitioners to respond to arguments in the answers that otherwise might have been difficult to anticipate in the requests. See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521, 525 (1979). It is not to allow the making of entirely new arguments.

**II. MS. HELMS-HUGHES’ REPLY TO NFS’S ANSWER TO HER HEARING REQUEST CONTAINS UNJUSTIFIABLY LATE-FILED AREAS OF CONCERN THAT SHOULD BE STRICKEN**

Ms. Helms-Hughes has attempted to raise areas of concern, see 10 C.F.R. § 2.1205(e)(3), in her Response that she did not attempt to raise in her Declaration. These new areas of concern are unjustifiably late and thus should be stricken. In her Declaration, Ms. Helms-Hughes asserted the following areas of concern:

1. the preparation of an environmental impact statement for the BLEU Project, Declaration ¶ 8;
2. NFS's control of its operations, id. ¶ 4;
3. airborne radiological contaminants, id. ¶ 5;
4. nuclear material transportation issues, id. ¶ 7; and
5. environmental assessment consideration of "population growth, new schools, aging population growth, [and] the lack of an acceptable evacuation plan in the event of an accident," id. ¶ 7.

See also Answer at 14-17.

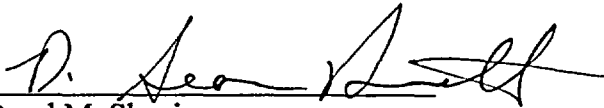
In her Response, Ms. Helms-Hughes now also asserts the following new concerns:

1. cumulative effects of past airborne emissions from the NFS facility, Response at 2;
2. cumulative environmental effects resulting from NFS's possible participation in the "USM Ore Program" with International Uranium Corp., id.;
3. cumulative effects of airborne emissions from the BLEU Project and the Studsvik Processing Facility, id. at 3;
4. NFS experience in conducting high enriched uranium downblending, id. at 4, 6;
5. environmental monitoring stations and radiological sampling, id. at 5;
6. the EA's evaluation of potential accidents, id. at 6;
7. alleged plutonium presence in groundwater, id.;
8. the information on the NFS web site, id. at 8;
9. NFS press releases, id.;
10. decommissioning funding, id. at 9;
11. financial assurance and corporate ownership, id. at 11;
12. the NFS special nuclear material license number, id. at 12.

While the Presiding Officer provided for Ms. Helms-Hughes' filing of a reply to NFS's Answer, a reply does not include entirely new material. Babcock and Wilcox, LBP-92-24, 36 NRC at 154. Thus, Ms. Helms-Hughes' new areas of concern are late. NFS understands that Ms. Helms-Hughes is a pro se litigant, and thus has some latitude in NRC proceedings, but even so, she must comply with the filing deadlines in the regulations. Yankee Nuclear, CLI-98-21, 48 NRC at 201. While her new concerns regarding the cumulative effects of airborne emissions

(new concerns 1 and 3) and her new concerns regarding NFS's experience with the proposed downblending operations and potential accidents (new concerns 4 and 6) may in some remote way relate to her original concerns, her other new concerns bear no relation whatsoever to the material in her Declaration. Ms. Helms-Hughes did not attempt to show why her late-filed concerns should be considered with her hearing request. 10 C.F.R. § 2.1205(l)(1). Hence, the lateness of her new material is not excusable. 10 C.F.R. § 2.1205(l)(1)(i). Therefore, her new areas of concern should be stricken. 10 C.F.R. § 2.1205(l)(2).

Respectfully submitted,



Daryl M. Shapiro  
D. Sean Barnett  
SHAW PITTMAN LLP  
2300 N Street, N.W.  
Washington, D.C. 20037  
(202) 663-8507  
Counsel for Nuclear Fuel Services, Inc.

Neil J. Newman  
Vice President and General Counsel  
Nuclear Fuel Services, Inc.

January 16, 2003

**CERTIFICATE OF SERVICE**

I hereby certify that copies of Applicant's Motion to Strike Part of Kathy Helms-Hughes Response to Nuclear Fuel Services, Inc.'s Motion to Deny Helms-Hughes' Request for Standing and Leave to Intervene and Applicant's Motion to Strike Part of the Reply by Friends of the Nolichucky River Valley, State of Franklin Group of the Sierra Club, Oak Ridge Environmental Peace Alliance, and Tennessee Environmental Council to Applicant's Answer to Their Hearing Request 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 16<sup>th</sup> day of January, 2003.

\*Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Administrative Judge  
Alan S. Rosenthal, Presiding Officer  
Atomic Safety and Licensing Board Panel  
Mail Stop – T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
Fax: 301-415-5599  
email: [rsnthl@comcast.net](mailto:rsnthl@comcast.net); [sam4@nrc.gov](mailto:sam4@nrc.gov)

Administrative Judge  
Richard F. Cole, Special Assistant  
Atomic Safety and Licensing Board Panel  
Mail Stop – T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
Fax: 301-415-5599  
Email: [rfe1@nrc.gov](mailto:rfe1@nrc.gov)

Dennis C. Dambly  
Jennifer M. Euchner  
David A. Cummings  
Office of the General Counsel  
Mail Stop: O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
Fax: 301-415-3572  
Email: [dac3@nrc.gov](mailto:dac3@nrc.gov); [jme@nrc.gov](mailto:jme@nrc.gov);

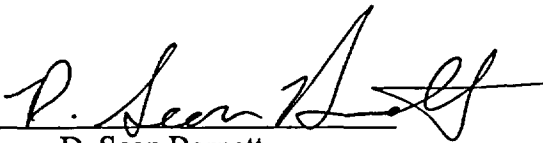
Louis Zeller  
Blue Ridge Environmental Defense League  
P.O. Box 88  
Glendale Springs, NC 28629  
Email: [BREDL@skybest.com](mailto:BREDL@skybest.com)

Diane Curran  
Harmon, Curran, Spielberg & Eisenberg,  
L.L.P.  
1726 M Street, N.W., Suite 600  
Washington, D.C. 20036  
Fax: 202-328-6918  
Email: [dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike  
One White Flint North  
Rockville, MD 20852-2738  
Attention: Docketing and Service Branch  
Fax: 301-415-1101  
Email: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)  
(original and two copies)

\*Kathy Helms-Hughes  
P.O. Box 58  
Hampton, TN 37658  
Email: [Khelms@mounet.com](mailto:Khelms@mounet.com)

\*\*C. Todd Chapman, Esq.  
King, King & Chapman, P.L.L.C.  
125 South Main Street  
Greeneville, TN 37743  
Fax: 423-639-3629



D. Sean Barnett

\* by U.S. mail only

\*\* by facsimile and U.S. mail only