

February 21, 2003

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

DOCKETED  
USNRC

Before the Presiding Officer

February 25, 2003 (11:31AM)

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

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**APPLICANT'S ANSWER TO REQUEST FOR HEARING AND LEAVE TO  
INTERVENE BY KATHY HELMS-HUGHES ON NFS'  
SECOND LICENSE AMENDMENT REQUEST**

Applicant Nuclear Fuel Services, Inc. ("Applicant" or "NFS") files this answer to the "Request for Hearing and Leave to Intervene by Kathy Helms-Hughes in the Matter of Nuclear Fuel Services, Inc.'s Notice to Amend Its NRC Special Nuclear Materials License SNM-124" (February 6, 2003) ("2d Req."). NFS submits this answer pursuant to 10 C.F.R. § 2.1205(g). NFS respectfully requests that the Presiding Officer reject the request for lack of standing and for failure to submit an area of concern germane to this proceeding.

**I. FACTUAL AND LEGAL BACKGROUND**

**A. Procedural Background**

On October 11, 2002, NFS requested a second amendment to Special Nuclear Material License No. SNM-124 to authorize modification to its special nuclear material processing operations in the BLEU Preparation Facility at its existing nuclear fuel fabrication and uranium recovery facilities in Erwin, Tennessee.<sup>1</sup> The amendment is the

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<sup>1</sup> Nuclear Fuel Services, Inc., Notice of Receipt of Amendment Request and Opportunity to Request a Hearing, 68 Fed. Reg. 796 (Jan. 7, 2003).

second of three amendments that will be necessary to support process operations associated with the portion of the BLEU Project that will be performed at NFS. 68 Fed. Reg. at 796. 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.<sup>2</sup> Re-use of the HEU as low enriched uranium ("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. EA at 1-3.

On February 28, 2002, NFS submitted its first request for an amendment to its license to authorize the storage of LEU-bearing materials at the Uranyl Nitrate Building ("UNB"), to be constructed at NFS' Erwin facilities.<sup>3</sup> That amendment request was the subject of several hearing petitions whose resolution is being held in abeyance by the Presiding Officer pending the expiration of the opportunity for hearing on NFS' third license amendment request. Nuclear Fuel Services, Inc. (Erwin, Tennessee), LBP-03-1, 57 NRC \_\_\_, slip op. at 13 (Jan. 31, 2003). NFS anticipates submitting its third request, to authorize the operation of a uranium dioxide conversion facility to be constructed at NFS' Erwin site, by May or June 2003.

On July 9, 2002, the NRC Staff published a notice in the Federal Register that it had prepared the EA for the entire BLEU Project, so as to avoid segmentation of the environmental review. 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 made a Finding Of No Significant Impact ("FONSI") for the first

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<sup>2</sup> 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.

<sup>3</sup> Environmental Statements; Availability, etc.: Nuclear Fuel Services, Inc., Notice of docketing, etc., 67 Fed. Reg. 66,172 (Oct. 30, 2002).

license amendment request. 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 BLEU Project “EA appropriately adequately assesses the environmental effects of the proposed action, then no further assessment will be performed.” Id. On the other hand, if the environmental review indicates that the BLEU Project EA does not fully evaluate the environmental effects, either another EA or an EIS will be prepared.

**B. The Second License Amendment Application**

Pursuant to the second license amendment request and as described in the EA, NFS will downblend HEU-aluminum alloy and HEU metal to low-enriched uranyl nitrate at the existing BLEU preparation facility (“BPF”) at NFS’ site. EA at 1-2; see also 68 Fed. Reg. at 796.<sup>4</sup> Process equipment previously used at NFS’ 200 Complex at the Erwin site will be relocated to an existing but inactive production area in NFS’ Building 333, to be designated as the BPF. EA at 2-1. Approximately 7.4 metric tons of HEU-aluminum alloy and 9.6 metric tons of HEU metal will be used to produce high-enriched uranyl nitrate solution. Id. This solution will be downblended with uranyl nitrate solution produced from 211.7 metric tons of natural uranium oxide to yield low-enriched uranyl nitrate solution in 5,000 gallon batches. Id. That uranyl nitrate solution will then be transferred to and stored at NFS’ UNB, whose operation was the subject of NFS’ first license amendment request. EA at 1-2.

The EA found that the three proposed amendments for the BLEU Project would not 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

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<sup>4</sup> NFS is already authorized to handle HEU at the BPF. 68 Fed. Reg. at 796.

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 environmental impacts of the second license amendment will be only part of the impacts caused by the BLEU Project as a whole. See id. at 2-10 to 2-11. Thus, the impacts of the amendment will also be insignificant.

**C. Ms. Helms-Hughes' Hearing Request**

Ms. Helms-Hughes filed her request within 30 days of the notice of opportunity for hearing. She makes several claims about the harm she and her daughter will suffer from airborne emissions from the BLEU Project. 2d Req. at 2-6. She attempts to raise a variety of concerns regarding NFS' second license amendment request that are not germane because they relate only to past NFS operations or they are purely conjectural. See id. at 6-23.

NFS requests that Ms. Helms-Hughes' hearing request be denied 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 asks 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. 68 Fed. Reg. at 796. 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**

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).

NFS discussed the law on standing in NRC materials licensing cases in detail in its response to Ms. Helms-Hughes request for a hearing on NFS’ first license amendment request.<sup>5</sup> NFS incorporates that discussion by reference and responds to Ms. Helms-Hughes’ specific claims 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

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<sup>5</sup> Applicant’s Answer to Declaration of Kathy Helms-Hughes (Dec. 13, 2002) at 5-9.

impermissibly vague and speculative claims, lacking in all detail, about potential harm arising from the amendment.

**1. Allegations of Injury from Airborne Emissions Resulting from this License Amendment Do Not Provide Ms. Helms-Hughes with Standing**

Ms. Helms-Hughes states that she lives "less than 20 miles downwind" from the NFS plant, "in the flight path of air effluent dispersion carried by the prevailing wind (northeast)." 2d Req. at 2. NFS' airborne emissions will assertedly deposit contaminants on her land "based on elementary science: gravity, wind velocity and wind direction." Id. She claims that airborne emissions from NFS will increase the health risks to her, her family and her community. Id. She claims to suffer from chronic asthma and that her child has respiratory problems. Id. She also claims that she eats produce and gets drinking water from the area and that a local lake is a popular recreation area for her and her family. Id. at 3.

Ms. Helms-Hughes' assertions 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.<sup>6</sup> Airborne radiological emissions from the BPF (the subject of this license amendment request), will be an extremely small fraction of what is permissible under applicable health and safety regulations and NFS' permits. The EA conservatively estimates the dose rate to the maximally exposed individual to be only 0.153 mrem per year,<sup>7</sup> which is less than one percent of the annual public dose limit of 25 mrem per year

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<sup>6</sup> At various points, Ms. Helms-Hughes claims that NFS' license amendment request will cause harm to other (adult) family members and members of her community. See 2d Req. at 2-5. Allegations of injury to others (with the possible exception of minor children) cannot provide one with legal standing. Atlas, LBP-97-9, 45 NRC at 426 n.2 (citing Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 474 n.1 (1978)); Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989).

<sup>7</sup> As shown in the EA, Table 5.2, the total radiological dose rate from airborne emissions from the proposed BPF and the wastewater treatment facility ("WWTF"), to which liquid wastes from the BPF will be sent

and only 1/2,300 of the average annual effective dose equivalent to a resident of the United States. See id. at 3-12 (360 mrem/yr).<sup>8</sup> 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.<sup>9</sup>

Under NRC case law, mere potential exposure to minute doses of radiation within regulatory limits does not constitute a “distinct and palpable” injury necessary for standing. See Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility – Decommissioning Plan), LBP-93-4, 37 NRC 72, 87-88 (1993). “[S]imply showing the potential for any radiological impact, no matter how trivial, is not sufficient to meet the requirement of showing a ‘distinct and palpable harm’ [necessary for] standing.” Pacific Gas and Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC \_\_\_, slip op. at 14 (Dec. 2, 2002). 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 (USA) Corp. (Source Material License Amendment), LBP-01-8, 53 NRC 204, 220, aff’d, CLI-01-18, 54 NRC 27 (2001). The

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(see EA at 5-5), to the maximally exposed individual is conservatively estimated to be only 0.153 mrem per year. EA at 5-6 (the sum of 7.37 E-2 mrem/yr from the BPF and 7.9 E-2 mrem/yr from the WWTF). The calculation includes dose from all pathways, including agricultural exposure from deposited radionuclides. Id. Furthermore, the airborne radiological effluent calculations on which the EA dose estimates are based are conservative because no pollution control was assumed for a number of radionuclides, while in fact NFS will utilize pollution controls. Id. at 5-5. In addition, some WWTF emissions included in the calculation result from ongoing operations, not the BLEU Project. See EA Table 5.1.

<sup>8</sup> Ms. Helms-Hughes makes arguments about how radionuclides deposited in the environment could come to affect her, see 2d Req. at 2-4 (concerning plutonium and uranium), but she does not show (or even assert) that the EA’s assessment of total dose to exposed individuals from the various possible pathways of exposure is incorrect. If her arguments are interpreted as challenges to the EA, they should be rejected as the speculation of a lay person. See International Uranium (USA) Corp. (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 253 (2001).

<sup>9</sup> In her declaration seeking a hearing on NFS’ first license amendment request, Ms. Helms-Hughes stated that she lived in Butler, Tennessee. See Declaration of Kathy Helms-Hughes (Nov. 29, 2002) ¶ 1. Butler is 25 miles from the NFS site.

minute increase above background that will result from airborne emissions due to the second license amendment—even for the maximally exposed individual—is simply insufficient to cause the palpable harm necessary to provide Ms. Helms-Hughes with standing.

## **2. The Alleged Cumulative Effects of this Amendment and Past NFS Operations Do Not Provide Ms. Helms-Hughes with Standing**

In addition to asserting that she will suffer harm from airborne emissions from NFS' second license amendment, Ms. Helms-Hughes also asserts that she has standing on the basis of the alleged cumulative effects of emissions from the NFS site dating back to 1957. 2d Req. at 2-6. Her claims do not provide her with standing to litigate this license amendment request. The Commission has stated repeatedly that “a petitioner seeking to intervene in a license amendment proceeding must assert an injury-in-fact associated with the challenged license amendment, not simply a general objection to the facility.”

Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 188 (1999) (emphasis in original). “[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, *supra* note 8, CLI-01-21, 54 NRC at 251 (quotations omitted, emphasis added); *see* White Mesa, LBP-01-8, 53 NRC at 219-20, *aff’d*, CLI-01-18, 54 NRC at 31-32.<sup>10</sup> Thus, Ms. Helms-Hughes cannot rely on the alleged cumulative impacts of the proposed action and current or past operations to provide her with standing.

Ms. Helms-Hughes allegations of cumulative impacts arising from airborne emissions should also be rejected as speculative. White Mesa, CLI-01-21, 54 NRC at

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<sup>10</sup> In White Mesa, a small increase in the truck traffic carrying radioactive material to a mill was found not to provide the petitioner with standing. LBP-01-8, 53 NRC at 219-20. The determination of injury-in-fact was based on the number of trucks that were to be added by the proposed amendment, not the cumulative total of trucks that were traveling to the mill under the license plus those that were to have traveled to the mill under the amendment. *Id.*



253. She provides nothing to show what the past impacts were, only an assertion that they occurred because NFS has existed since 1957 and “it is not unreasonable to conclude” and “[a] prudent person would be led to believe and even ‘presume’” that such impacts occurred. See 2d Req. at 3-4. Such bare, ipso facto claims are clearly insufficient to provide her with standing.

### **3. Ms. Helms-Hughes’ Other Claims Do Not Provide Her with Standing**

In addition to her claims of standing from airborne emissions from the NFS site, Ms. Helms Hughes asserts that she “has previously provided this panel with significant health and safety issues which clearly exist, as well as weaknesses in NFS’s control of its operations” and requests that “all information included in her previous submissions” be considered in this proceeding. 2d Req. at 5. Ms. Helms-Hughes broad and unspecified incorporation by reference of material she has previously provided to the NRC cannot provide her with standing. The NRC is not and opposing parties should not “be expected ‘to sift through the parties’ pleadings to uncover and resolve arguments not advanced by the litigants themselves.’” Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-02-16, 55 NRC 317, 337 (2002).

### **4. NFS’ Objection to Petitioners’ Standing is Not Improper**

In addition to asserting that she has standing to request a hearing on NFS’ second license amendment request, Ms. Helms-Hughes also asserts that in opposing her and other petitioners’ hearing requests, NFS is attempting to “strip away their rights [to participate in hearings] ensured by Congress.” 2d Req. at 5. This is not the case. NRC regulations require Ms. Helms-Hughes to demonstrate her standing in order for her to participate in this proceeding. 10 C.F.R. § 2.1205(h).<sup>11</sup> As the federal courts have

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<sup>11</sup> Section 189a of the Atomic Energy Act limits opportunities for hearings on materials licensing actions to persons “whose interest may be affected.”

explained, “the requirement that a party demonstrate a direct and concrete injury in fact [to show standing] ‘is designed to limit access to the courts to those who have a direct stake in the outcome, as opposed to those who would convert the judicial process into no more than a vehicle for the value interests of concerned bystanders.’” Central and South West Services v. U.S. E.P.A., 220 F.3d 683, 701 (5<sup>th</sup> Cir. 2000).

**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). They should be stated with reasonable specificity and with particularity. Shieldalloy, CLI-99-12, 49 NRC at 354. 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).

**1. Preparation of an EIS**

Ms. Helms-Hughes asserts that the NRC Staff should prepare an EIS for the BLEU Project on several grounds, none of which is admissible.

**a. Segmentation of the NRC Review**

Ms. Helms-Hughes claims that an EIS is required for the BLEU Project because NFS has assertedly hidden the “dangers” associated with the project and segmented its environmental review by submitting its license amendment requests “in piecemeal fashion.” 2d Req. at 6. On the contrary, the EA states that:

To avoid segmentation of the environmental review, NFS has submitted environmental documentation for three proposed license amendments: 1) to construct and operate a Uranyl [Nitrate] Building (UNB), 2) to construct and operate an Oxide Conversion Building (OCB) and an Effluent Processing Building (EPB) and 3) to relocate the downblending operations onsite. The documentation is found in a supplemental Environmental Report (ER) (ref. 2) and additional information letters dated January 15, 2002 (Ref. 3), March 15, 2002 (Ref. 4), and April 12, 2002 (Ref. 5). The NFS environmental documentation was used by NRC staff to prepare this EA pursuant to the Council on Environmental Quality Regulations . . . .

EA at 1-1 (emphasis added). Ms. Helms-Hughes cites no evidence to support her segmentation assertion. Indeed, Ms. Helms-Hughes patently ignores the plain language in the EA and the entire environmental evaluation of the BLEU Project discussed throughout the EA. Therefore, this concern should be summarily dismissed. See White Mesa, LBP-02-06, 55 NRC at 153.

**b. The NFS EA as an Addendum to the DOE EIS**

Ms. Helms-Hughes claims that “[a]n addendum to the original Department of Energy EIS, such as is being presented in the [EA], 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 for all regions of concern . . . .” 2d Req. at 6-7. This concern should be dismissed as not germane and entirely unparticularized.

First, Ms. Helms-Hughes cites nothing beyond a bare assertion for the proposition that an EA is inappropriate for NFS’ license amendments. NRC regulations clearly

provide that an EA is appropriate for amendments to a materials license. See 10 C.F.R. § 51.21; compare 10 C.F.R. §§ 51.20, 51.22. An admissible concern under Subpart L “must be sufficient to establish that the issues the requester wants to raise regarding the licensing action fall generally within the range of matters that properly are subject to challenge in such a proceeding.”<sup>12</sup> Here the NRC decision to perform an EA for the NFS license amendments simply is not subject to the facial challenge made by Ms. Helms-Hughes.

Second, Ms. Helms-Hughes’ claim that the EA is somehow inadequate because it allegedly fails to “take into consideration population growth, new schools, aging population growth, or the lack of an acceptable evacuation plan in the event of an accident for all regions of concern,” 2d Req. at 6-7, should be dismissed as not germane. She does not show that those issues are at all relevant to the effects of this license amendment. Furthermore, the EA does in fact address population growth (EA at 3-4) and community services (e.g., schools) (id. at 5-4). Ms. Helms-Hughes does not refer to these analyses, let alone challenge them. She also points to no requirement—and NFS cannot identify one—that the EA include an evacuation plan for NFS. In sum, her claim does not even rise to the level of a “notice pleading” that the Commission has stated is insufficient to support an admissible concern. See Shieldalloy, CLI-99-12, 49 NRC at 354.

**c. Cumulative Effects of Emissions Since 1957**

Ms. Helms-Hughes claims that the EA is deficient for not including “an engineering assessment which addresses the cumulative effect of airborne radioactive and chemical emissions since the company began process operations in 1957 along with

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<sup>12</sup> Informal Hearing Procedures for Materials Licensing Adjudications, Final Rule, 54 Fed. Reg. 8269, 8272 (1989).

airborne emissions expected to result from the BLEU Project.” 2d Req. at 7. This concern is inadmissible because Ms. Helms-Hughes provides nothing to show that past airborne emissions from the NFS site have had any effect on the surrounding area at all. “Prior to acceptance of an area of concern, there must at least be a reference to some authority giving rise to the concern.” Molycorp, LBP-00-10, 51 NRC at 175. Here there is nothing at all. Furthermore, this claim is unspecified, in that Ms. Helms-Hughes asserts that emissions have occurred but, especially with respect to chemical emissions, she does not describe them in any respect.

**d. Cumulative Effects of the “USM Ore Program”**

Ms. Helms-Hughes claims that the EA is inadequate for failing to address the cumulative impacts of the BLEU Project and the “USM Ore Program,” a joint program between NFS and International Uranium Corp. announced in November 2002. 2d Req. at 7-8. The program will involve the blending of currently unusable LEU with depleted uranium-bearing minerals to produce an ore that will be transported to a mill in Utah for processing as alternative feed material. Id.

This concern is not germane because it does not pertain to this license amendment request. In assessing the cumulative impacts of this amendment, the NRC Staff does not need to address the asserted impacts of contemplated future actions that are in no way certain or imminent. Kleppe v. Sierra Club, 427 U.S. 390, 405-06, 410 n.20 (1976). Here, the USM Ore Program may have been announced as a prospective project under consideration, but no license applications for it have been filed. If the program is pursued sometime in the future, any environmental review for it would account for cumulative impacts as necessary, but there is no need for the BLEU Project EA to account for them now. Id. at 410 n.20.

**e. Cumulative Effects of Airborne Emissions from the Studsvik Processing Facility**

Ms. Helms-Hughes “submit[s] that there is a lack of data on the cumulative effect of airborne emissions from the Studsvik Processing Facility, . . . due to the fact that the plant only became fully operational in 1999.” 2d Req. at 8-9. She also claims that testing and demonstration of a process for the treatment of DOE radioactive wastes “possibly will be or already have been carried out at the Erwin facility” and the EA does not address its effects. Id. at 9.

First, this concern should be dismissed for disregarding the analysis in the EA. Section 5.1.3.1 of the EA addresses the cumulative impacts from the Studsvik facility. It states that its assessment was based on “the most recent effluent data (CY2000) from the operations at Studsvik.” EA at 5-13. Thus, it reflects the actual operation of the facility. Second, regarding potential future programs, this concern should be dismissed as based on no more than “information and belief.” See Molycorp, LBP-00-10, 51 NRC at 175. A claim that a future program “possibly will be or already have been carried out,” 2d Req. at 5, is not sufficient to support an admissible concern.

**2. The DOE EIS for the Disposition of Surplus HEU**

Ms. Helms-Hughes complains that the EIS prepared by DOE for its disposition of surplus HEU<sup>13</sup> is inadequate in several respects. 2d Req. at 9-11. She claims that the DOE EIS “provides only generic analysis” of the proposed sites for DOE’s HEU downblending project. Id. at 9. She claims that the EIS did not consider performing the downblending project at NFS without expanding the uranium possession limits of its NRC license. Id. at 9-10. She claims that the DOE EIS did not include the construction

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<sup>13</sup> USDOE, Disposition of Surplus Highly-Enriched Uranium, Final Environmental Impact Statement, DOE/EIS-0240 (June 1996).

of new buildings at NFS. Id. at 10. She finally claims that the DOE EIS “not only is inaccurate, it does not suffice to meet NEPA standards.” Id. at 12.

This concern should be dismissed because it is not germane to this NRC license amendment proceeding. The environmental effects of the proposed NRC action—the approval of NFS’ second license amendment request for its Erwin facility—have been evaluated in the BLEU Project EA. What the DOE EIS may or may not have done with respect to its HEU downblending project as a whole is relevant to what the NRC EA has to do to support the NRC’s proposed action only to the extent that the EA relies on the DOE EIS. Here, Ms. Helms-Hughes does not complain about any aspect of the DOE EIS that is cited in the EA, so her concern is not germane.

### **3. NFS’ Assertedly Changing Mission**

Ms. Helms-Hughes asserts that “the BLEU Project changes NFS’s primary mission of producing fuel for the U.S. Navy to profit-oriented production of fuel for commercial nuclear reactors.” 2d Req. at 11. She makes several arguments based on that assertion that are not germane to this proceeding:

#### **a. NFS License Amendments**

NFS’ asserted change in mission allegedly requires NFS to obtain a new special nuclear materials license and, impliedly, requires the NRC to prepare an EIS. Id. Ms. Helms-Hughes goes on to cite several license amendments that NFS has obtained since 1993 that are unrelated to the BLEU Project. See id.

This concern should be dismissed as not germane to this proceeding. As discussed above, this proceeding and the NRC Staff EA concerns the second of three amendments needed to enable NFS’ participation in the BLEU Project. The EA analyzes all of the impacts of the BLEU Project, whether or not one calls it a “change in mission”

for NFS.<sup>14</sup> If it had found that the project would have significant impacts upon the environment, the NRC would have proceeded to the preparation of an EIS. See 10 C.F.R. § 51.31. Anything else that may have been done previously with respect to NFS' NRC license is simply irrelevant to this proceeding. Indeed, Ms. Helms-Hughes provides nothing to tie NFS' previous license amendments to the BLEU Project. In any event, the NRC performed environmental reviews for NFS' past amendments as necessary and does not need to repeat them here.

**b. New Systems and Processes**

Ms. Helms-Hughes asserts that the NRC should prepare an EIS for the BLEU Project because it involves new process operations or new systems. See 2d Req. at 11-15. This concern should be dismissed because it fails to establish "that the concern is at least worthy of further exploration." See White Mesa, LBP-02-06, 55 NRC at 153. The EA has assessed the impacts of the processes and systems proposed to be used under the second license amendment based on the environmental documentation that NFS provided to the NRC. See EA at 1-1. Merely asserting that a process or system is "new" does not show in any respect that the EA's analysis of their impacts is deficient or that the process or system would have a significant impact on the environment. Indeed, Ms. Helms-Hughes concludes by alleging that NFS is not qualified to perform the new processes. "There are unstated reasons for this which could have untold implications on public health and safety." 2d Req. at 15 (emphasis added). Such speculative and conclusory claims cannot form the basis for an admissible concern.

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<sup>14</sup> In fact, the BLEU Project does not represent a change in mission for NFS. NFS continues its principal business of providing services to the U.S. Navy.



**c. The NRC's "Blind Eye"**

Ms. Helms-Hughes claims that the NRC "sometimes turns a blind eye to deficiencies in the interest of industry profit." 2d Req. at 14. She claims that the NRC was slow to order the Davis-Besse nuclear reactor to shut down after discovering corrosion in the reactor vessel head "because it did not want to impose unnecessary costs on the owner." Id. Such a broad attack on the NRC cannot serve as the basis of an admissible concern—it is simply not germane to this license amendment.

**4. Decommissioning Funding**

Ms. Helms-Hughes claims NFS's decommissioning funding is inadequate and also asserts that NFS has begun BLEU Project Operations prior to NRC approval. 2d Req. at 15, 18.

**a. Decommissioning Funding**

Ms. Helms-Hughes claims that NFS has not demonstrated that it will have decommissioning funding sufficient to clean up its Erwin plant at the end of its life. 2d Req. at 15.<sup>15</sup> "[T]he local public has no assurance that NFS's Erwin site will not become another West Valley at the end of plant life." Id. at 16. She also claims that the suit filed against NFS in federal court indicates that NFS does not maintain adequate control of its operations. Id. at 19. Ms. Helms-Hughes asserts that DOE is not responsible for the decommissioning of the portions of the NFS site used for "non-Naval Reactor" purposes. Id. at 16-17.<sup>16</sup> She asserts that "it is intuitively obvious to the most casual observer" that the Tennessee Valley Authority will not pay for decommissioning related to the BLEU Project. Id. at 17. She then asserts that NFS' cost estimates for decommissioning for the

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<sup>15</sup> Although the section of her request is entitled "NFS's Control of Operations," it concerns NFS' decommissioning funding.

<sup>16</sup> She also asserts that DOE cannot be assured of obtaining appropriations from Congress for the decommissioning of facilities at NFS used for Naval Reactors purposes. 2d Req. at 16. This claim is clearly not germane because it does not pertain to BLEU Project decommissioning requirements.

BLEU Project date to 1994 and were last validated in 1998. Id. at 17-18. Thus, she claims that they are invalid for the BLEU Project. Id. at 18. Ms. Helms-Hughes also asserts that NFS has unknown amounts in several escrow accounts with the First Tennessee Bank in Johnson City, Tennessee. Id. Finally, she asserts that NFS remains responsible for decommissioning costs at the West Valley, New York site. Id. at 19.

This concern should be rejected because Ms. Helms-Hughes has not asserted any deficiency in NFS' decommissioning funding arrangements for this amendment or the BLEU Project. Nor has she shown any connection between NFS and any obligations regarding the decommissioning of the West Valley site. Ms. Helms-Hughes notes that NFS submitted its decommissioning funding information for the BLEU Project to the NRC on a proprietary basis, see 2d Req. at 16, but she has not sought to enter into a confidentiality agreement with NFS to obtain access to that information. Indeed, her claims about outdated cost estimates are based on documents that do not pertain to this license amendment request or the BLEU Project. See id. at 17-18. Therefore, this concern should be dismissed as lacking reference to anything giving rise to the concern. Molycorp, LBP-00-10, 51 NRC at 175.

**b. NFS Alleged Commencement of BLEU Project Operations**

In claiming that NFS lacks sufficient funds to decommission the BLEU Project after its completion, Ms. Helms-Hughes states that,

Installation of new downblending and Uranium Oxide Conversion equipment leads a prudent person to believe that NFS is going ahead with the BLEU Project even before it receives NFS approval. Also, one building to be used for the BLEU Project already has been erected at the NFS site. . . . This also provides evidence that the NRC has already has [sic] approved a backroom deal for this project which excludes the public.

2d Req. at 18.

Ms. Helms-Hughes' claim is patently baseless and should be rejected. NFS has not commenced BLEU Project operations. NFS has begun building construction on the

UNB, for which the NRC has issued a finding of no significant impact. NFS has not, however, begun to operate the UNB or any other aspect of the BLEU Project. Ms. Helms-Hughes attack on the NRC for having allegedly approved a “backroom deal” is similarly baseless. The NRC proceedings on NFS’ BLEU Project license amendments have been noticed and if petitioners’ requests are granted, a hearing will be held on the amendments. Neither of Ms. Helms-Hughes accusations provides grounds for admitting a concern.

## **5. NFS Ownership**

Ms. Helms-Hughes complains that NFS’ license does not contain a list of the parties involved in the ownership of “NFS Services, LLC, NFS Holdings, NFS, Inc., or Creative Energy Group, Inc.” 2d Req. at 20. This concern is inadmissible as not germane to this proceeding.

First, there is simply no requirement for NFS to list the owners of the company. See 10 C.F.R. §§ 70.22(a)(1).<sup>17</sup> Thus, this is not an “issue[] . . . fall[ing] generally within the range of matters that properly are subject to challenge in [a materials licensing] proceeding.” 54 Fed. Reg. at 8,272.

Second, Ms. Helms-Hughes own request correctly states that NFS Services, LLC owns 100 percent of NFS Holdings, which owns 100 percent of Nuclear Fuel Services, Inc. and NFS Technologies, Inc. and the majority of Creative Energy Group, Inc. 2d Req. at 19. Moreover, she acknowledges that Creative Energy Group is a public relations firm. Id. Thus, except for the shareholders of NFS Services, LLC, the ownership of NFS is entirely clear. Ms. Helms-Hughes cites no requirement for NFS to divulge the identities

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<sup>17</sup> Nor does Ms. Helms-Hughes cite any request by the NRC to name the owners of the company on the grounds of assessing NFS’ financial qualifications. See 10 C.F.R. § 70.22(a).

of NFS Services, LLC's shareholders. Therefore, this concern simply is not pertinent to this proceeding and should be dismissed.

#### **6. NFS' SNM License Number**

Ms. Helms-Hughes asserts that each manufacturing facility in the United States has its own unique identification number, but that NFS's NRC special nuclear materials license number, SNM-124, is or was also being used by General Atomics. 2d Req. at 20. Ms. Helms-Hughes insinuates that somehow this is indicative of special treatment of NFS by the NRC. Id. She also demands an investigation by the NRC and questions "whether there is a connection between General Atomics and NFS, and whether NFS's 'BLEU Project' might be connected to General Atomics Chairman J. Neal Blue." Id.

It is obvious that these odd claims do not give rise to an admissible concern. NFS' license number and the name of the NFS project are in no way germane to the NRC's approval of NFS' license amendment request. Ms. Helms-Hughes' attempt to inject what appears to be a conspiracy theory into an NRC licensing proceeding shows that she is more interested in muckraking than in pursuing legitimate safety or environmental issues.

#### **7. Training and Qualifications**

Ms. Helms-Hughes claims that "many of NFS's employees are not properly trained, and that those who sometimes, but not always, are lacking in education are used to perform some of the most high-risk tasks with inadequate supervision." 2d Req. at 21 (citing the attached statement of Julie Fann, an NFS employee in 2001). She asserts that "the public has no assurance" that the personnel who will perform HEU downblending will be qualified for their jobs. Id. She claims that the NRC must review the backgrounds and training of the personnel to ensure that their qualifications are more than adequate. Id. She also claims that this issue was not addressed in the EA.

Ms. Helms-Hughes concern is not germane to this license amendment application because it relies on a statement of a former NFS employee, Julie Fann, who did not perform any work or appear to have knowledge of any operations related to this amendment or the BLEU Project. See E-mail from Julie Fann, attached to 2d Req. From her statement, Ms. Fann appeared to be involved in removing waste material from the NFS site. She did not state that she was involved in any activities like those that would be conducted at the BPF under this license amendment. Therefore, her statement, even assuming that it accurately described her experience at NFS, is not relevant to the training or qualifications of the people who will work at the BPF.

Ms. Helms-Hughes claim that training was not addressed in the EA is also not germane. The purpose of the EA is to address environmental impacts (see EA at 1-1) and Ms. Helms-Hughes does not show or even assert that the level of training for NFS personnel will affect the environmental impacts of this license amendment.

#### **8. Alleged Safety Risks**

Ms. Helms-Hughes asserts several safety risks associated with the BLEU Project. None gives rise to an admissible concern.

##### **a. Local Population Breakdown**

Ms. Helms-Hughes claims that one of the risks associated with BPF operations is a hydrogen explosion. 2d Req. at 21. She claims that while the Integrated Safety Analysis (“ISA”) summary for the second license amendment states that the nearest residence is located 650 feet from the BPF, the ISA summary is deficient because it “has not accounted for the breakdown of population within a 1-mile radius of the facility.” Id. at 22. Therefore, she claims, NFS’ assessment of the health and safety risks to the people near the plant is inadequate and hence “the public has no assurance that NFS has

thoroughly evaluated the health and safety risks to outlying areas which also will be affected by the BLEU Project.” Id.

This concern is not germane because the underlying claim does not show some significance so as to “appear that the concern is at least worthy of further exploration.” See White Mesa, LBP-02-06, 55 NRC at 153. Ms. Helms-Hughes admits that the ISA considers the safety of the residence nearest the BPF. Since the ISA summary shows that the nearest resident will be adequately protected, no purpose would be served by admitting a claim that those farther away need be analyzed. She provides no reason why the ISA must also include the distribution of the population within one mile of the site, which would presumably be used to assess the safety of other people farther away. Without more, there is no reason to believe that the hazard from BPF operations to people farther away will be greater than the hazard to the nearest resident. In addition, Ms. Helms-Hughes provides nothing beyond a conclusory allegation that the fact that the ISA summary does not include a nearby population distribution is in any way related to the ISA’s assessment of the hazard from the BPF to people in outlying areas. Therefore, this claim should be dismissed.

**b. Public Notification Regarding Accidents at Studsvik**

Ms. Helms-Hughes complains that while the ISA states that Studsvik would notify NFS in the event of a failure of engineering controls leading to a release of radioactive material at Studsvik, it does not state that Studsvik or NFS would notify the public. 2d Req. at 22. This claim is inadmissible as not germane to this proceeding. The Studsvik facility is not part of the BLEU Project—it is located adjacent to NFS and is licensed by the State of Tennessee to process radioactive wastes. EA at 5-13. Whether Studsvik would or would not notify the public in the event of an accident there is simply irrelevant to the safety of the NFS license amendment. Thus, this concern should be dismissed.

**c. Remote-Controlled Locomotive Risks**

Ms. Helms-Hughes acknowledges that the ISA addresses the risks to the NFS site from possible fires, explosions, or hazardous chemical releases at the CSX railroad yard adjacent to NFS, yet she complains that the ISA “does not evaluate the additional risks from remote-control locomotives.” 2d Req. at 22; see id. at 8. Ms. Helms-Hughes asserts that CSX officials “are unsure whether a testing period was conducted at its Erwin yard before remote control technology was fully implemented.” Id. at 8.

This concern should be dismissed because Ms. Helms-Hughes does not cite to at least “some authority giving rise to [it].” Molycorp, LBP-00-10, 51 NRC at 175. She claims that remote-controlled locomotives in the CSX yard will increase the risk to NFS without pointing to anything to support her claim. Without any support, the concern is premised on no more than information and belief and thus is inadmissible. Id. It is also unparticularized, Shieldalloy, CLI-99-12, 49 NRC at 354, in that Ms. Helms-Hughes does not state in any respect how remote-controlled locomotives at the CSX yard could pose a hazard to NFS such that this license amendment would pose a hazard to public health and safety.

**d. Lightning Risks and NFPA 780**

Ms. Helms-Hughes acknowledges that the ISA addressed the risk to the BPF from lightning and that NFS will provide lightning protection in accordance with NFPA 780. 2d Req. at 22. Yet, Ms. Helms-Hughes complains that NFS “does not state what those protective measures are, nor does it provide reasonable assurance that the public would be protected in the event that lightning struck the BPF.” Id.

This concern is not germane because Ms. Helms-Hughes does not provide any reason or cite any authority providing a reason to believe that the protection from lightning offered by NFS’ adherence to NFPA 780 will be inadequate. Molycorp, LBP-

00-10, 51 NRC at 175.<sup>18</sup> She provides no support for her claim that NFPA 780 is inadequate or that she is even familiar with what lightning protection measures NFPA 780 provides.

**e. Flooding Risks**

Ms. Helms-Hughes asserts that flooding at NFS could cause a loss of power or loss of systems supporting BPF operations. 2d Req. at 22-23. She claims that Erwin and other nearby towns have had “several major incidents of flooding” in the past two years and that possible flooding of Martin Creek or Banner Spring Branch at or near the NFS site “does not appear to be adequately addressed.” *Id.* at 23.

This concern should be dismissed for lack of particularity and for being based on no more than information and belief. Shieldalloy, CLI-99-12, 49 NRC at 354; Molycorp, LBP-00-10, 51 NRC at 175. The ISA summary addresses the possibility of flooding and states that “the BPF would not be directly impacted by a 100-year flood.” ISA Summary at 1-12.<sup>19</sup> It states further that the possibility of loss of power and support systems has been evaluated and determined to be in compliance with applicable performance requirements. *Id.* Ms. Helms-Hughes does not show that this conclusion is incorrect. She does not discuss the BPF’s location or elevation relative to Martin Creek and Banner Spring Branch. Nor does she discuss the relative location and elevation of the systems whose loss would assertedly threaten the safety of the BPF. Thus, she does not show that possible flooding is pertinent to the safety of NFS’ license amendment. The fact that the town of Erwin may have experienced flooding in the last two years does not mean that the flooding threatened the site of the BPF in any respect. Her claim that flooding “does not

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<sup>18</sup> See also Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-00-35, 52 NRC 364, 390 (2000), *rev. declined*, CLI-01-9, 53 NRC 232 (2001) (“NFPA is a respected standard-setting organization” whose guidelines are probative of the adequacy of an applicant’s fire protection measures).

<sup>19</sup> Integrated Safety Analysis Summary for Uranium Aluminum Dissolution and Downblending Processes in the Blended Low-Enriched Uranium Preparation Facility, Rev 0 (Oct. 11, 2002).



appear to have been adequately addressed,” without more, is simply empty speculation that is not admissible here.

**f. Hydrogen Buildup**

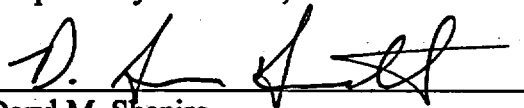
Ms. Helms-Hughes notes that the dissolution of uranium-aluminum alloy by caustic solution will generate hydrogen gas, cites the measures NFS will employ to prevent accidental criticality in the BPF (passive barriers and operator training) and then “questions whether adequate attention has been given to the purging of tank headspaces and vent systems to prevent the potential buildup of explosive concentrations of hydrogen.” 2d Req. at 23.

This concern should also be dismissed for lack of particularity and lack of basis. The ISA Summary analyzes in detail the potential for hydrogen buildup at the BPF and states that hydrogen “will be diluted with air from outside the building such that the lower explosive limit (LEL) of hydrogen is never reached.” ISA Summary at 2-19; see id. at 3-13 to 3-15 (analysis). Ms. Helms-Hughes simply provides no reason whatsoever to believe that the ISA Summary analysis is incorrect. Thus, this concern should be dismissed.

### III. CONCLUSION

For the foregoing reasons, the Presiding Officer should deny Ms. Helms-Hughes' request for a hearing on the license amendment application.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'D. Shapiro', is written over a horizontal line.

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Dated: February 21, 2003

## **CERTIFICATE OF SERVICE**

I hereby certify that copies of Applicant's Answer to Request for Hearing and Leave to Intervene by Kathy Helms-Hughes on NFS' Second License Amendment Request and Applicant's Answer to Second Request for Hearing by Friends of the Nolichucky River Valley, State of Franklin Group of the Sierra Club, Oak Ridge Environmental Peace Alliance, and Tennessee Environmental Council 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 21<sup>st</sup> day of February, 2003.

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A handwritten signature in black ink, appearing to read "D. Sean Kelly", written over a horizontal line.

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