February 12, 2004

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 THIRD REQUEST FOR HEARING BY STATE OF FRANKLIN GROUP OF THE SIERRA CLUB, FRIENDS OF THE NOLICHUCKY RIVER VALLEY, OAK RIDGE ENVIRONMENTAL PEACE ALLIANCE, AND TENNESSEE ENVIRONMENTAL COUNCIL REGARDING NUCLEAR FUEL SERVICES' PROPOSED BLEU PROJECT

Applicant Nuclear Fuel Services, Inc. ("Applicant" or "NFS") files this answer to the request for a hearing by the State of Franklin Group of the Sierra Club ("Sierra Club"), Friends of the Nolichucky River Valley ("FONRV"), the Oak Ridge Environmental Peace Alliance ("OREPA"), and the Tennessee Environmental Council ("TEC"), collectively "Petitioners,"[1] regarding NFS's third license amendment request for the Blended Low Enriched Uranium ("BLEU") Project. NFS submits this answer pursuant to 10 C.F.R. § 2.1205(g). NFS respectfully requests that the Presiding Officer deny Petitioners' request for a hearing for lack of standing and for failure to submit an admissible area of concern.

[1] Third Request for Hearing by State of Franklin Group of the Sierra Club, Friends of the Nolichucky River Valley, Oak Ridge Environmental Peace Alliance, and Tennessee Environmental Council, Regarding Nuclear Fuel Services' Proposed BLEU Project (Feb. 2, 2004) ("3rd Req.").

I. FACTUAL AND LEGAL BACKGROUND

A. Procedural Background

On October 23, 2003, NFS requested a third amendment to Special Nuclear Material License No. SNM-124 to authorize special nuclear material processing operations in the Oxide Conversion Building ("OCB") and Effluent Processing Building ("EPB") at its existing nuclear fuel fabrication and uranium recovery facilities in Erwin, Tennessee.[2] The amendment is the third 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 74,653. 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.[3] 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. 1st EA at 1-3.

On February 28, 2002, NFS requested its first BLEU Project license amendment to authorize the storage of LEU-bearing materials at the Uranyl Nitrate Building ("UNB"), to be constructed at NFS' Erwin facilities.[4] On October 11, 2002, NFS requested its second license amendment to authorize modification to its processing opera-

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[2] Nuclear Fuel Services, Inc., Notice of Receipt of Amendment Request and Opportunity to Request a Hearing for Oxide Conversion Building and Effluent Processing Building in the Blended Low-Enriched Uranium Complex, 68 Fed. Reg. 74,653 (Dec. 24, 2003).

[3] 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) ("1st EA") at 1-3.

[4] Environmental Statements; Availability, etc.: Nuclear Fuel Services, Inc., Notice of docketing, etc., 67 Fed. Reg. 66,172 (Oct. 30, 2002).

tions in the BLEU Preparation Facility ("BPF") at its Erwin facilities.[5] Those amendment requests were 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 this third license amendment request. Nuclear Fuel Services, Inc. (Erwin, Tennessee), LBP-03-1, 57 NRC 9, 17 (2003).

In June 2002, the NRC Staff published the Environmental Assessment and issued a Finding of No Significant Impact ("FONSI") for NFS's first license amendment.[6] Along with assessing the impacts of the first amendment, the 1st EA also assessed the impacts of the second and third amendments—i.e., the entire BLEU Project—for the purpose of assessing connected actions and cumulative effects and concluded that those amendments also would not result in significant adverse impacts to the environment. 1st EA at 5-1. On July 7, 2003, the Staff issued the first license amendment and its supporting Safety Evaluation Report ("SER") concerning the activities to be conducted under that amendment.[7] The SER concluded that "there is reasonable assurance that the activities to be authorized by the issuance of an amended license to NFS will not constitute an undue risk to the health and safety of the public, workers, and the environment." 1st SER at 94 (emphasis added).

In September 2003, the Staff published the 2nd EA and issued a FONSI for the second license amendment.[8] The 2nd EA presented updated information and analysis and

[5] Nuclear Fuel Services, Inc., Notice of Receipt of Amendment Request and Opportunity to Request a Hearing, 68 Fed. Reg. 796 (Jan. 7, 2003).

[6] Environmental Assessment and Finding of No Significant Impact of License Amendment for Nuclear Fuel Services, Inc. 67 Fed. Reg. 45,555, 45,558 (2002).

[7] Letter from Susan M. Frant, Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, USNRC, to B. Marie Moore, Vice President, Safety and Regulatory, NFS (July 7, 2003); Safety Evaluation Report: Nuclear Fuel Services, Inc., Amendment 39 (TAC NOS. L31688, L31739, L31721 and L31748) – to Authorize Uranyl Nitrate Building at the Blended Low-Enriched Uranium Complex and Possession Limit Increase (July 2003) ("1st SER").

[8] Environmental Assessment and Finding of No Significant Impact for License Amendment Request Dated October 11, 2002, Blended Low-Enriched Uranium Preparation Facility (Sept. 17, 2003) ("2nd EA").

concluded, as a final matter, that the second license amendment would not result in any significant impacts to the environment. Id. at 5. On January 13, 2004, the Staff issued the second license amendment and its supporting SER concerning the activities to be conducted under that amendment.[9] The SER concluded that "there is reasonable assurance that the activities to be authorized by the issuance of an amended license to NFS will not constitute an undue risk to the health and safety of the public, workers, and the environment." 2nd SER at 21.0-1 (emphasis added).

The Staff has not yet published the EA and FONSI (or EIS) for the third license amendment. Nor has the Staff yet published the SER for or approved the third amendment.

B. The Third License Amendment Application

Pursuant to the third license amendment request and as described in the 1st EA, NFS will convert low-enriched liquid uranyl nitrate solutions into solid uranium oxide (UO_2) powder at the OCB and will operate effluent processing facilities at the EPB. 1st EA at 1-3; see also 68 Fed. Reg. at 74,653. Low-enriched uranyl nitrate solution will be converted to UO_2 powder in the OCB using the Framatome ANP, Inc. process, which has been in use for over 20 years by Framatome ANP at its Richland, Washington plant. 1st EA at 2-5. In that process, the uranyl nitrate solution is mixed with ammonium hydroxide and water to produce ammonium diuranate solids. Id. The solids are then separated using a continuous centrifuge and cross filter. Id. The solids are next dried in a screw dryer and then calcined in a rotary kiln under a flow of steam and hydrogen to reduce the solids to UO_2 powder (which is then shipped off site for further processing). Id. at 2-5 to 2-6. The dilute stream from the centrifuge is passed through ion exchange columns to extract

[9] Letter from Gary S. Janosko, Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, USNRC, to B. Marie Moore, Vice President, Safety and Regulatory, NFS (Jan. 13, 2004); Safety Evaluation Report for Nuclear Fuel Services, Inc., License Amendment 47, Blended Low-Enriched Uranium Preparation Facility (January 2004) ("2nd SER").

uranium, which is recycled to the oxide conversion process. Id. at 2-7. The stream is then sent to the EPB for further treatment. Id. In addition to oxide conversion, in the OCB NFS will also dissolve natural uranium trioxide (UO3) in nitric acid to convert it into uranyl nitrate solution, which will then be shipped off-site for further processing. Id.

In the EPB, the liquid effluent from the OCB will be treated. First, sodium hydroxide will be added to the effluent and ammonia will be recovered and returned to the oxide conversion process. Id. The remaining effluent, consisting primarily of dilute sodium nitrate in water, will be fed to an evaporator, concentrated, and further processed into a solid waste for disposal. Id. The overheads stream from the evaporator will be held in tanks, sampled for verification of compliance with NFS's pretreatment permit, and then discharged to the sanitary sewer. Id.

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 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 third license amendment will be only part of the impacts caused by the BLEU Project as a whole. See id. at 2-9 to 2-13. Thus, the impacts of the amendment will also be insignificant.

C. Petitioners' Hearing Request

Pursuant to the Federal Register notice of opportunity for a hearing and an extension of time granted by the Commission, Petitioners filed a hearing request on the third license amendment request on February 2, 2004. 3rd Req. at 1. Petitioners assert standing on the basis that the probabilities of the occurrence of potential accidents identified by the

BLEU Project EA are not "so low as to pose no health threat at all." Id. at 9-10. Petitioners further assert – without authority – standing for the previous two NFS BLEU Project license amendments if they are granted standing for purposes of the third license amendment "because none of the three separate license amendment applications has a life of its own." Id. at 2. They assert that "any Petitioner who is found to have standing to challenge any one of the three license amendment applications should be found to have standing to challenge all three." Id. at 3. Petitioners also incorporate by reference from their first and second hearing requests their arguments that they have standing to participate in this proceeding. Id. at 2-3.

The Request asserts eight "areas of concern" allegedly germane to this third license amendment proceeding: 1) NRC Staff completion of its environmental analysis; 2) environmental impacts of operation of the proposed OCB and EPB; 3) preparation of an EIS to address the impacts of the operation of the OCB and EPB; 4) NFS' alleged history of environmental contamination; 5) "unreliable estimates" of airborne and liquid effluent releases; 6) decommissioning funding; 7) failure by NFS to demonstrate that it can and will comply with NRC safety regulations; and 8) NFS' ability to follow safety, security and safeguards procedures and make reports to the NRC. Id. at 10-16.

NFS requests that Petitioners' hearing request be denied because Petitioners lack standing, in that they do not show that they would suffer any injury in fact from the granting of the third license amendment. Petitioners' argument that standing on one license amendment should constitute standing to participate in the proceedings on all license amendments should be denied as contrary to NRC rules of practice and case law. NFS also requests that the Request be denied because Petitioners have failed to articulate any areas of concern that warrant a hearing on the 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 74654. 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 requires ". . . detailed descriptions of the Petitioner's positions on issues going to both standing and the merits." Shieldalloy Metallurgical Corp. (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 353-54 (1999).

A. Petitioners Do Not Have 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 determining standing in NRC proceedings. See, e.g., Sequoyah Fuels Corp. (Gore, Oklahoma Site Decommissioning), CLI-01-02, 53 NRC 9, 13 (2001). Since the Petitioners are organizations, they must also meet the test for organizational standing. See Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994).

Petitioners seek to incorporate by reference their claims of standing from Petitioners' hearing request on NFS' first license amendment application and their replies to NFS' answers to their first and second requests.[10] Petitioners also raise new claims of standing based on the 1st EA's discussion of potential accidents at the NFS site. See id. at 3-7.[11]

In response, NFS hereby incorporates by reference its responses to Petitioners' claims of standing in NFS' answers to Petitioners' first and second hearing requests, which include NFS' discussion of the law on standing in NRC materials licensing cases.[12] NFS responds specifically below to 1) the new claims in Petitioners' third hearing request and 2) the claims of standing which Petitioners incorporate by reference and to which NFS has never had the opportunity to reply. We show that Petitioners fail to meet the applicable standards.

1. Petitioners' Third Hearing Request Recitation of Potential Accidents from the EA Does Not Provide Them With Standing

Petitioners assert standing by summarily quoting the 1st EA regarding potential accidents associated with the operation of the BLEU Preparation facility, the tank storage and processing of solutions, and operation of the BLEU Complex Facilities (OCB and EPB). 3rd Req. at 5-8. They recite any EA reference—regardless of whether it pertains

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[10] Petitioners also incorporate by reference the declarations from five members of the various Petitioner organizations filed with their hearing request on NFS' first license amendment. See 3rd Req. at 2 & n.1.

[11] Petitioners also submit eight additional declarations, including second declarations by the five declarants supporting Petitioners' first and second hearing request (Frances Lamberts, Ruth Gutierrez, Trudy Wallack, Park Overall, and Chris Irwin) and three declarations from Kay Blackerby, Willa D. Early, and Dennis Nedelman, stating their various memberships in the Petitioner groups and asserting concerns regarding the NFS facility and the license amendment process. See 3rd Req. at 2.

[12] See 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 (Dec. 13, 2002) at 6-21 ("Ans. to 1st"). See also Applicant's Answer to Second 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 (Feb. 21, 2003) at 5-13 ("Ans. to 2nd")

specifically to the third license amendment—to accidents that "can potentially impact worker safety, public health and safety, and the environment." Id. at 6, 7, 8. In summary, Petitioners argue that "the EA demonstrates that operation of the proposed BLEU Project, including the OCB and the EPB and associated storage tanks, and the BPF, poses a risk of offsite radiological and chemical releases with the potential to harm public health and safety and the environment." Id. at 8.

Petitioners, however, provide no basis for standing by their mere recitations. As a preliminary matter, the first set of potential accidents cited by Petitioners (regarding the BLEU Preparation Facility, see 3rd Req. at 5-6) does not relate to the third license amendment at all. Furthermore, rather than providing any concrete description of the injury-in-fact to which any of its declarants might be exposed as a result of an accident stemming from operations under NFS's third BLEU Project license amendment, Petitioners merely quote general statements from the 1st EA regarding accidents and conclude that "it is clear that the operation of the proposed BLEU Project has the potential to cause great harm." Id. Petitioners ignore, however, the statements in the 1st EA regarding the safety measures NFS will employ and the EA's conclusion that "the safety controls to be employed in the processes for the BLEU Complex [which includes the OCB and EPB] appear to be sufficient to ensure planned processing will be safe." 1st EA at 5-10; see id. at 5-9 (tank storage). Thus, Petitioners' assertions fail to provide them with standing.

The 1st EA assessed the effects of the third license amendment and concluded, at that point,[13] that an Environmental Impact Statement was not warranted based on the potential accidents it identified. As such, the 1st EA determined that the proposed project

[13] As noted in Section I.A, supra, the 1st EA assessed the effects of the entire BLEU Project for the purposes of determining cumulative and connected impacts, but the Staff will issue a separate EA (or an EIS) for the third license amendment in the future the same way it issued a separate EA for the second license amendment (albeit the 2nd EA relied heavily on the assessments of the effects of the second amendment contained in the 1st EA).

does not significantly affect the quality of the human environment. Mere recitation of potential accidents where the 1st EA found no significant effects on the quality of the environment[14] is insufficient to provide standing because it lacks any specificity as to how Petitioners may be affected by an accident arising from the third license amendment. Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility – Decommissioning Plan), LBP-93-4, 37 NRC 72, 84 (1993).[15]

As noted above, the 1st EA describes the measures that NFS has adopted to prevent such potential accidents from occurring, including construction of berms around the tanks for spill control and isolation and the use of overfill protection devices, and determines that "based on information furnished in the NFS reports . . ., the safety controls to be employed in the processes for tank storage and process chemicals appear to be sufficient to ensure planned storage will be safe." 1st EA at 5-9. Petitioners do not specify how, in light of the safety measures in place, accidents arising from operations under the third license amendment will have any specific effects on them. As such, they have not established standing. Babcock and Wilcox, LBP-93-4, 37 NRC at 84.

The only scenario that Petitioners try to describe more fully in support of their speculative assertions of injury-in-fact, is a nuclear criticality event. 3rd Req. at 8-9. Petitioners, without documentary or expert opinion support, assert that the consequences of such an event at NFS could be on the scale of the accident that occurred at the Tokai-Mura facility in Japan on September 30, 1999. Id. However, Petitioners do not provide any basis for their claim; the assertion is merely speculative.

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[14] See, e.g., 1st EA at 5-10 – 5-15.

[15] In order to establish the factual predicates for the various standing elements, when legal representation is present, it is generally necessary for the individual to set forth any factual claims in a sworn affidavit. Shieldalloy Metallurgical Corp. (Cambridge, Ohio Facility), LBP-99-12, 49 NRC 155, 158 (1999). All three new declarants, supra note 11, however, merely repeat, in summary fashion, that the EA contains a series of potential accidents. Blackerby Decl. ¶ 4; Early Decl. ¶ 4; Nedelman Decl. ¶ 4.

First, Petitioners provide no basis for asserting that a criticality action of the sort that occurred at Tokai-Mura could occur at the NFS facility. While the 1st EA states that "loss of control of the process may include . . . nuclear criticality," 1st EA at 5-10, there is no indication that such an event would be of the nature of the Tokai-Mura event. Moreover, the 1st EA details the measures that will be in place to guard against inadvertent nuclear criticality in processing operations and storage under the BLEU Project. In storage, primary controls include "concentration limits and use of favorable geometry." Id. at 5-9. In processing, primary controls include concentration limits and use of favorable geometry process vessels, and the well-understood nature of the Framatome ANP Inc. process, which has previously been approved by the NRC. Id. at 5-10. Thus, Petitioners provide no basis for assuming that simply because the criticality event occurred at Tokai-Mura, a similar event could occur at NFS. Nor have they shown that if a criticality were hypothetically to occur at NFS that its consequences would be anything like those of the Tokai-Mura event.

Second, the NRC determined that the NRC's regulatory oversight program would prevent a nuclear criticality accident of the type experienced at Tokai-Mura from occurring at an NRC regulated facility. See Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, NRC Review of the Tokai-Mura Criticality Accident (April 2000) at 1, 11 ("Tokai-Mura Report"). The Tokai-Mura Report further determined that "[t]he current inspection program, including the resident inspectors at the two high-enriched uranium facilities and two gaseous diffusion plants, along with periodic operational and criticality inspections, provides sufficient coverage of licensee operations involving criticality safety to confirm the adequacy of licensee programs." Id. at 11. Therefore, under the circumstances, Petitioners have not shown that the Tokai-Mura accident scenario provides them with standing to intervene with respect to the BLEU Project third license amendment.

A hypothetical criticality accident should also be rejected as a basis for standing for Petitioners because the probability of such an accident at NFS is remote. Where the possibility of injury is "remote" the asserted harm does not show that a petitioner could be adversely affected by the outcome of a hearing and thus it does not provide standing. See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 NRC 327, 333 (1983). NFS's Supplemental Environmental Report states that a criticality accident involving the BLEU Project is "highly unlikely."[16] The ISA Summary also states that a criticality accident at the OCB or the EPB is "highly unlikely."[17] "Highly unlikely" means physically possible, but not expected to occur. The ISA Summary goes further to demonstrate through risk assessment that all credible nuclear criticality accident sequences are shown to be "highly unlikely" based on a graded combination of Items Relied on for Safety that prevent the accident from occurring or mitigate the consequences of a postulated accident. The results of the risk assessment are defined in accordance with and are measured against the performance requirements of 10 C.F.R. § 70.61 to ensure compliance with the regulation, thus demonstrating that the facility is safe. NFS qualitatively defines the term "highly unlikely" with a likelihood index of –4, which is approximately equivalent to a probability of 1 occurrence every 10,000 years. Therefore, the possibility of criticality accidents at NFS can be considered to be remote and thus they do not provide Petitioners with standing.

2. Petitioner Groups' Members Lack Standing

Petitioners assert representational standing and have proffered five second declarations from the declarants supporting its first and second hearing requests and first decla-

[16] Supplemental Environmental Report for Licensing Actions to Support the Blended Low-Enriched Uranium Project at Nuclear Fuel Services (Nov. 9, 2001) at 2-6.

[17] Integrated Safety Analysis Summary, Blended Low-Enriched Uranium Project, Oxide Conversion and Effluent Processing Buildings, Rev. 0 (Oct. 2003) at 170.

rations from three new declarants.[18] As discussed below, Petitioners still have not shown that the individual members that they are authorized to represent have standing themselves and thus Petitioners' Request should be denied.

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 (1987). 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 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); International Uranium (USA) Corp. (White Mesa Uranium Mill), LBP-01-8, 53 NRC 204, 219; aff'd CLI-01-18, 54 NRC 27, 31-32 (2001). Rather, the petitioner must demonstrate that the subject licensing action is "defective in a manner so as to cause the injuries described." Northern States Power Co. (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 44 (1990); see also International Uranium (USA) Corp. (White Mesa Uranium Mill), LBP-02-03, 55 NRC 35, 45-46 (2002) (small increase in truck traffic alone provides no basis for standing).

Here, Petitioners fail to demonstrate standing because, while in some cases they state the distances from the NFS site at which they live or travel, they fail to show a real-

[18] The three new declarants are members of FONRV or Sierra Club, none are representatives of TEC or OREPA. See Declaration of Kay Blackerby ¶ 6 (Sierra Club, FONRV); Declaration of Willa D. Early ¶ 6 (Sierra Club, FONRV); Declaration of Dennis Nedelman ¶ 6 (FONRV).

istic threat of direct, concrete, and palpable injury that is fairly traceable to the proposed third license amendment. Petitioners point to asserted harms connected to past or ongoing operations at the NFS facility that are not related to the proposed license amendment and they make only impermissibly vague and speculative claims, lacking in all detail, about potential harm arising from the third amendment.

a. Kay Blackerby

Ms. Blackerby states that she is a member of both the Sierra Club and FONRV and that she has authorized the Sierra Club and FONRV to represent her interests for the third license amendment proceeding, although she considers all three proceedings one proceeding. Blackerby Decl. ¶¶ 6-7. She lives in Erwin, Tennessee and travels on Jackson Love Highway to and from work each day, within one-half mile of the NFS plant. Id. ¶¶ 1-2. Ms. Blackerby states that she is concerned about hazards to public health and safety and to the quality of the environment from the proposed operation of the BLEU Project, because of the potential accidents listed in the EA. Id. ¶¶4-5.

While Ms. Blackerby states that she is concerned about the potential accidents listed in the EA related to BLEU Project operations (Blackerby Decl. ¶¶ 4-5), such concern does not provide her with standing. First proximity alone is not enough to establish standing in a proceeding. See, e.g., Babcock and Wilcox , LBP-93-4, 37 NRC at 84, 87. Second, mere recitation of the possible accident scenarios identified by the EA, without further explanation as to how such possible accidents would affect the declarant is insufficient. For materials licenses, petitioner must show, in accordance with section 2.1205(g), what particular impact the planned licensing action will have upon its legitimate (e.g., health, safety, or environmental) interests. See Informal Hearing Procedures for Materials Licensing Adjudication, Final Rule, 54 Fed. Reg. 8269, 8272 (1989). It is well-established that a hearing petitioner bears the burden of satisfying the injury in fact requirement. Babcock and Wilcox, LBP-93-4, 37 NRC at 81; Shieldalloy Metallurgical

Corp., LBP-99-12, 49 NRC at 158. Neither Ms. Blackerby nor Petitioners' request attempts to show any direct link between the distance that she resides from or travels by the facility and any injury that might be suffered from any of the potential accidents described in the EA.

b. Willa D. Early

Ms. Early states that she is a member of both the Sierra Club and FONRV and that she has authorized the Sierra Club and FONRV to represent her interests for the third license amendment proceeding, although she considers all three proceedings one proceeding. Early Decl. ¶¶ 6-7. She lives in Erwin, Tennessee approximately one mile from the NFS plant, and passes by the plant a few times a week. Id. ¶¶ 1-2. Ms. Early states that she is concerned about hazards to public health and safety and to the quality of the environment from the proposed operation of the BLEU Project, because of the potential accidents listed in the EA. Id. ¶¶4-5. She is also concerned that the incidence of cancer in her neighborhood will increase as a result of plant operation. Id. ¶ 5.

As with Ms. Blackerby, Ms. Early merely references potential accidents described in the EA with no further explanation of how any such an accident would affect her. Early Decl. ¶¶ 4-5. For the reasons described above, this recitation with nothing more does not establish standing for Ms. Early.

c. Dennis Nedelman

Mr. Nedelman states that he is a member of FONRV and has authorized FONRV to represent his interests for the third license amendment proceeding, although he considers all three proceedings one proceeding. Nedelman Decl. ¶¶ 6-7. He lives and operates a restaurant in Erwin, Tennessee and runs a white-water rafting business on the Nolichucky River where he passes within one-quarter mile of the NFS plant and directly passes the "outfall pipe" along the river. Id. ¶¶ 1-2. Mr. Nedelman states that he is con-

cerned about hazards to public health and safety and to the quality of the environment from the proposed operation of the BLEU Project because of the potential accidents listed in the EA. Id. ¶¶4-5.

As with Ms. Blackerby and Ms. Early, Mr. Nedelman merely references potential accidents described in the EA with no further explanation of how any such an accident would affect him. Nedelman Decl. ¶¶ 4-5. For the reasons described above, this recitation with nothing more does not establish standing for Mr. Nedelman.

d. Second Declarations by First Hearing Request Declarants

Petitioners submit second declarations for Ms. Ruth Gutierrez, Mr. Chris Irwin, Ms. Frances Lamberts, Ms. Park Overall, and Ms. Trudy Wallack's. None of the second declarations provide any new basis for the standing of the various declarants in the third license amendment proceeding—they merely reiterate their prior concerns. NFS incorporates by reference its response to Petitioners' claim of standing from its replies to Petitioners' first and second hearing requests as to each declarant.

e. Conclusion

As discussed above, none of the identified members of the Petitioner groups have standing. Therefore, none of the groups have standing and their petition should be denied.

3. Petitioners' Cannot Derive Standing to Litigate All License Amendment Requests Based on Standing Assertedly Arising From One License Amendment Request

In their third hearing request, Petitioners claim for the first time that they can derive standing as to all three license amendment requests if they can demonstrate standing as to any license amendment request. 3rd Req. at 2-3. Petitioners assert, without citation to any authority, that this is appropriate because "none of the three separate license

amendment applications has a life of its own." Id. at 2. Petitioners' novel and unsupported legal argument is incorrect.

The Commission's standing requirement stems from § 189(a) of the Atomic Energy Act, 42 U.S.C. § 2239(a), which provides, in pertinent part, that the Commission shall grant a hearing upon the request of "any person whose interest may be affected" by a proceeding. Case law holds that to demonstrate standing a petitioner "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, CLI-01-21, 54 NRC 247, 251 (2001) (quotations omitted, emphasis added); see White Mesa, LBP-01-8, 53 NRC at 219-20. Here, the three BLEU Project license amendments are legally distinct because they only authorize the specific activities they describe—in no respect does one BLEU Project amendment authorize activities to be conducted under either of the other amendments. Therefore, any alleged "new harm" arising from one amendment can only arise from that amendment—it cannot arise from any others. Hence, Petitioners must demonstrate that their interests may be affected for each license amendment. As the Commission (and the federal courts) has long recognized, standing is an essential element in determining whether there is any legitimate role for a court or an agency adjudicatory body in dealing with a particular grievance. Westinghouse Electric Corporation (Nuclear Fuel Export License for Czech Republic - Temelin Nuclear Power Plants), CLI-94-7, 39 NRC 322, 331-32 (1994); see Central and South West Services v. U.S. E.P.A., 220 F.3d 683, 701 (5th Cir. 2000).

The case law is also clear that a petitioner's standing in an earlier proceeding does not automatically grant standing in subsequent (much less prior) proceedings, even if the

scope of the earlier and later proceedings is similar. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-92-27, 36 NRC 196, 198 (1992), citing Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), LBP-92-4, 35 NRC 114, 125-26 (1992). In other words, Petitioners have to demonstrate for each license amendment that they have standing. Granting Petitioners' argument that a petitioner who establishes standing as to any license amendment should have standing as to any other license amendment future or past just because they relate to a particular project would vitiate the Commission's well-established standing rules.

4. Petitioners Arguments Incorporated by Reference Do Not Provide Them With Standing

As noted above, Petitioners incorporate by reference their standing arguments advanced with respect to NFS' first and second BLEU Project license amendments (see 3rd Req. at 3-4). Petitioners, however, provide no explanation showing how those arguments or declarations would apply to the third license amendment request. Petitioners' broad and unspecified incorporation by reference of material that has been previously provided to the NRC regarding the first and second license amendment, without further explanation or comment, cannot show a "'particular and concrete' impact" required to demonstrate standing for the Petitioners for the third license amendment. Babcock and Wilcox, LBP-93-4, 37 NRC at 84. 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). Nevertheless, because Petitioners made some new arguments with respect to standing in their replies to NFS's responses to their hearing requests on the first and second BLEU Project amendments, NFS has not yet had the opportunity to respond to them. Therefore, to the extent that those

new arguments could be applied to this third license amendment proceeding, NFS responds specifically to them below.

a. Petitioners' Speculative Claims Regarding the Cumulative Effect of Future Effluent from the BLUE Project and Past Contamination Does Not Provide Them With Standing

In their reply to NFS' answer to their second hearing request,[19] Petitioners raised claims regarding the alleged effect of past contamination at the NFS site. Specifically, Petitioners claim that "past contamination, taken together with legal discharges from the BLEU Project, may have cumulative adverse health effects." 2d Reply at 2. Yet, Petitioners offer no support for any adverse health effects resulting from cumulative impacts; nor do Petitioners show that any of their declarants will be exposed to any cumulative impacts.

Furthermore, a petitioner cannot derive standing from an infinitesimal effect associated with the instant license amendment added to the allegedly more significant effects of ongoing or past NFS operations. NRC case law is clear that to demonstrate standing "a petitioner's challenge must show that the second license 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); see also Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 428 (2003) (infinitestimal radiological exposure insufficient). An infinitesimal effect from the proposed action simply does not rise to the level of a "distinct new harm," even if it is added to allegedly more significant pre-existing effects. Therefore, Petitioners claims of standing from the assertedly cumulative impacts of the third BLEU Project license amendment plus the effects of ongoing or past NFS operations must fail.

[19] 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 NFS's Response to Their Second Hearing Request (Mar. 7, 2003) ("2d Reply").

b. Petitioners' Speculative Claims Regarding the Potential for Future Violation of Regulations Does Not Provide Them With Standing

In their reply to NFS's response to their second hearing request, Petitioners also claimed that the past history of regulatory compliance at the NFS site confers standing because it allegedly shows "a credible potential for disregard of environmental protection in the future . . . ." 2d Reply at 3. As NFS discussed in its Answer to Petitioners first and second requests, Ans. to 1st at 12-13; Ans. to 2nd at 7-8, Petitioners' claim is meritless because it is unrelated to any of the BLEU Project license amendments, conjectural, and contrary to NRC case law. As noted above, "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." Zion, CLI-99-4, 49 NRC at 188 (emphasis in original). While Petitioners aver that they are not posing a "general objection" to the facility, 2d Reply at 4, their claims that NFS will violate regulations in the future is clearly a general objection to the facility rather than a concern specifically addressed to the third (or any other) license amendment. Moreover, as also noted previously, the Commission has "long declined to assume that licensees will refuse to meet their obligations under their licenses or [its] regulations." Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-03-02, 57 NRC 19, 29 (2003) (footnote omitted); see also Diablo Canyon, CLI-02-16, 55 NRC at 344 ("We will not assume that licensees will contravene our regulations.") Thus, Petitioners' claims cannot provide them with standing here.

c. Unsubstantiated Concerns Over Effects on Property Values Do Not Provide Petitioners with Standing

Petitioners asserted a new argument in their reply to NFS's response to their second hearing request that they have "linked the potential depression of property values to actual increases in effluent discharges from the NFS facility" and thus they are not claim-

ing standing from a psychological injury. 2d Reply at 5. Petitioners, however, have only asserted that the BLEU Project will have an effect on property values without providing any discussion of how the activities to be performed as part of this license amendment will directly impact their property. Petitioners assert that their argument regarding property values reflects "the fact that the public must perceive the threat to their health and safety before acting on their perception and lowering the amount they are willing to pay for property . . . ." Id. at 5. However, this is still nothing more than speculation. As the Commission has explained, standing from property devaluation cannot derive from non-cognizable psychological effects stemming from fear, but rather "[would] flow directly from radiological and environmental impacts" associated with the facility. Louisiana Energy Services, L.P. (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 109 n.26 (1998) (emphasis added).[20] Petitioners still only assert non-cognizable psychological effects and do not show any direct radiological and environmental impacts on their property arising from this license amendment. As was the case in Petitioners' second hearing request, Petitioners' declarants provide "[s]tatements consisting only of generic, unsubstantiated concerns for health, safety, and property devaluation . . . ," and such statements "are insufficient to [establish standing]." Diablo Canyon, LBP-02-23, 56 NRC at 432. Thus, the Petitioners' asserted effects remain too "indirect and evanescent," see Private Fuel Storage, LBP-02-08, 55 NRC at 188 n.34, to support standing.

B. Petitioners Have 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 sub-

[20] See also Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-02-08, 55 NRC 171, 188 n.34 (noncognizable, "indirect and evanescent" psychological effects are to be distinguished from cognizable, "direct and palpable" impacts), rev'd on other grounds, CLI-02-20, 56 NRC 147 (2002).

ject 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).

The concerns advanced by Petitioners here are inadmissible because they are devoid of particularity and factual basis and are not germane to the license amendment.

1. Environmental Assessment Concerns

Petitioners' claim that the EA prepared by the NRC Staff is inadequate to support the issuance of the third license amendment for the BLEU Project.

a. Completion of the NRC Environmental Analysis

Petitioners claim that the 1st EA is not sufficient to support issuance of the third license amendment because the NRC Staff stated in the EA that it would perform an environmental review when it performed its safety review for the third license amendment to determine whether "this [the 1st] EA effectively assesses the environmental effects of the proposed action," but the Staff has not yet completed its safety review. 3rd Req. at 11 (quoting EA at 1-1).

This concern should be dismissed as not germane. While Petitioners are correct that the NRC Staff has not yet published the EA (or an EIS) for the third license amendment, that is no error. As with the second license amendment, the Staff provided notice and opportunity for hearing on the third license amendment prior to the publication of the EA for that amendment. See Section I.A., supra. Indeed, this was appropriate and is commonplace in Subpart L proceedings. Furthermore, Petitioners are wrong when they assert that the Staff has not assessed the impacts of the third license amendment. The 1st EA is clear that along with assessing the impacts of the first amendment, it also assessed the impacts of the second and third amendments—i.e., the entire BLEU Project—for the purpose of assessing connected actions and cumulative effects and concluded that those amendments also would not result in significant adverse impacts to the environment. 1st EA at 5-1.

b. Allegedly Significant Impacts

Petitioners claim that the NRC Staff must prepare an EIS for the BLEU Project because the operation of the OCB and EPB involves activities "with potentially significant environmental impacts." 3rd Req. at 12. However, Petitioners concerns do not allege any impacts of this amendment that will in fact be significant.

(1) Nature of the Downblending Process

Petitioners claim that an EIS must be prepared because "downblending of HEU is an inherently dangerous process, involving the use of large quantities of toxic and radiological material in a manner that has the potential to cause spills, fires and explosions." Id. Petitioners state that the effects of downblending operations will be significant because the EA states that operation of the "BLEU Complex, including the OCB, the EPB, and associated storage tanks, poses significant hazards to human health and the environment." Id.

This concern should be dismissed because Petitioners provide no reason to believe that the risks of OCB and EPB operations will amount to significant environmental impacts. An EIS is not required for actions that will not have a significant effect on the environment. See 10 C.F.R. § 51.20(a). Petitioners refer to passages in the EA that state that risks exist, but Petitioners provide nothing to show that the probabilities and the consequences of accidents will amount to a potentially significant impact that must be assessed in an EIS.[21] Contrary to Petitioners' claim, the EA states that based on the information that NFS supplied to the NRC regarding safety controls, OCB and EPB processes can be executed safely. See, e.g., EA at 5-7 – 5-10. Petitioners' conclusory assertions that risks are significant—without providing anything to show that they are—do not give rise to admissible concerns. See White Mesa, LBP-02-06, 55 NRC at 153; Molycorp, LBP-00-10, 51 NRC at 175.

(2) Past Environmental Contamination

Petitioners claim that past contamination of the NFS site "demonstrate a serious risk that NFS will continue to pollute the environment" and therefore, the NRC Staff could not base its Finding of No Significant Impact "on the assumption that NFS will comply with its permit." 3rd Req. at 13-14. Petitioners then claim that because there is soil and groundwater contamination at the NFS site and NFS is allegedly responsible "for significant environmental contamination elsewhere" (citing West Valley, New York), ". . . any expanded operation by NFS should be the subject of an EIS." Id. at 14.

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[21] See Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-90-7, 32 NRC 129, 131 (1990) ("remote" accidents do not require EIS); Baltimore Gas and Electric Co. (Calvert Cliffs Independent Spent Fuel Storage Installation), DD-93-14, 38 NRC 69, 73-74 (1993) (potential accidents with insignificant consequences do not require preparation of EIS); Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), LBP-85-34, 22 NRC 481, 511 (1985) (same). Indeed, the case Petitioners cite, Limerick Ecology Action v. NRC, 869 F.2d 719, 741 (3rd Cir. 1989), while factually different from the current proceeding, supports the proposition that remote and speculative risks do not require an EIS.

This is not a valid basis for concern because this claim is completely unparticularized. See Shieldalloy, CLI-99-12, 49 NRC at 354 (citing 10 C.F.R. §§ 2.1211(b), 2.714(a)(2)). The claim does not say how the proposed actions under the third license amendment will pollute the environment or how (or why) NFS would not comply with its license. The alleged predicate for the claim is also wrong—the NRC Staff has issued FONSIs (and EAs) for the first and second BLEU Project amendments but has not yet issued one for the third. See Section I.A, supra.

Moreover, Petitioners' claim does not show that the alleged contamination at the NFS site is related in any way to activities that would be conducted under the third amendment. As discussed above in response to Petitioners' claim of standing, the contamination at the NFS site resulted over 25 years ago from equipment storage in the 1960s and waste disposal between 1957 and 1978. See EA at 3-14, 3-16. Contamination at West Valley is in no way related to the third amendment and it also occurred over 20 years ago. 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, LBP-94-33, 40 NRC at 153-54. Thus the effects of past operations at NFS (and whether they were or were not considered in other EISs) are irrelevant to this proceeding.

Also, as discussed above with respect to standing, in licensing proceedings the Commission will not assume that license applicants will violate applicable regulations. GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 207 (2000); Diablo Canyon, CLI-03-02, 57 NRC at 29; see also Diablo Canyon, CLI-02-16, 55 NRC at 344. Furthermore, Petitioners do not show nor does the EA state that the contamination resulted from discharges that were unauthorized at the time they occurred. See, e.g., EA at 3-14, 3-16. Thus, the alleged past contamination cited by Petitioners does not give rise to an admissible concern.

c. Reliability of Airborne and Liquid Effluent Releases

Petitioners assert, without support, that the EA estimates of airborne and liquid effluent releases for uranium, thorium, plutonium, americium, neptunium, actinium, cesium, technetium and strontium are not reliable, "because they are not based on information about the specific sources of feed material that will be used in the downblending process as the proposed BLEU Project." 3rd Req. at 14. This allegedly makes a "reliable estimate of radiological effluent releases" impossible. Id.

This concern should be dismissed as not germane. First, it ignores a clear statement in the 1st EA. The 1st EA states that the radiological impacts from proposed BLEU Project operations are based on "source material properties and processing information." 1st EA at 5-4. "The documentation of [the calculations of airborne and liquid effluent releases] are provided in the additional information letter (Ref. 5) and RAI response (Ref. 8)" provided by NFS. Id. at 5-4 – 5-5. "The documentation of effluent estimates includes detailed radionuclide data for feed material, mass balance and process flow diagrams, bases for release fractions for various processing steps, pollution control removal efficiencies, and tabulation of results." Id. at 5-5 (emphasis added). Thus, Petitioners assertion is without any supporting authority whatsoever. "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., LBP-00-10, 51 NRC at 175.

2. Safety Concerns

Petitioners assert three safety concerns regarding the third license amendment application: decommissioning funding, compliance with substantive safety regulations, and compliance with other NRC regulatory requirements. 3rd Req. at 15-16.

a. Decommissioning Funding

Petitioners assert that NFS has not "demonstrated that it has made adequate arrangements to fund the decommissioning of the OCB and EPB at the end of the facility's life, and thus has not demonstrated compliance with 10 C.F.R. § 70.23(a)(5) or § 70.25." 3rd Req. at 15. Petitioners claim that consideration of the adequacy of financial assurance for decommissioning should account for NFS's liability for cleaning up existing contamination at the Erwin site and at asserted obligations at West Valley, New York. Id. The NRC should not allow the expansion of operations at NFS until it has assurance that NFS has the resources to clean up both existing contamination and any contamination resulting from "the operation of the BPF [sic]." Id.

This concern should be rejected because Petitioners have not asserted any deficiency in NFS' decommissioning funding arrangements for this third amendment. (Nor have Petitioners shown that NFS has decommissioning obligations at the West Valley site—in fact, it does not.) NRC regulations provide specific requirements for decommissioning funding, 10 C.F.R. § 70.25, and Petitioners have alleged no specific or particular violation of them. Thus, the concern should be dismissed. Shieldalloy, CLI-99-12, 49 NRC at 354. In any event, NRC decommissioning regulations require that funding provided for decommissioning for each licensed action can only be spent on decommissioning for that action, not for any other purposes. See 10 C.F.R. § 70.25(f) (financial assurance methods require decommissioning funding remain outside licensee's administrative control). Therefore, this concern should also be dismissed as simply conclusory and lacking reference to any support for the concern. Molycorp, LBP-00-10, 51 NRC at 175.

b. Substantive Safety Regulations

Petitioners claim that "NFS has not demonstrated that it can and will comply with 10 C.F.R. §§ 70.23(a)(2), (3), or (4) in operating the OCB and EPB." 3rd Req. at 15. Those sections concern applicant qualifications by training and experience, the appli-

cant's proposed equipment and facilities, and the applicant's proposed safety procedures. 10 C.F.R. §§ 70.23(a)(2), (3), and (4). Petitioners claim that NFS has a "long history of contaminating the soil and groundwater at the NFS site" and is alleged to have caused off-site contamination. 3rd Req. at 15. NFS has been cited for "violations of its permit." Id. These incidents allegedly reflect inadequacies in management, procedures, and equipment. Id.

This concern is invalid because it provides no specifics. It does not describe in any respect the ways in which the Petitioners believe that the third license amendment application does not meet the Commission's requirements. Thus, it does not even rise to the level of "notice pleading" that the Commission has rejected as insufficient to state a valid area of concern. Shieldalloy, CLI-99-12, 49 NRC at 353-54. Furthermore, as noted, concerns over past or ongoing operations are not valid with respect to proceedings on license amendment applications. Energy Fuels Nuclear, LBP-94-33, 40 NRC at 153-54; 10 C.F.R. § 2.1205(g).

c. Safety, Security, Safeguards, and Reporting Procedures

Petitioners claim that "NFS has not demonstrated that it has the qualifications, commitment, and corporate integrity to follow important safety, security and safeguards procedures and make complete and accurate reports to the NRC." 3rd Req. at 16. Once again, this concern is invalid, first, because it provides no specifics related to NFS's third license amendment. It does not describe in any respect the ways in which the Petitioners believe that the license amendment application does not meet the Commission's requirements. As with the concern above, it fails to even rise to the level of "notice pleading" which does not provide a petitioner with a valid area of concern. Shieldalloy, CLI-99-12, 49 NRC at 353-54. Second, concerns over past or ongoing operations are not valid with respect to license amendment proceedings. Energy Fuels Nuclear, LBP-94-33, 40 NRC at 153-54; 10 C.F.R. § 2.1205(g). Third, as discussed above with respect to standing, alle-

gations that license applicants will simply violate regulations or the terms of their licenses are not cognizable. Diablo Canyon, CLI-03-02, 57 NRC at 29; see Diablo Canyon, CLI-02-16, 55 NRC at 344. Thus, this concern should be dismissed.

III. CONCLUSION

For the foregoing reasons, the Presiding Officer should deny Petitioners' request for a hearing on the license amendment.

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Dated: February 12, 2004

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Answer to Third Request for Hearing by State of Franklin Group of the Sierra Club, Friends of the Nolichucky River Valley, Oak Ridge Environmental Peace Alliance, and Tennessee Environmental Council Regarding Nuclear Fuel Services' Proposed BLEU Project were served on the persons listed below by electronic mail or by facsimile and deposit in the U.S. mail, first class, postage pre-paid, this 12th day of February, 2004.

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