

April 1, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Presiding Officer

April 8, 2004 (10:22AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

**KATHY HELMS-HUGHES' MOTION FOR APPEAL OF MARCH 17, 2004,
MEMORANDUM AND ORDER/RULING ON HEARING REQUESTS
IN THE MATTER OF NUCLEAR FUEL SERVICES'
PROPOSED BLENDED LOW-ENRICHED URANIUM PROJECT**

First of all, Your Honor, let me say that this public process has been an enlightening experience and I appreciate the courtesy you and your assistant, Sharon Perini, have shown. I believe we both know the background of this case and I am not going to bore you with the same details you already have in front of you. This is not a matter of laziness, Your Honor, but one of courtesy.

Per your March 17, 2004 response in the matter Kathy Helms-Hughes' claim to standing:

1. As previously noted, in contrast to the fifteen individual declarers and Blue Ridge, Ms. Helms-Hughes submitted hearing requests in connection with all three license amendment applications associated with the BLEU Project. In essence, as reflected in her November 29, 2002 filing with regard to the UNB application, her claim of standing to challenge the project rests upon her ownership of three parcels of land in Butler, Tennessee, approximately 20 miles distant from the Erwin site, that were stated to represent a family ancestral home.¹

According to the November 2002 hearing request, Ms. Helms-Hughes was then living

with her ten year-old daughter and conducting farming activities on her Butler property. In that regard, they ate the produce of the land and drank the spring water that flowed across the property from the Cherokee National Forest. Helms-Hughes Declaration at 1. See also Helms-Hughes January 26 Response at 2-3.

*That situation, however, no longer obtains. At present, Ms. Helms-Hughes (presumably with her daughter) resides in Arizona, where she is employed by a newspaper. Although acknowledging that she is not "physically present on her [Tennessee] property at this time***because she must work out of state temporarily in order to earn a living in her profession," she maintains that she "fully intends to return to Tennessee within the next five years."*

To the best of my knowledge, Your Honor, nowhere in the federal regulations is there a requirement that states that I must be on the property 100 percent of the time. My home is located in Carter County, Tennessee — next door to Unicoi County, Tenn. Carter County is where my voting record is. It is where I pay my property taxes. It is where my family is, including an aunt and two cousins who live less than a football field's length away, on the other end of what used to be Granny's cow pasture. It is now my aunt's and cousins' garden space.

It is not currently known to what degree airborne radioactive constituents such as uranium, plutonium, thorium, cesium, and strontium have been distributed across this mountainous property as a result of air stack releases from Nuclear Fuel Services Inc. in Erwin because an Environmental Impact Statement (EIS) on the BLEU Project has not been done.

On this property there are numerous fruit trees. It is not known whether there is any uptake of radioactive contamination in the fruit as a result of downwind contamination of the soil and penetration to surface water springs or groundwater. There is no public water supply in this area. These are the sole sources of drinking water for the communities of Fish Springs, Butler, Elk

Mills, and Poga, all of which are impacted by the prevailing winds from Erwin. Those mountain springs — my source of water — have not been tested for radioactive constituents or heavy metals, though arsenic has been detected in some areas.

By leaving me out of this process, Your Honor, in effect, you're making the statement that President Bush could not intervene in an action that would affect his Crawford, Texas, ranch because he is temporarily living in the White House. So for four years he would be denied his right to oppose an action that would affect his permanent home. I don't believe that is acceptable, and I doubt whether President Bush would think it was acceptable either.

Because I was forced for economic reasons to work out of the area on a temporary basis does not mean that I don't still have economic liabilities in Butler, Tennessee. And the issue Your Honor has failed to adequately address in this action is cumulative airborne emissions from NFS and their impact on human health and the environment in my hometown.

"Cumulative" means they have been bioaccumulating at their chosen point of impact along the path of the prevailing wind after disbursement from NFS's stacks. "Bioaccumulating" means they have been building up in soil and water over the years and that at this very moment, when you are hopefully drinking a cup of coffee and reading this, they are continuing to build up in the soil and water of my permanent homeplace.

It does not matter whether I return in two months, two years, or 10 years. These radioactive contaminants are continually dispersed on my property where they remain long-term. For verification, Your Honor might consider the half-life of each radioactive constituent and the tons of reportable airborne releases from NFS since 1957, per NRC's own documentation. I apologize for not having ready access to those reports, but I am sure the NRC staff could happily provide them for your reading pleasure upon request. I, too, would like to see a comprehensive report.

So whether I am at my permanent homeplace at the moment or not, NFS's emissions are pouring out of the stacks and drifting onto my property, thus contaminating and devaluing my property and limiting any return on monetary investment should I ever decide to sell.

Cumulative impacts from ongoing processes at NFS, coupled with emissions from each of the processes mentioned in NFS's three segmented license amendment requests for the BLEU project are having and will continue to have a direct and negative impact on my property and health. The full impact to my health and that of my now-12-year-old daughter will not be known for a number of years due to the latency of cancer and other uranium-related illnesses such as kidney disease.

Due to previous bioaccumulation of contaminants in soil and water, and any future buildup of contaminants released as a result of the new processes associated with the BLEU project — now known and not-yet-known — upon my return to Tennessee I may no longer be able to take my child camping or fishing in Watauga Lake or the Nolichucky River, my favorite swimming hole when I attended East Tennessee State University.

I and my aunt annually preserve and eat fruit and vegetables grown at Scott's Farms, located on the Nolichucky River. It is not known whether any of those fruits or vegetables have uranium uptake as a result of contamination from NFS wastewater discharges to the Nolichucky River or airborne deposition of contaminants. In my absence from Tennessee, my aunt still will be preserving those fruits and vegetables for her family and mine. Thus it is possible and plausible that we could suffer direct harm as a result of eating fruits and vegetables grown near NFS.

"That Ms. Helms-Hughes took the step of leaving her ancestral home to take a position with a newspaper in a far distant part of the country definitely suggests a strong commitment to the pursuit of her profession that might or might not lessen with the passage of time."

Begging Your Honor's pardon, but Ms. Helms-Hughes has worked for the same newspaper, the Gallup Independent, in the past, winning several awards for investigative reporting in 1997-1998, the year she lived on the Navajo Reservation in Tuba City, Ariz.

Ms. Helms-Hughes now lives in Fort Defiance, Ariz., on the opposite side but still within the boundaries of the reservation, three hours from Tuba City. Helms-Hughes returned home in August 1998 following the death of her mother from kidney failure. She stayed there five years working on her land and preparing it for her retirement.

While at home, she worked for the Elizabethton Star, also winning numerous awards, including the top award in the state for investigative reporting for her series, "Tennessee Valley: A Nuclear Future?"

Last October, Helms-Hughes was offered a bureau reporter assignment on the Navajo Reservation. She now covers the issues of Cold War legacy uranium waste and its impact on the Navajo people and their environment. She also covers the issue of U.S. atomic testing and the health impacts to Navajo downwinders and their environment. She now temporarily resides on the grounds of a Christian mission within the boundaries of the Navajo Reservation. The land is not for sale.

Therefore it is *"a matter of substantial conjecture"* to assume that Helms-Hughes would not return to the land and home she owns in Tennessee, since she has demonstrated by past practices — having lived in Oregon, Florida, Indiana, and Arizona for brief periods of time during her 48 years — that she always returns home.

"The fact that she does not currently reside on her Tennessee property, but is instead pursuing her profession at a distance of some 1,400 miles or so from that property, would seem of itself to defeat any claim that the BLEU Project threatens Ms. Helms-Hughes with the injury-in-fact upon which standing must rest."

Your Honor, here again, this is "*a matter of substantial conjecture,*" since once more, the issue of living downwind of a nuclear facility is not being addressed. I am out here on the reservation witnessing first-hand, entire families being wiped out from various types of cancer as a result of atomic weapons tests in Nevada, hundreds of miles away. Many of the Navajo also suffer from kidney disease related to chronic exposure to uranium and some have even received federal compensation for their illnesses, which tells me there is a case to be made for downwind impacts from nuclear facilities.

There are no independent health studies which definitively state that I, my daughter, my aunt and cousins, or any other member of my community might not someday suffer diseases related to chronic exposure to uranium as a result of bioaccumulation of past, present, and future uranium processing and downblending of high-enriched uranium at NFS.

NFS itself has stated that plutonium in groundwater on Impact Plastics' property adjacent to NFS is the result of "bomb tests in the '60s out in Nevada."

In April 2002, I reported a story on plutonium in groundwater offsite from NFS on property adjacent to Impact Plastics Inc., owned by Gerald O'Connor. That offsite contamination is now the subject of litigation in U.S. District Court in Greeneville, Tenn.

Here is an excerpt from the story which appeared in the Elizabethton Star, the newspaper for which I wrote, on or about April 4, 2002.

How did "trace" quantities of plutonium show up in offsite groundwater monitoring wells near Nuclear Fuel Services in Erwin?

Tony Treadway, public relations representative for NFS, said, "You know, if you really get into it, any well that you dig anywhere is going to have background levels of plutonium, based on, believe it or not, bomb tests."

When asked to explain, Treadway said offsite plutonium could be the result of fallout

associated with nuclear testing in Nevada in the 1960s.

So, Your Honor, I ask you: Am I to believe that airborne radiological contaminants can travel all the way from Nevada to Tennessee — approximately 2,000 miles — as NFS claims, but that it is not possible for similar radiological contaminants to travel on the prevailing wind the estimated 12-15 air miles from NFS's stacks in Erwin to my house and land in Butler, Tenn.? I don't think so. Or does this airborne theory just work one way?

From Your Honor's order:

As noted, the Helms-Hughes property is located at a considerable distance from the BLEU complex on the Erwin site. To establish standing, Ms. Helms-Hughes therefore cannot simply point to references in the EA to the effect that there will be some airborne emissions as the result of the execution of the BLEU Project. Rather, her burden extends to supplying some good reason to believe that, 20 miles away from the site, the emissions might prove harmful. Mere potential exposure to minute doses of radiation within regulatory limits does not constitute a "distinct and palpable" injury on which standing can be founded.

Your Honor, this tells me that you are not looking at the whole picture, which is what I believe NFS hoped to accomplish by segmenting its permits for the BLEU Project into three parts. You are only considering "minute doses of radiation within regulatory limits" for one segment of the process. I don't believe you are taking into account the tons of "allowable" emissions already pouring out of NFS's stacks.

For future reference, as NFS adds even more new processes, can you or your staff please tell me the magic cutoff number on allowable emission limits — when total emissions now emanating from the plant, combined with emissions from the new process, become overburden —

or unsafe for human health and the environment? Because at that time, I promise to attempt to intervene again.

CONCLUSION

Your Honor, I am asking you to reconsider my motion for standing. In doing so, I am asking you to sit down with that mountain of paperwork I have filed in this case and actually read it yourself, from the first filing to the last. I believe you will see there there are several other issues Your Honor has failed to address, in addition to those mentioned here.

If after having done so, you still decide not to grant standing, then I will be left no other recourse but to sign on with Sierra Club, which has been granted standing, so that these issues may be brought up and dealt with.

Thank you for your time and consideration and for the opportunity to be enlightened on the "public process."

Respectfully submitted,



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(Dated April 1, 2004)

CERTIFICATE OF SERVICE

I certify that on April 1, 2004, copies of Helms-Hughes' Motion For Appeal were served on the persons listed below by e-mail transmission, with paper copies to follow in U.S. Mail.

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