

June 3, 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

Before the Presiding Officer

June 4, 2004 (3:42PM)

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 REQUEST FOR CLARIFICATION OF THE ISSUES TO BE  
HEARD AND STATEMENT OF POSITION ON  
THE SCOPE OF THE HEARING**

**I. INTRODUCTION**

Pursuant to the Presiding Officer's April 28, 2004 Memorandum and Order (Memorializing Pre-Hearing Conference Determinations), at 3, Applicant Nuclear Fuel Services, Inc. ("NFS") files this request for clarification of the issues to be heard and statement of its position on the scope of the hearing. NFS requests that the scope of the proceeding, now at the written presentation stage, be limited to the environmental effects and the safety of the operations to be conducted at NFS's Erwin, Tennessee facilities as authorized by the Blended Low-Enriched Uranium ("BLEU") Project license amendments at issue in this proceeding. Accordingly, the scope of the proceeding should not include the environmental effects of NFS's current or past operations at its Erwin facilities or elsewhere; nor should it include the safety or the history of NFS's current or past operations at Erwin or elsewhere. NFS submits that limiting the scope of the issues to those truly relevant to the BLEU Project will be of benefit to the parties in focusing their written presentations and to the Presiding Officer in ultimately making the licensing decision for the NRC.

## II. BACKGROUND

### A. Procedural Background

NFS has requested three license amendments to Special Nuclear Material License No. SNM-124 to support process operations associated with the portion of the Department of Energy ("DOE") BLEU Project that will be performed at NFS's Erwin, Tennessee facilities. See 68 Fed. Reg. 74,653, 74,653.<sup>1</sup> The BLEU Project is part of a 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. 1<sup>st</sup> 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"), which was ultimately constructed at NFS' Erwin site.<sup>3</sup> On October 11, 2002, NFS requested its second license amendment to authorize modification to its processing operations in its BLEU Preparation Facility ("BPF").<sup>4</sup> On October 23, 2003, NFS requested its third license amendment to authorize special nuclear material processing operations in its Oxide Conversion Building ("OCB") and Effluent Processing Building

---

<sup>1</sup> 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 (2003).

<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) ("1<sup>st</sup> EA") at 1-3.

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

<sup>4</sup> Nuclear Fuel Services, Inc., Notice of Receipt of Amendment Request and Opportunity to Request a Hearing, 68 Fed. Reg. 796 (2003).

("EPB"). 68 Fed. Reg. 74,653; see also Nuclear Fuel Services, Inc. (Erwin, Tennessee), LBP-04-05, 59 NRC \_\_\_, slip op. at 1-3 (Mar. 17, 2004), aff'd in part, CLI-04-13 (May 20, 2004).

NFS's three BLEU Project license amendment requests were the subject of several hearing petitions, including a petition concerning each request from the Sierra Club et al. ("Sierra Club").<sup>5</sup> See LBP-04-05, slip op. at 2-5. The Presiding Officer held in abeyance the resolution of the petitions concerning the first two amendments pending the receipt of petitions on the third amendment. Id. at 2-3; see Nuclear Fuel Services, Inc. (Erwin, Tennessee), LBP-03-1, 57 NRC 9, 17 (2003). The Presiding Officer ultimately admitted the Sierra Club to a proceeding concerning all three license amendment requests. LBP-04-05, slip op. at 19. The hearing requests from the other petitioners were denied. Id.

## **B. The BLEU Project License Amendment Requests**

### **1. The First License Amendment Request**

Pursuant to the first license amendment request, the UNB will store LEU nitrate solutions prepared at and shipped to NFS from the DOE Savannah River Site. 1<sup>st</sup> EA at 1-2. The UNB will also store solutions prepared at the NFS Site, if license amendments for such operations are approved. Id. at 2-5. The LEU solutions will be stored in tanks within a diked area of the UNB. Id.

### **2. The Second License Amendment Request**

Pursuant to the second license amendment request, NFS will downblend HEU-aluminum alloy and HEU metal to low-enriched uranyl nitrate at the existing BPF at

---

<sup>5</sup> 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, (Nov. 27, 2002) ("1<sup>st</sup> Req."); 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, (Feb. 6, 2003) ("2<sup>nd</sup> Req."); 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) ("3<sup>rd</sup> Req.").

NFS' Erwin site. Id. at 1-2; see also 68 Fed. Reg. at 796.<sup>6</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. 1<sup>st</sup> EA at 2-1. Approximately [REDACTED] of HEU-aluminum alloy and [REDACTED] 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 [REDACTED] of natural uranium oxide to yield low-enriched uranyl nitrate solution in [REDACTED] batches. Id. That uranyl nitrate solution will then be transferred to and stored at NFS' UNB, whose operation is the subject of NFS' first license amendment request. Id. at 1-2.

### 3. The Third License Amendment Request

Pursuant to the third license amendment request, NFS will convert low-enriched liquid uranyl nitrate solutions into solid uranium oxide (UO<sub>2</sub>) powder at the OCB and will operate effluent processing facilities at the EPB. Id. at 1-3; see also 68 Fed. Reg. at 74,653. Low-enriched uranyl nitrate solution will be converted to UO<sub>2</sub> 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. 1<sup>st</sup> 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<sub>2</sub> powder (which is then shipped off site for further processing). Id. at 2-5 to 2-7. The dilute stream from the centrifuge is passed through ion exchange columns to extract 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

---

<sup>6</sup> NFS is already authorized to handle HEU at the BPF. Id.

natural uranium trioxide (UO<sub>3</sub>) 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 overhead's 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.

### **C. The Sierra Club's Hearing Requests**

As noted above, the Sierra Club filed petitions to intervene on all three NFS BLEU Project license amendment requests and in each petition it stated "areas of concern" regarding the amendment at issue. Regarding the first amendment, it advanced concerns with respect to: 1) preparation of an EIS, 2) NFS's compliance with effluent permit limits, 3) the consequences of terrorism, 4) the appropriate geographic zone of impact for the proposed action, 5) decommissioning funding, and 6) compliance with safety regulations. 1<sup>st</sup> Req. at 9-14. Regarding the second amendment, it advanced concerns with respect to: 1) completeness of the NRC EA, 2) preparation of an EIS because of the impacts of normal operations, 3) preparation of an EIS because of the potential impacts of accidents, 4) decommissioning funding, and 5) compliance with safety regulations. 2<sup>nd</sup> Req. at 8-15. Regarding the third amendment, it advanced concerns with respect to: 1) completeness of the NRC EA, 2) preparation of an EIS because of the impacts of normal operations and accidents, 3) NFS's alleged history of violating effluent permit limits, 4) reliability of effluent estimates in the EA, 5) decommissioning funding, 6) compliance with safety regulations, and 7) compliance with NRC security and reporting requirements. 3<sup>rd</sup> Req. at 11-16.

#### **D. The Presiding Officer's Ruling**

In admitting the Sierra Club to this proceeding, the Presiding Officer determined that it had submitted at least one area of concern germane to the subject matter of the proceeding. LBP-04-05, slip op. at 17. He found that its petition concerning the third license amendment had raised admissible (but not necessarily meritorious) concerns regarding the preparation of an environmental impact statement, decommissioning funding, compliance with 10 C.F.R. §§ 70.23(a)(2), (3), and (4), and reporting to the NRC. *Id.* at 18. He found the concern regarding an alleged prior history of NFS exceeding effluent permit limits to be "marginally germane," and the concern regarding the alleged unreliability of airborne and liquid effluent releases in the EA to be "on a seemingly better footing." *Id.* n.13. The Presiding Officer also admitted the concerns raised in the petitions on the first and second license amendment requests, with the exception of the concerns attempting to raise the potential consequences of terrorism as an environmental issue, finding that "[i]n substantial measure they mirror the concerns specified the third hearing request." *Id.* at 18-19 & n.14.

### **III. DISCUSSION**

NFS submits, as discussed below, that the scope of license amendment proceedings under 10 C.F.R. Part 2, Subpart L, and in particular the written presentations of the parties, is limited to the activities that would be authorized under the requested license amendments and does not extend to current or past licensee operations or to licensee operations conducted at sites other than the site where the proposed activities will occur. Some of the areas of concern that the Sierra Club submitted in its petitions extend beyond that scope. Therefore, at this written presentation stage, NFS requests that the Presiding Officer limit the scope of the proceeding to only those matters concerning the activities that would take place under the requested BLEU Project license amendments. Under 10 C.F.R. §2.1233(c), a petitioner's initial written presentation must "describe in detail" as-

serted license application deficiencies (and proposed relief), with references to particular application sections. Under 10 C.F.R. § 2.1233(e), the Presiding Officer has the power to strike parts of written presentations that are “cumulative, irrelevant, immaterial, or unreliable”. Therefore, while petitioners’ areas of concern may not be held to a high standard of specificity or germaneness at the pleading stage, it is appropriate now, at the initial written presentation stage, to require petitioners to focus their presentations on issues that are directly relevant to the activities to be conducted under the proposed license amendments. NFS submits further that limiting the scope of the issues to those truly relevant to the BLEU Project will be of benefit to the parties in focusing their written presentations (which may include substantive technical analyses prepared by experts) and to the Presiding Officer in ultimately making the licensing decision for the NRC.

**A. The Allowable Scope of Petitioner Issues Is Limited to the License Amendments the Subject of this Proceeding**

Under 10 C.F.R. § 2.1205(h), “areas of concern” submitted by petitioners must be “germane to the subject matter of the proceeding.” See also 10 C.F.R. § 2.1205(e)(3) (areas of concern). Here, therefore, litigable issues must be germane to the proposed BLEU Project license amendments, not past or ongoing NFS operations. The subject matter of the proceeding is specified in the Federal Register notices announcing the proceeding and providing opportunity for hearing. 10 C.F.R. § 2.105(b)(1). “Only those concerns that fall within the scope of the proposed action set forth in the Federal Register notice of opportunity for hearing may be admitted for hearing.” International Uranium (USA) Corp. (Receipt of Material from Tonawanda, New York), LBP-98-21, 48 NRC 137, 143 (1998) (citing Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419, 426 (1980) (licensing board jurisdiction is limited by Commission’s notice of hearing)). Areas of concern must “on their face relate to the subject matter of the license

amendment at issue.” International Uranium (USA) Corp. (White Mesa Uranium Mill), CLI-02-10, 55 NRC 251, 257 (2002).

Areas of concern in a license amendment proceeding may not raise issues relating to past or ongoing licensee activities. In the Energy Fuels Nuclear license amendment proceeding, concerns regarding the disturbance of archaeological resources by the development of the White Mesa Mill site under the original source materials license were rejected as not germane to the license amendment proceeding. Energy Fuels Nuclear, Inc., LBP-94-33, 40 NRC 151, 153-54 (1994). The opening of a new mill site cell and the importation of new material for disposal under the proposed license amendment would not impact any such resources.

While no one can say whether the construction of the White Mesa Mill would have taken place given more vocal concern on the part of the Ute Tribe at that time, we may not revisit the initial licensing of the plant today. The scope of this hearing request is limited to the future importation and disposal of mill tailings from a remote site, nothing more. Therefore, since that activity will not impact on any archaeological or religious resources, in any degree more than they could have under the existing license, [petitioner’s] concerns for those resources are not, in this limited context, germane to the subject matter of this proceeding.

Id. at 154.

Here, as the Presiding Officer has recognized, the subject matter of the proceeding is the three proposed license amendments which would authorize BLEU Project activities at NFS’s Erwin facilities. See LBP-04-05, slip op. at 1-3 (citing Federal Register notices). Areas of concern must be “truly relevant – i.e., ‘germane’ to the license amendment at issue.” Id. at 17 (quoting Fansteel, Inc. (Muskogee, Oklahoma Facility), LBP-03-22, 58 NRC 363, 368 (2003)). Therefore, here, as in Energy Fuels Nuclear, the scope of the Sierra Club’s concerns may address activities to be conducted under the BLEU Project amendments but not ongoing or past NFS operations. Thus, at this written pres-

entation stage the Presiding Officer should limit the issues for litigation to only those concerning the proposed license amendments.

**B. Allegations Concerning Past Violations or Management Character or Integrity Are Inappropriate Without a Direct and Obvious Relationship With the Licensing Action In Dispute**

The Sierra Club has submitted several areas of concern that include claims about past NFS regulatory violations and alleged violations or allegedly inappropriate releases of contaminants into the environment, asserting that past events imply that the BLEU Project will be unsafe or will have undue environmental impacts. The Commission has stated, however, that petitioner allegations that past regulatory violations imply that applicant or licensee management lacks character or integrity, such that the applicant or licensee cannot be counted upon to comply with NRC regulations in the future, are inappropriate in license amendment proceedings without a “direct and obvious relationship between the character issues and the licensing action in dispute.” Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 365 (2001). Because even now it is apparent that the Sierra Club’s claims about past events do not have the requisite direct and obvious relationship to the activities to be conducted on the BLEU Project, the scope of the Sierra Club’s issues for litigation should be narrowed to exclude them.

In Millstone, the petitioners had alleged that a series of regulatory violations and ultimately criminal actions in the mid-1990s indicated that the licensee (in 2001 and beyond) could not be trusted to follow regulations. Id. at 365. The Commission acknowledged that contentions alleging poor character or integrity had been admitted in the past; but it stated that it “ha[d] always insisted . . . that ‘[f]or management ‘character’ to be an appropriate issue for adjudication in a licensing proceeding, ‘there must be some direct and obvious relationship between the character issues and the licensing action in dispute.’” Id. (emphasis added). The Commission stated that it has “placed strict limits on

'management' and 'character' contentions," – alleged improprieties must be of more than historical interest—they must "relate directly to the proposed licensing action." Id. at 366. "License amendment proceedings are not a forum 'only to litigate historical allegations' or past events with no direct bearing on the challenged licensing action." Id. It then rejected the contention because the cited violations took place in the mid-1990s and the petitioners had "ma[de] no effort to show how these historical events have a direct bearing upon the discrete license amendments now before [it]." Id. The petitioners did not, for example, suggest there were any "irregularities" in the program that was the subject of the license amendments. Id.

Nor [did] they indicate[] any pattern of ongoing corporate misconduct at [the facility] which reasonably could bear upon the . . . program. There simply has been no link established between the individuals or direct management responsible for [the violations] years ago . . . and [the program that was the subject of the license amendments] or the managers currently responsible for overseeing it.

Id. The Commission noted that, in fact, facility ownership and control had changed since the time of the violations.

Finally, the Commission concluded that,

[t]o accept Petitioners' reasoning would potentially insert management integrity issues into virtually all license amendment proceedings at facilities with prior violations, no matter the nature of the amendment. We cannot allow the admission of contentions premised on a general fear that a licensee cannot be trusted to follow regulations of any kind. As a rule, reactor license amendment applications do not "throw[] open an opportunity to engage in a free-ranging inquiry into the "character" of the licensee." When "character" or "integrity" issues are raised, we expect them to be directly germane to the challenged licensing action. No such link has been established here.

Id. at 366-67.

While Millstone was a 10 C.F.R. Part 2, Subpart G reactor license amendment decision, it should apply with equal force to this Subpart L proceeding, now at the written presentation stage. At the outset, the Commission describes its standard for admitting

past violation and character and integrity issues as their being “directly germane to the challenged licensing action.” Millstone, CLI-01-24, 54 NRC at 367. Under Subpart L, an area of concern must also be “germane to the subject matter of the proceeding.” 10 C.F.R. § 2.1205(h). Furthermore and more importantly, the Millstone standard is intended to ensure that, in a Subpart G, Subpart L, or any other NRC proceeding, that the issues litigated truly bear on the potential effects of the proposed activities on the public health and safety and the environment. Compare 10 C.F.R. §§ 2.1233(c) and (e) (requiring written presentations to be detailed and specific and providing for the striking of irrelevant, immaterial, and unreliable material). The Commission has recognized that merely describing alleged past offenses and then insinuating without support that the applicant is unfit to conduct the proposed activities or that it will violate NRC regulations constitutes logically flawed reasoning. Without a direct and obvious relationship between the past events and the proposed action, there is no basis for believing that the past events are relevant at all to the licensing decision the NRC must make.

In a similar vein, a petitioner cannot manufacture a “management character” issue by asserting that management is of bad character and then claiming that bad management will cause harm to arise, through regulatory violations, from a proposed licensing action. In Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 189-91 (1999), the Commission rejected just such a claim. First, the proposed license amendments there had no bearing on management structure, personnel, or culture. Id. at 190. Second, it would be “much too open-ended” and an inappropriate expenditure of agency resources to simply allow a petitioner to “insert management integrity issues into all license amendment proceedings, no matter the nature of the amendment, simply by (1) alleging that management character is bad; and (2) then claiming that no license amendments should be granted because of the alleged bad character.” Id. at 190-91.

Therefore, in accordance with Millstone (and Zion), the Sierra Club should not be permitted to litigate past violations or alleged wrongdoings that do not have a “direct and obvious relationship” with the activities to be conducted under the BLEU Project license amendments. The litigable scope of their issues should exclude ““historical allegations’ or past events with no direct bearing on the challenged licensing action.” Millstone, CLI-01-24, 54 NRC at 366. Without showing any pattern of ongoing licensee misconduct that reasonably could bear upon the BLEU Project, there is no link between the individuals or direct management assertedly responsible for alleged past violations or other alleged wrongdoings and the currently proposed project or the managers currently responsible for overseeing it. See id. In sum, the Sierra Club should not be permitted to litigate past events unless they are “directly germane” to the proposed BLEU Project.

**C. Unsupported Allegations that License Applicants Will Violate NRC Regulations Are Not Litigable**

Finally, similarly to the foregoing but more broadly, it is well established that mere unsupported allegations that an NRC license applicant will violate regulations and hence the application should be denied cannot serve as the basis for litigation in an NRC licensing proceeding. “We have long declined to assume that licensees will refuse to meet their obligations under their licenses or our regulations.” Pacific Gas & Electric Co. (Diablo Canyon Power Plant, Units 1 and 2), CLI-03-2, 57 NRC 19, 29 (2003); Pacific Gas & Electric Co. (Diablo Canyon Power Plant, Units 1 and 2), CLI-02-16, 55 NRC 317, 344 (2003); see Curators of the University of Missouri, CLI-95-8, 41 NRC 386, 400 (1995) (rejecting bare hypothesis in Subpart L proceeding that licensee would violate a license condition). If a licensee does violate NRC regulations, “the agency can and will take the necessary enforcement action to ensure the public health and safety.” Diablo Canyon, CLI-03-2, 57 NRC at 29. Therefore, mere claims by the Sierra Club that NFS

will violate applicable regulations cannot serve as the basis for litigating the proposed BLEU Project license amendments.

**D. The Scope of the Sierra Club's Issues for Litigation Should Be Narrowed**

In accordance with the case law discussed above and as set forth specifically below, the scope of the Sierra Club's issues for litigation should be narrowed to exclude claims in their areas of concern regarding ongoing or past NFS activities and activities at sites other than the Erwin facilities where the BLEU Project activities will be conducted. They should also be narrowed to exclude claims regarding past regulatory violations or allegedly inappropriate releases of contaminants into the environment where such claims do not have a "direct and obvious relationship" with the activities to be conducted under the BLEU Project. Finally, the Sierra Club's issues should exclude bare allegations that the BLEU Project license amendments should not be granted because NFS will violate NRC regulations.

**1. Petition Concerning First BLEU Project Amendment**

In its petition on the first BLEU Project amendment, the Sierra Club claimed that NFS has a history of exceeding permit limitations with respect to effluent emissions to the environment and there is contamination on the NFS site and that therefore there is a risk that NFS will pollute the environment in conducting BLEU Project activities. See 1<sup>st</sup> Req. at 10-11, 14. NFS submits that the scope of these claims (environmental and safety) be narrowed to exclude alleged permit violations or instances of contamination that do not have a "direct and obvious relationship" with the activities to be conducted under the BLEU Project amendments. See Millstone, CLI-01-24, 54 NRC at 365. Events that occurred five, ten, or more years ago and events that involve activities different than those to be conducted in support of the BLEU Project are simply of historical interest and do not "relate directly to the proposed licensing action." See id. at 366. "License amend-

ment proceedings are not a forum 'only to litigate historical allegations' or past events with no direct bearing on the challenged licensing action." Id.

The Sierra Club also submitted an area of concern regarding decommissioning funding which asserted in part that "[c]onsideration of the adequacy of financial assurance for decommissioning should take into account NFS's liability for cleaning up existing contamination on the NFS site." 1<sup>st</sup> Req. at 14. NFS submits that the only relevant issue is the funding to decommission the BLEU Project Uranyl Nitrate Building (UNB) (the subject of the first amendment). The status of NFS's other decommissioning obligations or funding, unless they materially affect NFS's ability to fund decommissioning of the UNB, are entirely unrelated to this licensing proceeding.

## 2. Petition Concerning Second BLEU Project Amendment

Similarly to its petition on the first BLEU Project amendment, the Sierra Club asserts that NFS will not comply with regulations or permit effluent limits because it allegedly has a history of contaminating the environment. 2<sup>nd</sup> Req. at 12-13, 15. As with the first petition, NFS submits that the scope of these claims (environmental and safety) be narrowed to exclude historical instances of alleged permit violations or contamination that do not have a "direct and obvious relationship" with the activities to be conducted under the BLEU Project amendments. See Millstone, CLI-01-24, 54 NRC at 365.

In the same concern, the Sierra Club also asserts that NFS is responsible for environmental contamination at the West Valley, New York site. 2<sup>nd</sup> Req. at 13. Independent of being excluded because they concern only historical allegations, NFS submits that claims regarding West Valley be excluded as totally irrelevant to this proceeding. They concern activities conducted at an entirely different site that are entirely different from those to be conducted to support the BLEU Project. Thus, they simply are not pertinent to this licensing action.

The Sierra Club raised a concern regarding decommissioning funding, asserting in part that “[c]onsideration of the adequacy of financial assurance for decommissioning should take into account NFS’s liability for cleaning up existing contamination on the NFS site, and also at West Valley, New York. 2<sup>nd</sup> Req. at 14. As with the Sierra Club’s first petition, NFS submits that the only relevant question for this proceeding is the funding to decommission the BLEU Project facilities. NFS’s other obligations (at Erwin, West Valley, or elsewhere), unless they materially affect NFS’s ability to fund the decommissioning of the BLEU Project, are simply irrelevant here.

### 3. Petition Concerning Third BLEU Project Amendment

Similarly to its first and second petitions, the Sierra Club asserts that NFS will not comply with regulations or permit effluent limits because it allegedly has a history of contaminating the environment, assertedly to include contamination at the West Valley, New York site. 3<sup>rd</sup> Req. at 13-16. As with the two prior petitions, NFS submits that the scope of this claim be narrowed to exclude historical instances of alleged permit violations or contamination that do not have a “direct and obvious relationship” with the activities to be conducted under the BLEU Project amendments. See Millstone, CLI-01-24, 54 NRC at 365. NFS also submits that historical events at West Valley, New York are simply irrelevant altogether to the activities to be conducted in the future in support of the BLEU Project at Erwin, Tennessee.

In a similar vein, the Sierra Club claims that NFS’s past regulatory violations imply that it does not have the “qualifications, commitment, and corporate integrity,” to follow NRC safety, security, and reporting requirements. 3<sup>rd</sup> Req. at 16. NFS submits that the scope of this claim be narrowed to exclude alleged violations that do not have a “direct and obvious relationship” with the activities to be conducted under the BLEU Project amendments. See Millstone, CLI-01-24, 54 NRC at 365. Events that occurred years ago, involving people unconnected to the BLEU Project, are simply of historical interest and

do not “relate directly to the proposed licensing action.” See id. at 366. Indeed, the Commission’s Millstone decision is directly intended to preclude the “potential[] insert[ion of] management integrity issues into virtually all license amendment proceedings at facilities with prior violations, no matter the nature of the amendment.” Id.; see also Zion, CLI-99-4, 49 NRC at 190-91. Thus, the scope of this issue should be appropriately narrowed.

Finally, the Sierra Club asserts the same decommissioning funding concern it asserted in its second petition. See 3<sup>rd</sup> Req. at 15. NFS similarly submits that the only relevant issue is the funding to decommission the BLEU Project facilities. NFS’s other obligations, unless they materially affect NFS’s ability to fund BLEU Project decommissioning, are simply irrelevant.

#### **4. Conclusion Regarding the Scope of the Issues**

In sum, NFS submits that the following issues—NFS’s alleged history of regulatory violations and exceeding permit limitations with respect to emissions to the environment; alleged events or obligations at West Valley, New York; and decommissioning obligations at Erwin other than those regarding the BLEU Project—should be excluded from this proceeding as simply irrelevant to the NRC’s licensing decision.

#### IV. CONCLUSION

As stated above, limiting the scope of the issues to those truly relevant to the BLEU Project will be of benefit to the parties in focusing their written presentations and to the Presiding Officer in ultimately making the licensing decision for the NRC. Thus, in accordance with the foregoing discussion, NFS requests clarification of the scope of the issues in this proceeding.

Respectfully submitted,



Daryl M. Shapiro

D. Sean Barnett

SHAW PITTMAN, LLP

2300 N Street, N.W.

Washington, DC 20037

(202) 663-8507

Counsel for Nuclear Fuel Services, Inc.

Neil J. Newman

Vice President and General Counsel

Nuclear Fuel Services, Inc.

Dated: June 3, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that copies of Applicant's Request for Clarification of the Issues to Be Heard and Statement of Position on the Scope of the Hearing 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 3<sup>rd</sup> day of June, 2004.

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

Administrative Judge  
Richard F. Cole, Special Assistant  
Atomic Safety and Licensing Board Panel  
Mail Stop – T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
Fax: 301-415-5599  
Email: [rfl1@nrc.gov](mailto:rfl1@nrc.gov)

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

Angela B. Coggins  
Office of the General Counsel  
Mail Stop: O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
Fax: 301-415-3572  
Email: [abc@nrc.gov](mailto:abc@nrc.gov);

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

  
D. Sean Barnett