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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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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 OPPOSITION TO MOTION FOR APPEAL OF
KATHY HELMS-HUGHES

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April 22, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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 OPPOSITION TO MOTION FOR APPEAL OF
KATHY HELMS-HUGHES

Pursuant to 10 C.F.R. § 2.1205(o) and the Commission's Order of April 13, 2004, Applicant Nuclear Fuel Services, Inc. ("Applicant" or "NFS") files this opposition to the "Motion for Appeal" of Kathy Helms-Hughes, dated April 1, 2004.¹ Ms. Helms-Hughes appeals the Presiding Officer's March 17, 2004 denial, for lack of standing, of her petitions to intervene in the above captioned matter.² NFS respectfully requests that the Commission deny Ms. Helms-Hughes' appeal because the Presiding Officer's ruling was correct and because Ms. Helms-Hughes' appeal was filed late without justification.

I. FACTUAL AND LEGAL BACKGROUND

A. Procedural Background

Applicant 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") Blended Low-Enriched Uranium ("BLEU") Project that will be performed at NFS's Erwin, Tennessee facilities. See 68 Fed. Reg. 74,653,

¹ 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 (Apr. 1, 2004).

² Nuclear Fuel Services, Inc. (Erwin, Tennessee), LBP-04-05, 59 NRC __ (Mar. 17, 2004).

74,653.³ 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.⁴ 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"), which was ultimately constructed at NFS' Erwin site.⁵ On October 11, 2002, NFS requested its second license amendment to authorize modification to its processing operations in its BLEU Preparation Facility ("BPF").⁶ 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 ("EPB"). 68 Fed. Reg. 74,653; see also LBP-04-05, slip op. at 1-3.

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.⁷ 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 pur-

³ 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).

⁴ 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.

⁵ Environmental Statements; Availability, etc.: Nuclear Fuel Services, Inc., Notice of docketing, etc., 67 Fed. Reg. 66,172 (2002).

⁶ Nuclear Fuel Services, Inc., Notice of Receipt of Amendment Request and Opportunity to Request a Hearing, 68 Fed. Reg. 796 (2003).

⁷ Environmental Assessment and Finding of No Significant Impact of License Amendment for Nuclear Fuel Services, Inc. 67 Fed. Reg. 45,555, 45,558 (2002).

pose of assessing connected actions and cumulative effects. 1st EA at 5-1. It concluded that those amendments also would not result in significant adverse impacts to the environment. Id. 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 project are not expected to have a significant impact on the water quality in the Nolichucky River. Id. at 5-2. Airborne emissions “are not expected to have a significant impact on off-site nonradiological air quality.” Id. at 5-1. Airborne radiological emissions will result in a dose to the maximally exposed individual orders of magnitude below regulatory limits. See id. Table 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.

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.⁸ 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.

On September 17, 2003, the Staff published the 2nd EA and issued a FONSI for the second license amendment.⁹ The 2nd EA presented updated information and analysis and 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

⁸ 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”).

⁹ 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”).

conducted under that amendment.¹⁰ 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.

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.

NFS's three BLEU Project license amendment requests were the subject of several hearing petitions, including a petition concerning each request from Ms. Helms-Hughes. 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). In the instant ruling, the Presiding Officer admitted one petitioner to a proceeding concerning all three license amendment requests. LBP-04-05, slip op. at 19. He denied the petitions from the other petitioners, including Ms. Helms-Hughes, with respect to all three amendments, for failure to establish judicial standing. 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. 1st EA at 1-2. The UNB will also store solutions prepared at the NFS Site, if license amendments

¹⁰ 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”).

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 NFS' Erwin site. Id. at 1-2; see also 68 Fed. Reg. at 796.¹¹ 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. 1st 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 (UO₂) 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 UO₂ 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 ro-

¹¹ NFS is already authorized to handle HEU at the BPF. 68 Fed. Reg. at 796.

tary kiln under a flow of steam and hydrogen to reduce the solids to UO₂ 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 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 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. Ms. Helms-Hughes' Hearing Requests

Ms. Helms-Hughes filed petitions to intervene on all three NFS BLEU Project license amendment requests.¹² She asserts that she has standing to intervene on the grounds that airborne radiological emissions from the BLEU Project will cause, and current and past emissions from NFS's Erwin facilities have caused, contamination to her property and harm to her health. See Motion for Appeal at 2-4. Ms. Helms-Hughes owns property in Butler, Tennessee, located 20 miles from the NFS site. LBP-04-05, slip op: at 10 & n.9. She now resides in Arizona, where she is employed by a newspaper. Id. at 10. Ms. Helms-Hughes also submitted in her petitions "areas of concern" regarding the

¹² Declaration of Kathy Helms-Hughes (Nov. 29, 2002); Request for Hearing and Leave to Intervene by Kathy Helms-Hughes in the Matter of Nuclear Fuel Services, Inc.'s Notice to Amend Its NRC Special Nuclear Materials License SNM-124 (Feb. 6, 2003); Third Request for Hearing by Kathy Helms-Hughes Regarding Nuclear Fuel Services' Proposed Blended Low-Enriched Uranium Project (February 2, 2004).

BLEU Project license amendments. See 10 C.F.R. §§ 2.1205(e)(3) and (h). However, the Presiding Officer did not determine whether her areas of concern were germane; see LBP-04-05, slip op. at 19, and Ms. Helms-Hughes' Motion for Appeal does not discuss her areas of concern.

D. The Presiding Officer's Ruling

The Presiding Officer denied Ms. Helms-Hughes' petitions to intervene because she lacks standing. Id. He found at the outset that her residence in Arizona, "some 1,400 miles or so from [her] property [in Tennessee], 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." Id. at 12 (citing Washington Public Power Supply System (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 336-38 (1979)). He found that her expressed intent to return to live on her property in the future was "a matter of substantial conjecture." LBP-04-05, slip op. at 12.

Nevertheless, the Presiding Officer went further and analyzed whether Ms. Helms-Hughes would have standing if she were living on her Tennessee property. He concluded that Ms. Helms-Hughes had not "come close" to satisfying her burden of "supplying some good reason to believe that, 20 miles away from the [NFS] site, [BLEU Project] emissions might prove harmful." Id. at 12-13. "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." Id. at 12-13 (citing Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 87-88 (1993)). The 1st EA showed that the radiological dose from airborne radiological emissions received by the hypothetical maximally exposed individual, who would be located approximately eight miles from the NFS site, would be less than one percent of the regulatory limit of 25 mrem per year for radiological dose to the public. See LBP-04-05, slip

op. at 13.¹³ The dose to Ms. Helms-Hughes, if she were living on her property 20 miles away, would be “substantially less” than that. Id. at 14. In the end, Ms. Helms-Hughes “has simply provided no basis for a possible conclusion that, notwithstanding the appreciable distance between the Erwin site and [her] property, the project poses a threat of harm to her upon which standing might be founded.” Id.

On April 1, Ms. Helms-Hughes filed the instant motion with the Presiding Officer.¹⁴ He noted that NRC rules do not specifically provide for motions for reconsideration of the denial of hearing requests, but he nevertheless considered it as such. Id. at 3. He denied the motion on the grounds that Ms. Helms-Hughes did no more than set forth her reasons for believing that the Presiding Officer’s ruling was wrong—she did not point out any fact that was either overlooked or misapprehended that would have warranted reconsideration of the standing decision. Id. In the exercise of discretion, the Presiding Officer then referred the motion to the Commission “for such consideration as it might wish to provide it.” Id.

II. DISCUSSION

A. Standard of Review

Under longstanding NRC case law, “the Commission generally defers to the Presiding Officer’s determinations regarding standing, absent an error of law or an abuse of discretion.” International Uranium (USA) Corp. (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 118 (1998). Ms. Helms-Hughes points to no such error or abuse and thus the Presiding Officer’s decision should be affirmed.

¹³ Total dose is less than 10 percent of the limit and dose from airborne emissions is less than 10 percent of the total dose.

¹⁴ Nuclear Fuel Services, Inc. (Erwin, Tennessee), LBP-04-06, 59 NRC ___, slip op. at 2 (Apr. 7, 2004).

B. The Presiding Officer's Ruling that Ms. Helms-Hughes Lacked Standing Was Correct

1. A Petitioner Must Demonstrate Judicial Standing to Intervene

Under the notice of opportunity for hearing, requests for a hearing on the NFS license amendment are to be evaluated under 10 C.F.R. Part 2, Subpart L. 68 Fed. Reg. at 796. Under Subpart L, a petitioner requesting a hearing must demonstrate, *inter alia*, that she has standing to intervene. 10 C.F.R. § 2.1205(h). To determine whether a petitioner meets the judicial standards for standing, a presiding officer 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.

Id. This is the test for standing familiar in NRC proceedings. See, e.g., Sequoyah Fuels Corp. (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 13 (2001).

To satisfy this test,

a petitioner must allege: (1) an actual or threatened, concrete and particularized injury, that (2) is fairly traceable to the challenged action, (3) falls among the general interests protected by the Atomic Energy Act (or other applicable statute such as the National Environmental Policy Act) and (4) is likely to be redressed by a favorable decision.

Id. at 13. The burden of establishing the alleged injuries is on the petitioner. Babcock and Wilcox, LBP-93-4, 37 NRC at 81.

In a license amendment proceeding, standing must be derived from the activities to be conducted under the amendment, not ongoing or past licensee operations. "Since a licensing amendment involves a facility with ongoing operations, a petitioner's challenge

must show that the amendment will cause a 'distinct new harm or threat apart from the activities already licensed.'" International Uranium (USA) Corp. (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 251 (2001) (emphasis added). "Conclusory allegations about potential radiological harm from the facility in general, which are not tied to the specific amendment at issue, are insufficient to establish standing." Id.

To provide standing, asserted harms must be more than "unfounded conjecture;" petitioners must show "a realistic threat . . . of direct injury." Id. at 253. Even in a reactor license amendment case, a petitioner cannot establish standing by simply enumerating the proposed license changes and alleging without substantiation that the changes will lead to offsite radiological consequences. Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 & 2), CLI-99-4, 49 NRC 185, 192 (1999). Vague or cryptic statements regarding petitioners' location, their activities, or their potential injuries are clearly insufficient. See Atlas Corp. (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 426-27 (1997). If petitioners claim that there is a potential for injury from accidents, they must show that the accident scenario(s) are credible and that the accident(s) would have a "particular and concrete" impact at the distances from the facility at which the petitioners are located. Babcock and Wilcox, LBP-93-4, 37 NRC at 84. Similarly, petitioners alleging harm from facility effluents or contamination must explain how the effluents or contamination would have concrete impact upon them: Id. at 84, 92; see Atlas, LBP-97-9, 45 NRC at 426 (alleged radiological contacts must be concretely delineated); see also White Mesa, CLI-01-21, 54 NRC at 252-53.

Furthermore, mere potential exposure to minute doses of radiation far below regulatory limits is not sufficient to provide standing because it does not constitute "distinct and palpable" injury. "[S]imply showing the potential for any radiological impact, no matter how trivial, is not sufficient to meet the requirement of showing a 'distinct and palpable harm' [necessary for] standing." Pacific Gas and Electric Co. (Diablo Canyon

Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 428 (2002), review declined, CLI-03-12, 58 NRC 185 (2003); see Babcock and Wilcox, LBP-93-4, 37 NRC at 87-88 (exposure to doses constituting “a small fraction of regulatory limits” is not “distinct and palpable” injury). Put somewhat differently, a negligible likelihood of radiation exposure above background does not constitute the “new or increased harm . . . or risk” that is necessary to provide a petitioner with standing. International Uranium (USA) Corp. (White Mesa Uranium Mill), LBP-01-8, 53 NRC 204, 220, aff’d, CLI-01-18, 54 NRC 27 (2001) (emphasis in original).

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 (1989). 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 83-84, 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).¹⁵

Nor does asserting that the NRC should have prepared an environmental impact statement (“EIS”) for a facility obviate the need for a petitioner to otherwise establish standing. Although having an EIS prepared may be a procedural right, “the petitioner must suffer some concrete injury from the proposed agency action, which must still be shown apart from any interest in having the procedures observed.” Babcock and Wilcox,

¹⁵ Similarly, close proximity to a radioactive waste transportation route, alone, is not sufficient to establish standing. See Northern States Power Co. (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 43-44 (1990); White Mesa, LBP-01-8, 53 NRC at 218-19, aff’d, CLI-01-18, 54 NRC at 31-32; see also International Uranium (USA) Corp. (White Mesa Uranium Mill), LBP-02-12, 55 NRC 307, 314-15, aff’d on other grounds, CLI-02-21, 56 NRC 161 (2002) (small increase in truck traffic insufficient); White Mesa, CLI-01-21, 54 NRC at 252-53 (speculation about transportation accidents insufficient).

LBP-93-4, 45 NRC at 93. Petitioners unable to show concrete injury to legitimate health, safety, or environmental interests “are unable to establish their standing to pursue their concerns about the agency’s compliance with NEPA’s procedural requirements.” Id. at 94. As the Supreme Court put it, an individual can assert procedural rights “so long as the procedures in question are designed to protect some threatened concrete interest of his that is the ultimate basis of his standing.” Lujan v. Defenders of Wildlife, 504 U.S. 555, 573 n.8 (1992).

2. Airborne Emissions from BLEU Project Operations Do Not Provide Ms. Helms-Hughes with Standing

As noted above, Ms. Helms-Hughes owns property in Butler, Tennessee, located 20 miles from the NFS site. LBP-04-05, slip op. at 10. She is now living in Arizona, where she works for a newspaper. Id. at 10-11. On appeal she asserts that she has standing because of the cumulative impact of the deposition on her property of radionuclides emitted into the air from NFS’ facilities since 1957 and radionuclides to be emitted as a result of the BLEU Project. See Motion for Appeal at 2-4. She asserts (with no further support) that the radionuclides “bioaccumulate,” or build up in the soil and water on her property and thus have the potential to cause her harm. Id. at 3. She claims that the fact that she now lives in Arizona is not important, because she intends to return to Tennessee sometime in the future. See id. at 3 (“two months, two years, or 10 years” hence); see also id. at 5.

As the Presiding Officer held, Ms. Helms-Hughes’ claims do not provide her with standing. First, because she now resides in Arizona, her standing to intervene in this proceeding should be judged based on her presence in Arizona, not Tennessee. In WPPSS, LBP-79-7, 9 NRC at 336-38, an owner of and occasional visitor to improved farmland 10-15 miles from a proposed nuclear power plant site was denied standing because an “occasional trip” was insufficient to determine that his health and safety would be endan-

gered by the plant. See also Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-358, 4 NRC 558 (1976) (dismissing petition of intervenor who moved away from vicinity of reactor). For a petitioner to establish standing, the threatened harm must be "actual or imminent." Quivira Mining Co. (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 6 (1998); Lujan, 504 U.S. at 560. A petitioner's professed intent to return to a place where she will assertedly suffer harm "is simply not enough." Id. at 564. "Such 'some day' intentions – without any description of concrete plans, or indeed even any specification of when the some day will be – do not support a finding of the 'actual or imminent' injury that our cases require." Id.

Nor can Ms. Helms-Hughes' establish standing through her assertion that airborne radionuclide emissions from NFS will contaminate her property, because her assertion is "unfounded conjecture." See White Mesa, CLI-01-21, 54 NRC at 253. Indeed, from her own pleading it is apparent that her claims have no support. She states that "[i]t is not currently known to what degree [radionuclides] have been distributed across this . . . property as a result of air stack releases from [NFS]" Motion for Appeal at 2. "It is not known whether there is any uptake of radioactive contamination in . . . fruit as a result of downwind contamination of the soil" Id. Local mountain springs "have not been tested for radioactive constituents" Id. at 3. "It is not known whether . . . fruits or vegetables have uranium uptake as a result of contamination from NFS" Id. at 4. In the end, her claim that airborne radionuclide emissions will harm her property is simply speculation. Therefore, Ms. Helms-Hughes, residing in Arizona, lacks standing.

In any event, even assuming she were living on her Tennessee property, as the Presiding Officer found, Ms. Helms-Hughes' claim of threatened injury from of BLEU Project airborne radionuclide emissions does not establish her standing. See LBP-04-05, slip op. at 12-14. Airborne radiological emissions from the BLEU Project will be a very small fraction of what is permissible under applicable health and safety regulations and

NFS's permits. The 1st EA conservatively estimates the dose rate to the maximally exposed individual from the BLEU Project to be only 0.16 mrem per year. See 1st EA, Table 5.2 (summing dose from proposed actions).¹⁶ That is 0.6 percent of the annual public dose limit of 25 mrem per year and only 1/2,250 of the average annual effective dose equivalent to a resident of the United States. See *id.* at 3-12 (360 mrem/yr).¹⁷ Moreover, the maximally exposed individual with respect to effluents (for total dose, the great majority of which is due to liquid effluents) is assumed to be living 8 miles from the NFS site, *id.* at 5-6, not to own property 20 miles away as does Ms. Helms-Hughes. Finally, while Ms. Helms-Hughes refers in several places to "segmented" license amendment requests, e.g., Motion for Appeal at 4, the EA's airborne emission dose estimate is for the entire BLEU Project, not merely the activities to be authorized by the individual license amendments.

Under NRC case law, mere potential exposure to minute doses of radiation within regulatory limits does not constitute a "distinct and palpable" injury necessary to establish standing. Diablo Canyon, LBP-02-23, 56 NRC at 428; Babcock and Wilcox, LBP-93-4, 37 NRC at 87-88; see White Mesa, LBP-01-8, 53 NRC at 220. The minute increase above background that will result from airborne emissions due to the BLEU Project—even for the maximally exposed individual—is simply insufficient to cause the palpable harm necessary to provide Ms. Helms-Hughes with standing.

¹⁶ The dose calculation includes dose from all pathways, including agricultural exposure from deposited radionuclides. *Id.* at 5-6. Furthermore, the airborne radiological effluent calculations on which the EA dose estimates are based are conservative because no pollution control was assumed for a number of radionuclides, while in fact NFS will utilize pollution controls. *Id.* at 5-5.

¹⁷ Ms. Helms-Hughes claims that radionuclides deposited in the environment could come to affect her, but she does not show (or even assert) that the EA's assessment of total dose to exposed individuals from the various possible pathways of exposure is incorrect. Even if her arguments were interpreted to be challenges to the EA, they should be rejected as the speculation of a lay person. See White Mesa, CLI-01-21, 54 NRC at 253.

Finally, Ms. Helms-Hughes asserts that adult family members living near her property will also be harmed by BLEU Project airborne emissions. See Motion for Appeal at 2 (aunt and two cousins). As the Presiding Officer noted, however, such a claim cannot provide Ms. Helms-Hughes with standing. See LBP-04-05, slip op. at 11 n. 10. Claims of potential injury to others (with the possible exception of minor children) cannot provide one with legal standing. Atlas, LBP-97-9, 45 NRC at 426 n.2 (citing Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 474 n.1 (1978)); Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989). Therefore, for the foregoing reasons, the Presiding Officer's decision that Ms. Helms-Hughes lacks standing is correct and should be affirmed.

3. Past NFS Operations and Asserted Cumulative Impacts Do Not Provide Ms. Helms-Hughes with Standing

In addition to asserting that she and her property will suffer harm from airborne emissions from the BLEU Project, Ms. Helms-Hughes also asserts that she will suffer or has suffered harm from the cumulative impact of airborne radiological effluents emitted from NFS since 1957. See Motion for Appeal at 3-4. Her claim does not provide her with standing to litigate the BLEU Project license amendment requests. First, the Commission has stated repeatedly that "a petitioner seeking to intervene in a license amendment proceeding must assert an injury-in-fact associated with the challenged license amendment, not simply a general objection to the facility." Zion, CLI-99-4, 49 NRC at 188 (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 at 251 (quotations omitted, emphasis added); see White Mesa, LBP-01-8, 53 NRC at 219-20, aff'd, CLI-01-18, 54 NRC at 31-32. As one presiding officer recently put it, "in a license amendment proceeding, . . . only the incremental impact of the activity that is the subject of the amendment can be challenged." CFC Logistics,

Inc., LBP-03-20, 58 NRC 311, 328 (2003) (emphasis in original and emphasis added).

Thus, one simply cannot derive standing from the asserted cumulative effects of activities to be authorized by a license amendment and previously licensed, pre-existing activities.¹⁸

Second, as discussed above, Ms. Helms-Hughes' claim that current and past NFS operations have deposited radionuclides on her property is speculative. Thus, Ms. Helms-Hughes cannot rely NFS's current or past operations or the alleged effects cumulative with those of the BLEU Project to provide her with standing.

C. Ms. Helms-Hughes' Appeal Was Unjustifiably Late

In addition to denying Ms. Helms-Hughes' appeal because she lacks standing, the Commission should also deny the appeal because it was unjustifiably late. The Presiding Officer's decision issued on March 17, 2004. LBP-04-05, slip op. at 1. It stated that "[i]f so inclined, within ten (10) days of the service of this order, the hearing requesters whose requests were denied may appeal to the Commission in accordance with the provisions of 10 C.F.R. § 2.1205(o)." Id. at 21. Ms. Helms-Hughes filed her Motion for Appeal on April 1, 2004, i.e., 15 days later, with no explanation of why she filed it when she did. While ordinarily five days are added to proscribed periods for taking actions to allow for service of pleadings and orders by U.S. mail, see 10 C.F.R. § 2.710, in this case the Presiding Officer stated twice that "all . . . submissions in this proceeding are to be served in the first instance by electronic mail or facsimile transmission" and that "[s]imultaneously, hard copies are to be placed in the U.S. mail."¹⁹ Therefore, no time should be added to

¹⁸ For example, in White Mesa, a small increase in the truck traffic carrying radioactive material to a mill was found not to provide the petitioner with standing. LBP-01-8, 53 NRC at 219-20. The determination of injury-in-fact was based on the number of trucks that were to be added by the proposed amendment, not the cumulative total of trucks that were traveling to the mill under the license plus those that were to have traveled to the mill under the amendment. Id.

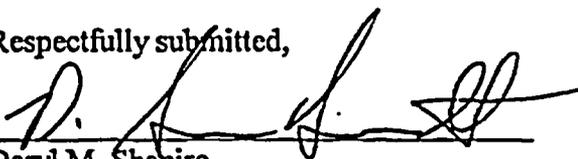
¹⁹ Memorandum and Order (Oct. 31, 2002) at 1-2; Memorandum and Order (Raising Questions Regarding Completeness of Federal Register Notice) (Sept. 11, 2002) at 4.

the prescribed time for appeal here and thus, Ms. Helms-Hughes Motion for Appeal should be denied.

III. CONCLUSION

For the foregoing reasons, the Presiding Officer's decision denying Ms. Helms-Hughes' petition to intervene for lack of standing was correct and should be affirmed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Opposition to Motion for Appeal of Kathy Helms-Hughes 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 22nd day of April, 2004.

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