

December 17, 1998

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'98 DEC 18 A8:24

BEFORE THE PRESIDING OFFICER

OFFICE OF THE PRESIDING OFFICER
FOLLOWING THE
ADJUDICATORY STAFF

In the Matter of)	
)	
INTERNATIONAL URANIUM (USA))	Docket No. 40-8681-MLA-5
CORPORATION)	
)	
(Request for Material License)	
Amendment))	

NRC STAFF NOTICE OF INTENT TO PARTICIPATE
AND NRC STAFF RESPONSE TO REQUESTS FOR HEARING
FILED BY KEN SLEIGHT, NAVAJO UTAH COMMISSION,
CONCERNED CITIZENS OF SAN JUAN COUNTY

INTRODUCTION

On November 3, 1998, the NRC published in the *Federal Register* a notice of receipt of an application by International Uranium (USA) Corporation (IUSA or Licensee) to amend Source Material License No. SUA-1358 to allow IUSA to process at its White Mesa mill, uranium-bearing material received from the Ashland 1 and Seaway Area D Formerly Utilized Sites Remedial Action Program (FUSRAP) sites, near Tonawanda, New York. 63 Fed. Reg. 59340 (November 3, 1998). The notice provided that any person whose interest may be affected by this proceeding may file a request for a hearing, in accordance with 10 C.F.R. § 2.1205(c) [sic: (d)]¹ within thirty days of the notice.

By separate letters, Ken Sleight, the Concerned Citizens of San Juan County (CCSJC) and the Navajo Utah Commission (NUC) of the Navajo Utah Council of San Juan County each

¹Paragraph (c) of 10 C.F.R. § 2.1205 pertains to noticing Part 50 license amendments.

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filed a request for hearing and petition for leave to intervene concerning the proposed license amendment. See Letter from Ken Sleight, dated December 1, 1998 (Sleight Petition), at 1; Letter from Gene Stevenson, Bluff Water Manager, CCSJC, to Office of the Secretary, dated December 1, 1998 (CCSJC Petition), at 1; Letter from Clarence Rockwell, Executive Director, NUC, to Secretary, NRC, dated November 21, 1998 (NUC Petition), at 1.²

In accordance with 10 C.F.R. § 2.1213, the Staff provides this notice of intent to participate in this proceeding. In addition, as detailed below, the petitioners have not met the requirements for leave to intervene in this proceeding.

BACKGROUND

By application, dated October 15, 1998, IUSA requested that its license be amended to allow uranium-bearing material (*i.e.*, alternate feed material -- material other than natural uranium ore) from Ashland 1 and Seaway Area D FUSRAP sites.³ In response to the November 3, 1998, *Federal Register* notice of opportunity for hearing, CCSJC and NUC filed

²Staff counsel did not receive copies of the petitions until they were distributed by the Office of the Secretary (SECY) on December 10, 1998. See Memorandum from John C. Hoyle, Secretary, to B. Paul Cotter, Chief Administrative Judge, ASLBP, dated December 10, 1998. No proof of service (as required by 10 C.F.R. §§ 2.1203(e) and 2.712) was included with the requests. SECY has informed Staff counsel that the NUC and Sleight petitions were postmarked December 1 and December 2, 1998, respectively, but the envelope containing the CCSJC petition has no postmark. Given that copies of the petitions received from SECY shows each was docketed on December 7, 1998, the Staff does not object to the timeliness of the petitions.

³A similar request to allow the receipt, processing and disposal of uranium-bearing material from the Ashland 2 site (near Tonawanda, New York) at IUSA's White Mesa mill near Blanding, Utah, was approved by the NRC Staff, on July 23, 1998, and is the subject of a separate proceeding. See *International Uranium (USA) Corp.*, LBP-98-21, 48 NRC ____ (September 1, 1998). Mr. Sleight recently requested leave to intervene in that proceeding. See Letter from Ken Sleight to Executive Director for Operations, NRC, dated November 13, 1998.

requests for hearing. On December 14, 1998, a presiding officer was designated to rule on five petitions filed regarding the amendment request⁴ under 10 C.F.R. Part 2, Subpart L, and conduct any hearing ordered. Designation of Presiding Officer, dated December 14, 1998. The Staff response to the requests filed by Ken Sleight, NUC and CCSJC is provided below.

DISCUSSION

I. Legal Requirements for Standing and Participation in an NRC Proceeding

A. Standing

Pursuant to 10 C.F.R. § 2.1205, interested persons may request a hearing on the grant of an amendment to a source or byproduct materials license under the Commission's informal hearing procedures set forth in 10 C.F.R. Part 2, Subpart L. A hearing request is considered timely if filed within 30 days of the notice of opportunity for hearing. 10 C.F.R. § 2.1205(k).

Pursuant to 10 C.F.R. § 2.1211(b), "a representative of the interested State, county, municipality, or an agency thereof, may request an opportunity to participate in the proceeding" as a nonparty. That paragraph provides that such participants may file written and oral presentations in accordance with 10 C.F.R. § 2.1233 and 2.1235, without being required to take a position with respect to the issues. Such requests are considered timely if filed within 30 days of an order granting a request for hearing under 10 C.F.R. § 2.1205(b)-(d). 10 C.F.R. § 2.1211(b).

⁴ The State of Utah, Ken Sleight and Envirocare of Utah, Inc., the Navajo Utah Commission of the Navajo Council of San Juan County, Utah, and the Concerned Citizens of San Juan County, Utah. Memorandum from John C. Hoyle to B. Paul Cotter, ASLBP, dated December 10, 1998. The Staff filed a response to the State of Utah petition on December 14, 1998. The Staff will address the Envirocare petition in a separate response.

It is fundamental that any person who wishes to request a hearing or to intervene in a Commission proceeding must demonstrate that he or she has standing to do so.

Section 189a(1) of the Atomic Energy Act ("AEA"), 42 U.S.C. § 2239(a), provides that:

In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license . . . , the Commission shall grant a hearing upon the request of *any person whose interest may be affected by the proceeding*, and shall admit any such person as a party to such proceeding.

Id. (emphasis added).

In addition, pursuant to 10 C.F.R. § 2.1205(e), where a request for hearing is filed by any person other than the applicant in connection with a materials licensing action under 10 C.F.R. Part 2, Subpart L, the request for hearing must describe in detail:

- (1) The interest of the requester in the proceeding;
- (2) How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in [§ 2.1205(h)];
- (3) The requester's area of concern about the licensing activity that is the subject matter of the proceeding; and
- (4) The circumstances establishing that the request for a hearing is timely in accordance with [§ 2.1205(d)].

Pursuant to 10 C.F.R. § 2.1205(h), in ruling on any request for hearing filed under 10 C.F.R. § 2.1205(d), the Presiding Officer is to determine "that the specified areas of concern are germane to the subject matter of the proceeding and that the petition is timely." The rule further provides as follows:

The presiding officer also shall determine that the requestor meets the judicial standards for standing and shall consider, among other factors -

(1) The nature of the requestor's right under the [AEA] 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 upon the requestor's interest.

In order to determine whether a petitioner has met these standards and is entitled to a hearing as a matter of right under Section 189a of the Act, the Commission applies contemporaneous judicial concepts of standing. *See, e.g., Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992), *review denied sub nom. Environmental & Resources Conservation Organization v. NRC*, 996 F.2d 1224 (9th Cir. 1993); *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983); *Envirocare of Utah, Inc.* (Byproduct Material Waste Disposal License), LBP-92-8, 35 NRC 167, 172 (1992).

The United States Supreme Court has stated that the "irreducible constitutional minimum" requirements for standing are that the litigant suffer an "injury-in-fact" which is "concrete and particularized and . . . actual or imminent, not conjectural or hypothetical," that there is a causal connection between the alleged injury and the action complained of, and that the injury will be redressed by a favorable decision. *Bennett v. Spear*, 520 U.S. ___, 117 S. Ct. 1154, 1163 (1997).⁵ *See also Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1991). In addition

⁵In other words, the petitioner must establish (a) that he personally has suffered or will suffer a "distinct and palpable" harm that constitutes injury in fact; (b) that the injury can fairly be traced to the challenged action; and (c) that the injury is likely to be redressed by a favorable decision in the proceeding. *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988);

(continued...)

to this constitutional aspect of standing, there are "prudential" (*i.e.*, judicially self-imposed) standing requirements, one of which is that the litigant's asserted interests must arguably fall within the "zone of interests" of the governing law. *See Bennett*, 117 S. Ct. at 1167. *See also Port of Astoria v. Hodel*, 595 F. 2d 467, 474 (9th Cir. 1979).

The Commission applies constitutional and prudential aspects of the standing doctrine. *See, e.g., International Uranium*, CLI-98-23, 48 NRC ___, slip. op. at 3-8 (November 24, 1998) (economic harm unrelated to potential radiological or environmental effects is not sufficient for "injury-in-fact" and "zone-of-interests" tests)⁶; *Georgia Power Co.* (Vogle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993) (to show an interest in the proceeding sufficient to establish standing, a petitioner must show that the proposed action will cause "injury in fact" to its interest and that its interest is arguably within the "zone of interests" protected by the statutes governing the proceeding); *Public Service Co.*

⁵(...continued)

Vogle, supra, 38 NRC at 32; *Babcock and Wilcox, supra*, LBP-93-4, 37 NRC at 81; *Envirocare, supra*, 35 NRC at 173. An alleged injury could be redressed in a licensing proceeding since a presiding officer has the power to approve, deny or condition any licensing action that comes under his or her jurisdiction. *See e.g., Sequoyah Fuels Corp.* LBP-96-12, 43 NRC 290, 206 (1996).

⁶Purely economic interests (*i.e.*, interests not related to harm stemming from adverse environmental impacts of a proposed action) are not within the zone of interest protected by the AEA or the NEPA and are not sufficient to confer standing. *International Uranium (USA) Corp.*, CLI-98-23, *supra* at 3-8; *Quivira Mining Co.*, CLI-98-11, 48 NRC 1, 8-10 (1998). *See also Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992); *Public Service Co. of New Hampshire* (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975, 978 (1984); *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-789, 20 NRC 1443, 1447 (1984). *Accord Churchill Truck Lines, Inc. v. United States*, 533 F. 2d 411, 416 (8th Cir. 1976) (NEPA not designed to prevent loss of profits); *Sabine River Authority v. U.S. Department of Interior*, 951 F.2d 669, 674 (5th Cir.), *cert. denied*, 506 U.S. 823 (1992) (geographic nexus to the project required).

of New Hampshire (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 266 (1991) (citing *Three Mile Island, supra*, 18 NRC at 332).

A generalized grievance concerning enforcement of regulatory requirements is not sufficient for particularizing a harm to support standing. *See Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-81-25, 18 NRC 327,333 (1983), *citing, Transuclear Inc.*, CLI-77-24, 6 NRC 525, 531 (1977) (a "generalized grievance" shared in substantially equal measure by all or a large class of citizens will not result in distinct and palpable harm to support standing). Such interests would be indistinguishable from those of general concerns about the integrity of NRC actions.

Requirements for standing have been applied to requests for hearing in numerous informal Commission proceedings held under Subpart L. *See, e.g., Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decontamination and Decommissioning Funding), LBP-94-5, 39 NRC 54, 66-67 (1994); *Babcock and Wilcox Co.* (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania), LBP-94-4, 39 NRC 47, 49 (1994); *Babcock and Wilcox* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 80-81 (1993); *Umetco Minerals Corp.* (Source Materials License No. SUA-1358), LBP-92-20, 36 NRC 112, 115 (1992); *Sequoyah Fuels Corp.* (Source Material License No. SUB-1010), LBP-91-5, 33 NRC 163, 164-65 (1991); *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-89-30, 30 NRC 311, 312-13 (1989).

A petitioner must have a "real stake" in the outcome of the proceeding to establish injury-in-fact for standing. *Houston Lighting and Power Co.* (South Texas Project, Units 1

and 2), LBP-79-10, 9 NRC 439, 447-48, *aff'd*, ALAB-549, 9 NRC 644 (1979). While the petitioner's stake need not be a "substantial" one, it must be "actual," "direct" or "genuine." *Id.* at 448. A mere academic interest in the outcome of a proceeding or an interest in the litigation is insufficient to confer standing; the requester must allege some injury that will occur as a result of the action taken. *Puget Sound Power and Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 983 (1982), *citing Allied General Nuclear Services* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976); *Id.* LBP-82-26, 15 NRC 742, 743 (1982). Similarly, an abstract, hypothetical injury is insufficient to establish standing to intervene. *Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), LBP-91-38, 34 NRC 229, 252 (1991), *aff'd in part on other grounds*, CLI-92-11, 36 NRC 47 (1992).

A person may obtain a hearing or intervene as of right on his own behalf but not on behalf of other persons whom he has not been authorized to represent. *See, e.g., Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) (individual could not represent plant workers without their express authorization); *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977) (mother could not represent son attending university unless he is a minor or under legal disability); *Combustion Engineering, Inc.* (Hematite Fuel Fabrication Facility), LBP-89-23, 30 NRC 140, 145 (1989) (legislator lacks standing to intervene on behalf of his constituents).

An organization may meet the injury-in-fact test either (1) by showing an effect upon its organizational interests, or (2) by showing that at least one of its members would suffer injury as a result of the challenged action, sufficient to confer upon it "derivative" or "representational" standing. *Houston Lighting & Power Co.* (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 646-47 (1979), *aff'g* LBP-79-10, 9 NRC 439, 447-48 (1979). An organization seeking to intervene in its own right must demonstrate a palpable injury in fact to its organizational interests that is within the zone of interests protected by the AEA or NEPA. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 528-30 1991). Where the organization relies upon the interests of its members to confer standing upon it, the organization must show that at least one member (with standing in an individual capacity) has authorized the organization to represent his or her interests in the proceeding. *Id*; *Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-94, 396 (1979); *Babcock and Wilcox Co., supra*, LBP-94-4, 39 NRC at 50. Finally, an individual who files a request for hearing on behalf of an organization must show that he or she has been expressly authorized by the organization to represent its interests in the proceeding. *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 583 (1978); *see also Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-90-29, 32 NRC 89, 92 (1990).⁷

⁷ It has also been held that the alleged injury-in-fact to the member must fall within the purposes of the organization. *Curators of the University of Missouri (TRUMP-S Project)*, LBP-90-18, 31 NRC 559, 565 (1990).

The question of whether proximity to a nuclear facility (or a site at which the possession of nuclear materials is authorized) is sufficient to confer standing upon an individual or entity has been addressed in numerous Commission decisions. While residence within 50 miles of a nuclear power reactor often has been sufficient to confer standing in construction permit or operating license proceedings, such distance may not necessarily confer standing in other types of proceedings. In reactor license amendment proceedings and materials license proceedings, a petitioner must demonstrate that the risk of injury resulting from the contemplated action extends sufficiently far from the facility so as to have the potential to affect his interests.⁸ In adopting Subpart L, the Commission rejected a 50-mile geographic proximity rule for materials licensing and rejected a presumption that persons who reside and work outside a five-mile radius of a site would not have standing. The Commission stated, "[t]he standing of a petitioner in each case should be determined based upon the circumstances of that case as they relate to the factors set forth in [10 C.F.R. § 2.1205(g)]."

⁸See, e.g., *Boston Edison Co.* (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97, 99 (1985), *aff'd on other grounds*, ALAB-816, 22 NRC 461 (1985) (risk of injury from proposed spent fuel pool expansion was not demonstrated where petitioner resided 43 miles from the facility); *c.f. Sequoyah Fuels Corp., supra*, LBP-94-5, 39 NRC at 67-91 (residence adjacent to contaminated fuel fabrication facility might not be sufficient to confer standing if the proposed action has no potential to affect the requester's interests); *Babcock and Wilcox Co., supra*, LBP-94-4, 39 NRC at 51-52 (standing and injury-in-fact can be inferred in some cases by proximity to the site, but a greater demonstration of injury may be required where the activity has no obvious offsite implications); *Babcock and Wilcox, supra*, LBP-93-4, 37 NRC at 83-84 and n.28 (petitioners' residences within one-eighth of a mile to approximately two miles from a fuel fabrication facility were insufficient to confer standing in a decommissioning proceeding, absent "some evidence of a causal link between the distance they reside from the facility and injury to their legitimate interests"); see also, *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 44-45 (1990) (person who regularly commutes past the entrance to a nuclear facility once or twice a week possessed the requisite interest for standing).

Statement of Consideration, "Informal Hearing Procedures for Materials Licensing Adjudications," 54 Fed. Reg. 8269 (Feb. 28, 1989); *see also, id.*, Proposed Rule, 52 Fed. Reg. 20089, 20090 (May 29, 1987).

In cases without obvious offsite implications, a petitioner must allege some specific "injury in fact" will result from the action taken. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2, CLI-89-21, 30 NRC 325, 329-30 (1980). Petitioners need not set forth all of their concerns until they have been given access to a hearing file. *Babcock & Wilcox*, LBP-94-4, 39 NRC 47, 52 (1994).

B. Areas of Concern

Pursuant to 10 C.F.R. § 2.1205(h), areas of concern identified by a petitioner must be "germane to the subject matter of the proceeding." States and municipalities seeking to participate under 10 C.F.R. § 2.1211(b) similarly "must state with reasonable specificity [their] areas of concern about the licensing action that is the subject matter of the request. 10 C.F.R. § 2.1211(b).

The threshold showing at the intervention stage of a Subpart L proceeding is low, but must be specific enough to allow the presiding officer to ascertain whether or not the matter sought to be litigated is relevant to the subject matter of the proceeding. *Sequoyah Fuels Corp.*, LBP-94-39, 40 NRC 314, 316 (1994); "Informal Hearing Procedures for Materials Licensing Adjudication, 54 Fed Reg. 8269, 8273 (February 28, 1989) (inequitable to require intervenor to file written presentations setting forth all of its concerns without access to the

hearing file).⁹ Only those concerns which fall within the scope of the proposed action set forth in the *Federal Register* notice of opportunity for hearing may be admitted for hearing. See e.g., *Commonwealth Edison Co.* (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419, 426 (1980).¹⁰

When proffering concerns to be admitted in a proceeding, an intervention petitioner may rely on Staff guidance to allege that an application is deficient, but guidance cannot prescribe requirements. See *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-95-41, 34 NRC 332, 338-39, 347, 354 (1991); *Curators of University of Missouri*, CLI-95-1, 41 NRC 71, 98, 100 (1995). In addition, because licensing boards and presiding officers have no authority to direct the Staff in the performance of its safety reviews, *Carolina*

⁹ Pursuant to 10 C.F.R. § 2.1233(c), after a hearing is granted and the hearing file is made available in accordance with § 2.1231, written presentations by intervenors must describe in detail any deficiency or omission in the license application, why any particular portion is deficient or why the omission is material, and what relief is sought.

¹⁰ In *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974), it was held that a contention must be rejected where:

- (1) it constitutes an attack on applicable statutory requirements;
- (2) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
- (3) is nothing more than a generalization regarding the petitioner's view of what applicable policies ought to be;
- (4) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
- (5) it seeks to raise an issue which is not concrete or litigable.

A merits determination is not required at the pleading stage. *Id.* at 20.

Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514, 516 (1980); *Recoil International Corp.* (Rocketdyne Division), ALAB-925, 30 NRC 709, 721-11 (1989), *aff'd*, CLI-90-5, 31 NRC 337 (1980), and the applicant/licensee has the burden of proof in this proceeding, the adequacy of the Staff's review is not determinative of whether an action should be approved. *Curators of the University of Missouri*, CLI-95-1, 41 NRC at 121.

C. Scope of the Proposed/Authorized Materials Licensing Action

Before addressing the Petition, a brief summary of the proposed project is helpful to place the claims in context.

Operation of the White Mesa uranium mill is authorized by an NRC source material license issued under 10 CFR Part 40, which allows IUSA to process natural uranium ore and certain other materials for their uranium content and to possess the waste generated from such milling operations. The NRC originally issued the license for the White Mesa mill in 1979, and renewed this license in 1985 and again in 1997.¹¹

Wastes generated by operations at the White Mesa mill are disposed onsite in impoundments that are designed and constructed to minimize seepage of tailing fluids into the subsurface soil, surface water, and ground water. The impoundment designs incorporate natural and synthetic liners and a leak detection system that is monitored daily. Environmental Assessment for Renewal of Source Material License No. SUA-1358, Energy

¹¹Letter from R. Scarano, NRC, to R. Adams, Energy Fuels Nuclear, Inc, dated August 7, 1979 (transmitting Source Materials License SUA-1358); Letter from R. Smith, NRC, to UMETCO Minerals Corporation, dated September 26, 1985; Letter from J. Holonich, NRC, to H. Roberts, IUSA, dated March 14, 1997.

Fuels Nuclear, Inc., White Mesa Uranium Mill, dated February 1997 (Renewal EA), at 15, 18, attached to NRC Staff Response to State of Utah Request for Hearing, dated December 14, 1998.

The amendment at issue in this proceeding authorizes IUSA to receive and process uranium-bearing material from the Ashland 1 and Seaway Area D FUSRAP sites near Tonawanda, New York. These sites are currently being remediated by the U.S. Army Corps of Engineers and are associated with uranium ore processing activities conducted by the Manhattan Engineering District during the mid-1940s. 63 Fed. Reg. 59340. IUSA expects that approximately 25,000 to 30,000 cubic yards of material with an average uranium content of approximately 0.06 weight percent uranium would be shipped over a three-to-four month period to White Mesa. *Id.* The *Federal Register* notice indicated that IUSA's request was to allow the processing of alternate feed material under Staff guidance entitled "Final Position and Guidance on the Use of Uranium Mill Feed Material Other Than Natural Ores," 60 Fed. Reg. 49296 (September 22, 1995) (Alternate Feed Guidance).¹² That guidance provides that requests to process alternate feed material can be approved if the Staff concludes that the material proposed for processing is "ore," that it does not contain a listed hazardous waste, and that it is being processed primarily for its source material content. 60 Fed. Reg. 49296-

¹² With the passage of the Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. § 7901 *et seq.* (UMTRCA), the AEA was amended to provide an additional definition of byproduct material (11.e(2)) to include "tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content."

49297.¹³ "Feed material exhibiting only a characteristic of hazardous waste (ignitable, corrosive, reactive, toxic) would not be regulated as hazardous waste and could therefore be approved for recycling and extraction of source material." *Id.* at 49297. The amendment request is still pending before the Staff.¹⁴

II. The Petitioners Do Not Have Standing to Intervene

Application of the standards for intervention (in the context of the action challenged) indicates that Mr. Sleight, the NUC and CCSJC do not have standing to intervene as a party to the proceeding. Each has failed to demonstrate that, as a result of the amendment, it will likely suffer injury that is "distinct and palpable, particular and concrete, as opposed to being conjectural or hypothetical." *See International Uranium (USA) Corp.*, CLI-98-6, 47 NRC 116

¹³ The guidance was intended to present an expanded interpretation of the term "ore" as used in the section 11.e(2) of the AEA, thus permitting feed material other than natural ore to be used by licensed mills to extract source material, avoiding possible dual regulation by the Environmental Protection Agency (EPA) and enabling transfer of other material to the Department of Energy. *See* "Uranium Mill Facilities, Request for Public Comments on Revised Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments and Position and Guidance on the Use of Uranium Mill Feed Materials Other Than Natural Ores," 57 Fed. Reg. 20525, 20530-31 (May 13, 1992) (Draft Guidance).

¹⁴In processing a similar request regarding material from the Ashland 2 site, the Staff concluded that processing of the material would not result in (1) a significant change or increase the types or amounts of effluents that may be released offsite, (2) a significant increase in individual or cumulative occupational exposures, (3) a significant construction impact, or (4) a significant increase in the potential for, or consequences from, radiological accidents. *IUSA*, LBP-98-21, slip op. at 12-13. The bases for these conclusions include that (a) the annual yellowcake production limit would not be exceeded, (b) tailings from the processed material would be disposed onsite in an existing impoundment (Cell 3), (c) disposal of the tailings would increase the total amount of tailings in the cell by only one percent, and (d) the Ashland 2 material is similar in composition to mill tailing currently in the Cell 3 impoundment. *Id.* at 13.

(1998), citing *Steel Co. v. Citizens for a Better Environment*, 118 S. Ct. 1003, 1016 (1998); *Warth v. Seldin*, 422 490, 501, 508, 509 (1975); *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994). They have not shown a harm that is distinct and apart from that caused by the initial licensing and continued operation of the facility. See *Energy Fuels, Inc.*, LBP-94-33, 40 NRC 151, 153-54 (1994).

A. Ken Sleight Petition

Mr. Sleight states that he is a general partner, and a resides at, the Pack Creek Ranch (a tourist guest ranch), which is located in Moab Utah, in San Juan County. See Sleight Petition at 1. Mr. Sleight asserts that (1) he conducts horseback trail rides, pack trips and excursions in various parts of that county, he travels US 191 and US 95 highways and would be "negatively affected by the increased truck traffic on US 191 (Moab to White Mesa)" associated with hauling material from Tonawanda, (2) he is an officer and stockholder in High Desert Adventures (a Utah corporation headquartered in St. George, Utah), which conducts boating trips on the San Juan River and Lake Powell, (3) he is a member of the Utah Guides and Outfitters Association, an organization that is interested in a clean environment and opposes nuclear-based activities in the region; and (4) he is concerned that the "cumulative amounts of radioactivity and other chemicals resulting from nuclear industry activities . . . threatens [his] health" and the health of his passengers and tourists. See *id.* at 1-3. Mr. Sleight further claims that (1) "any contaminated groundwater from the White Mesa facilities would drain towards the San Juan River" and affect him and his operations, (2) a lack of information about "nuclear waste and the prospects of a nuclear waste dump" causes fear and anguish that directly affects mental and physical well-being and increases local health care costs, and (3)

nuclear waste storage and hauling makes the region less attractive and affects the local economy. *See id.* at 2-4.

While Mr. Sleight mentions the processing and storage of material from the Ashland 1 (as well as the Ashland 2) site, the injuries claimed stem from general concerns about operations at White Mesa and general objections to nuclear-related activities in the region and its perceived effect on his business, his other activities in the region, the local economy, and cultural resources. Such general "injuries" are not caused by the contested license amendment and are not sufficient to support standing. *See Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-1, 38 NRC 87, 95 n.10 (1993) (standing requires more than general interests in the cultural, historical, and economic resources of a geographic area), *citing, Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972). Moreover, Mr. Sleight's claims of harm from the processing of the Ashland 1 material are speculative since he does not specify a credible means by which the proposed action could directly harm him, and thus, he fails to describe an injury that is "distinct and palpable" from his general concerns about the continued operation of the facility. *See International Uranium (USA) Corp.*, CLI-98-6, 47 NRC at 117-118; *Sequoyah Fuels Corp.*, CLI-94-12, 40 NRC at 72; *Energy Fuels, Inc.*, LBP-94-33, 40 NRC at 153-54. Because the proposed licensing action has no obvious potential for offsite impacts and the amount of material to be processed and disposed of onsite is only a small

fraction of that already authorized at the site,¹⁵ Mr. Sleight's vague and speculative claims of harm are not sufficient for intervention.¹⁶

Mr. Sleight's residence is located over 60 miles from the facility,¹⁷ and his travels in the surrounding county do not show that he would be harmed by the small amount of uranium-bearing material that will be processed and stored onsite under the license amendment. He offers no credible basis for the proposition that the amendment (which has no obvious potential for offsite impacts) will lead to groundwater contamination that would significantly impact the San Juan River (over 10 miles away) and does not explain why the Ashland 1 material would have impacts that are not encompassed by those associated with operation of the facility in

¹⁵See NRC Staff Response to State of Utah Request for Hearing, dated December 14, 1998, at Renewal EA at 13 (four tailings cells are designed to accept waste to be produced during a 15-year period, at an ore processing rate of 2,000 tons per day).

¹⁶Wastes generated by operations at the White Mesa mill are disposed onsite in impoundments that are designed and constructed to minimize seepage of tailing fluids into the subsurface soil, surface water, and groundwater. The impoundment design incorporates natural and synthetic liners and a leak detection system that is monitored daily. See *IUSA*, LBP-98-21 at 11. The Staff concluded in its "Technical Evaluation Report: Request to Receive and Process Ashland 2 FUSRAP Material," dated June 23, 1998 (TER), that (1) the feed material qualified as "ore," (2) no hazardous wastes had been identified on the Ashland 2 property and confirmatory measures to guard against the presence of listed hazardous wastes would be taken prior to shipment and upon receipt at the White Mesa mill, (3) the Licensee had provided adequate certification that the material is being processed primarily for recovery of uranium, and (4) there would be no significant increase in environmental impacts particularly since the annual yellowcake production limit would not be exceeded, tailings would be stored in an existing impoundment, disposal would increase the total amount of tailings in the cell by only one percent, and the Ashland 2 material is similar in composition to tailings currently stored in the impoundment. *Id.* Similar findings would be made before an amendment authorizing the proposed processing of the Ashland 1 and Seaway Area D material could be issued.

¹⁷See Final Environmental Impact Statement related to operation of White Mesa Uranium Project, dated May 1979 (FEIS), at 2-5, Fig. 2.1 (regional map) (Attachment A).

general.¹⁸ The injuries claimed are vague, remote and speculative. Mr. Sleight has therefore failed to establish a causal nexus between the license amendment and his claimed injuries and to identify a specific harm that is the direct result of the license amendment. In essence, Petitioner has failed to particularize a likely injury to himself.¹⁹

Petitioner has no standing to assert general concerns about the health and safety of other citizens in the region.²⁰ See *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-412, 5 NRC 1418, 1421 (1977) (individuals may not assert the right of third parties). Further, Petitioner has not demonstrated that he is authorized to represent the interests of the organizations in which he is a member. See *Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995). Therefore, these alleged injuries provide no basis for standing.²¹

¹⁸In the *IUSA* MLA-4 proceeding (concerning the Ashland 2 materials), the State of Utah withdrew its concern that the alternate feed material could contain listed hazardous wastes. See Letter from Fred Nelson (counsel for State of Utah) and Frederick Phillips (counsel for *IUSA*) to Peter Bloch, dated October 26, 1998.

¹⁹The failure to show that the asserted injuries stemmed from another license amendment that authorized receipt and processing of alternate feed material at White Mesa resulted in the rejection of three petitioners, including the late Norman Begay, because the petitioners failed to show injuries that were distinct and palpable, particular and concrete, as opposed to being conjectural or hypothetical. See *International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 117-18 (1998), affirming LBP-97-12, 46 NRC 1 and LBP-97-14, 46 NRC 55 (1997)

²⁰General economic concerns about the impact of operations of the facility on the region do not provide a basis for standing. See *Babcock & Wilcox*, 37 NRC at 92 n. 64.

²¹Mr. Sleight's claims of injury stemming from the fear and mental anguish associated with nuclear activities at White Mesa raises a psychological stress issue that is not cognizable under NEPA or admissible in NRC proceedings. See e.g., *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 226, 228, 233 (1998),
(continued...)

Mr. Sleight's concerns that the proposed amendment (1) requires a supplementary environmental impact statement and (2) is contrary to the Alternate Feed Material Guidance,²² *see* Sleight Petition at 4 and Addendum, may be germane to the proposed amendment, however, because he has failed to establish his standing to intervene, Mr. Sleight cannot litigate these concerns in this proceeding.²³ Therefore, his petition should be denied.

B. Navajo Utah Commission (NUC) Petition

The Navajo Utah Commission of the Navajo Council states that it is a local governing body designated by the Intergovernmental Relations Commission (IGR) of the Navajo Council that, by resolution, has "the authority to review all matter effecting [sic] the communities in the seven chapter areas of Utah, making appropriate recommendations to, and requests of, the Navajo Nation and other pertinent agencies." NUC Petition at 1. NUC (1) generally comments on the hazards of nuclear wastes and the lack of environmental information which

²¹(...continued)

citing, Metropolitan Edison Co. v. People Against Nuclear Energy, 406 U.S. 766, 772-79 (1983) (*PANE*); *Babcock & Wilcox Co.* Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania), LBP-94-12, 39 NRC 215, 218-19 (1994) (fears about a facility and alleged adverse impacts are not admissible), *citing, Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-82-6, 15 NRC 407 (1982) and *PANE, supra*; *Long Island Lighting Co.*(Shoreham Nuclear Power Station, Unit 1), LBP-91-23, 33 NRC 430, 439 (1991) (claim of panic is similar to psychological stress and is too nebulous to particularize an injury).

²² In the four-page Addendum, Mr. Sleight argues that the material is not "ore," the facility is not designed to process alternate feed material, the application is "sham" disposal for a recycling fee and that information is needed concerning environmental impacts, including cultural resource, transportation, and air and water impacts.

²³ The Presiding Officer could allow Mr. Sleight to provide orally or in writing a limited appearance statement. Such remarks, however, would not be part of the record of the proceeding. 10 C.F.R. § 2.1211(a).

is leading to "a growing FEAR of nuclear waste and the prospects of nuclear waste dump in [the] community, (2) notes that it passed a resolution opposing the transportation and processing of "nuclear waste material" and "radiation-containing byproducts" at the White Mesa mill, (3) claims that the hauling and dumping of additional nuclear waste would be detrimental, (4) notes that Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, 7630 (February 16, 1994), 3 C.F.R. § 859 (1995), recognizes the need for federal agencies to address health and environmental conditions in minority communities, and (5) asserts that the material is being accepted primarily for storage and disposal purposes. NUC Petition at 1-3.

The NUC is located in Montezuma Creek which is approximately 40 miles from White Mesa. While Native Americans have a unique relationship with the Federal government, they must satisfy NRC requirements for standing in order to be admitted as a party to an NRC proceeding. *Hydro Resources, Inc.*, LBP-98-9, 47 NRC 261, 272 (1998), citing, *Umetco Minerals Corp.*, LBP-94-18, 39 NRC 369 (1994). The resolution and the comments in the petition amount to a generalized grievance concerning, and opposition to, the operation of the White Mesa mill and do not identify a distinct and palpable harm from the proposed licensing action. See *Metropolitan Edison Co.*, CLI-83-25, 18 NRC at 333. The fear of nuclear materials and concerns about the cumulative impacts of nuclear activities and testing unrelated to the proposed amendment cannot provide a basis for standing in this proceeding.²⁴ In addition, NUC has not identified (by name and address) the particular Navajo people who have

²⁴See note 21, *supra*.

authorized NUC to represent their interests and who will likely be harmed as a result of the proposed amendment *See Houston Lighting & Power Co.*(South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 646-47(1979). Moreover, NUC has not shown that the milling to be authorized by the proposed amendment will result in tailings that are more hazardous than that already authorized under the license. *See International Uranium (USA) Corp.*, LBP-97-14, 16 NRC 55, 56 (1997), *aff'd*, CLI-98-6, 47 NRC 116, 177 (1998). Therefore, the NUC Petition should be denied.²⁵

C. Concerned Citizens of San Juan County (CCSJC) Petition

CCSJC states that its organization includes residents throughout San Juan County and in Bluff, Utah, which is "18 miles down-gradient from the White Mesa Mill" and that many of its member have homes and businesses located along the San Juan River." CCSJC Petition at 2. CCSJC asserts (1) that its members are involved in health and safety issues affecting the southern Utah community, (2) that it works closely with the Navajo Tribal Council and the NUC, and others who depend on clear air and water, cultural resources, (3) that it is adversely affected by the ongoing and proposed operations of the mill because the impoundment of radioactive waste will injure the people and economy of the community and local drinking water (from wells drilled into the Navajo Sandstone aquifer, (4) that heavy metals found in the wells suggests contamination from the mill, which could be increased by the proposed amendment, and thus there is a need to enforce water quality standards, and (5) the increasing

²⁵If the NUC can demonstrate that it is a recognized governmental entity, the presiding officer could exercise his discretion and allow NUC admission as a 10 C.F.R. § 2.1211(b) participant if another intervention petition were granted.

volume of tailings at White Mesa creates "an unacceptable health risk" and costly mitigation and cleanup costs, and will expand the waste site at White Mesa to include imported rather than in situ sources. *See id.* at 2-8. CCSCJ's "concerns" are about water resources and "compounded [and] continued local exposure to radioactive waste." *See id.* at 2, 6.

CCSJC has not demonstrated its standing to intervene in this proceeding pursuant to 10 C.F.R. § 2.1205(d) and (h).²⁶ It has failed to identify an injury to its organizational interest or to identify a member (by name and address) who has authorized the filing of the petition on his or her behalf and who would likely be injured by the proposed amendment. *See Houston Lighting & Power Co., ALAB-549, supra.* While concerns about drinking and surface water quality are arguably germane to this proceeding,²⁷ CCSJC has not provided evidence that the water quality is the direct result of operations at White Mesa or that the processing of the Ashland 1 material would significantly increase such impacts.²⁸ The generalized opposition to the operation of the mill irrespective of whether the proposed amendment is granted does not particularize an injury from the proposed action. *See International Uranium (USA) Corp., CLI-98-6, 47 NRC at 117-118; Energy Fuels, Inc., 40 NRC at 153-154.* Similarly, a general

²⁶CCSJC's request to submit a limited appearance in accordance with 10 C.F.R. § 2.1211(a), *see* CCSJC Petition at 1, could be granted at a later date, provided a petition for hearing is granted.

²⁷Included with the CCJSC Petition is a map showing the proximity of Bluff, Utah, and copies of chemical analyses of drinking water performed in 1994 and 1996.


²⁸As the Staff noted in response to the petition filed by the State of Utah, seepage from White Mesa would have to travel through approximately 1200 feet of low permeability rock before reaching the Navajo Aquifer and it is unlikely that potential seepage would ever impact the water quality of that Aquifer. *See* Staff Response to Utah Request for Hearing, dated December 14, 1998, at note 13.

grievance about the enforcement of regulatory requirements does not particularize a harm sufficient to support standing. *Metropolitan Edison Co.*, CLI-81-25, 18 NRC at 333. In short, CCSJC has not particularized an injury that will likely result from the proposed action, has not demonstrated its representational standing, and should not be admitted as a party to this proceeding. Therefore, its petition should be denied.

CONCLUSION

For the reasons set forth above, the petitioners have not met the standards to intervene in this licensing proceeding and their petitions should be denied.

Respectfully submitted,


Mitzi A. Young
Counsel for NRC Staff

Dated at Rockville, Maryland
this 17th day of December 1998

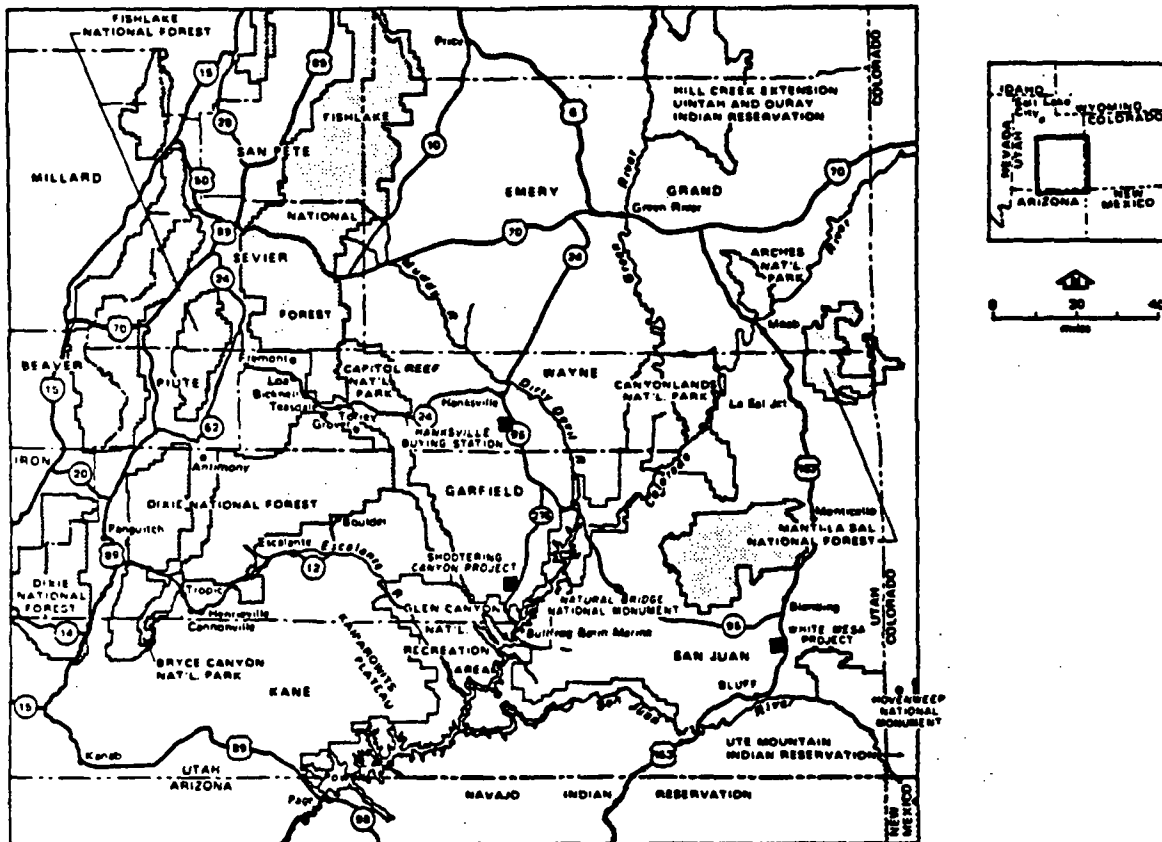


Fig. 2.1. Regional map of the White Mesa Uranium Project site. Source: Plateau Resources, Ltd., Application for a Source Material License for the Blanding Ore Buying Station, Grand Junction, Colo., Apr. 3, 1978.

Table 2.4. Area and population for Utah and Wayne, Garfield, and San Juan counties, 1970 and 1977

State or county	Land area		Total population			Population per square kilometer			
	km ²	sq miles	1970	1977 ^a	Change (%) ^a	1970		1977 ^a	
						km ²	sq. mile	km ²	sq. mile
Utah, total	213,180	82,340	1,059,273	1,271,300	20.0	5.0	12.9	5.9	15.4
Wayne	6,444	2,489	1,483	1,800	21.4	0.2	0.6	0.3	0.7
Garfield	13,507	5,217	3,157	3,800	14.0	0.2	0.6	0.3	0.7
San Juan	20,412	7,884	9,606	13,000	35.3	0.5	1.2	0.5	1.6

^a Preliminary data.

Source: U.S. Bureau of Census, 1970; Utah Population Work Committee, 1977.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'98 DEC 18 A8:24

BEFORE THE PRESIDING OFFICER

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATION STAFF

In the Matter of)
)
INTERNATIONAL URANIUM (USA))
CORPORATION)
)
(Request for Material License)
Amendment))

Docket No. 40-8681-MLA-5

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF NOTICE OF INTENT TO PARTICIPATE AND NRC STAFF RESPONSE TO PETITIONS FILED BY KEN SLEIGHT, NAVAJO UTAH COMMISSION, AND CONCERNED CITIZENS OF SAN JUAN COUNTY" in the above-captioned proceeding have been served on the following by first class United States Mail; and through deposit in the Nuclear Regulatory Commission's internal mail system as indicated by an asterisk, this 17th day of December 1998:

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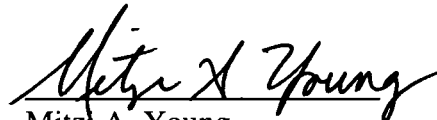
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