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November 30, 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of	)	
	)	
INTERNATIONAL URANIUM (USA) CORPORATION	)	Docket No. 40-8681 MLA-4
	)	
(Receipt of Material from Tonawanda, New York)	)	

NRC STAFF RESPONSE TO PETITION FOR LEAVE OF INTERVENE OF KEN SLEIGHT

INTRODUCTION

On October 15, 1998, a notice of opportunity for hearing issued by the Presiding Officer in the above-captioned proceeding was published in the *Federal Register*. The notice indicated that the State of Utah's petition for hearing, which alleged that the shipment of Ashland 2 materials from the Tonawanda, New York site, as authorized by the materials license amendment issued to International Uranium (USA) Corporation (Licensee or IUSA), could violate applicable laws and harm wildlife and natural resources, had been granted. 63 Fed. Reg. 55412 (October 15, 1998).[1] The notice further provided that "[a] person

[1] The license amendment was issued on July 23, 1998 and allows IUSA to receive and process uranium-bearing material (*i.e.*, alternate feed material -- material other than natural uranium ore) from the Ashland 2, Formerly Utilized Sties Remedial Action Program (FUSRAP) site near Tonawanda, New York. *See International Uranium (USA) Corp.*, LBP-98-21, 48 NRC ___, slip. op. at 1-2, 11 (September 1, 1998).

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whose interest may be affected, including a State, county, or municipality or any agency thereof," may file a request to participate in the proceeding within 30 days of the notice. *Id.*[2]

By letter dated, November 13, 1998, Ken Sleight (Petitioner), petitioned for leave to intervene concerning the license amendment. Letter from Ken Sleight to Executive Director for Operations, NRC, dated November 13, 1998 (Petition). As discussed below, the Staff opposes this hearing petition as the Petitioner has not satisfied the requirements to intervene pursuant to 10 C.F.R. § 2.1205(d), (e), and (h).

DISCUSSION

A. Petitioner Has Not Satisfied the Requirements for Standing and Participation in an NRC Proceeding

1. 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).[3]

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[2]The notice was published pursuant to 10 C.F.R. 2.1205(j), which provides that, if request for hearing is granted and a notice of opportunity for hearing has not previously been published in the *Federal Register,* a notice of hearing shall be published, stating, *inter alia*, the matters of fact and law to be considered and the time within which interested persons may intervene.

[3]If a *Federal Register* notice providing an opportunity for hearing has not been published, an intervention petition must be filed the earliest of (a) 30 days after the requester receives actual notice of a pending application, (b) 30 days after the requester receives actual

(continued...)

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(l) 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 for 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(c), 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:

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[3](...continued)
notice of an agency action granting the application in whole or in part, or (c) 180 days after agency action granting an application in whole or in part. 10 C.F.R. § 2.1205(d).

> 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). *See also Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1991). In addition 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 (economic harm unrelated to potential radiological or environmental effects is not sufficient for "injury-in-fact" and "zone-of-interests" tests)[4]; *Georgia Power Co.* (Vogtle 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. 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-83-25, 18 NRC 327, 333 (1983), *citing,*

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[4]Purely 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 (USC) Corp.*, CLI-98-23, 48 NRC ___, slip op. 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).

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).

Further, it has been held that in order to establish standing, 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.[5] *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988); *Vogtle, supra*, 38 NRC at 32; *Babcock and Wilcox, supra*, LBP-93-4, 37 NRC at 81; *Envirocare, supra*, 35 NRC at 173.

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[5] A presiding officer has the authority 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).

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).

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.[6] 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)]." 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 ruling on affidavits with respect to standing, a decisionmaker should "avoid 'the familiar trap of confusing the standing determination with the assessment of petitioner's case on the merits,'" *Sequoyah Fuels Corp.*, (Gore, Oklahoma Site Decontamination and Decommissioning Funding), LBP-94-5, 39 NRC 54 (1994), *citing City of Los Angeles v. National Highway Traffic Safety Administration*, 912 F.2d 478, 495 (D.C. Cir. 1990)

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[6] *See, 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 Wikox 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).

(*citations omitted*), *aff'd*, CLI-94-12, 40 NRC 64 (1994); *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).

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." 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).[7] Only those concerns which fall within the scope of the proposed action set forth in the *Federal Register* notice of

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[7] 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.

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).[8]

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 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

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[8] 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.

review is not determinative of whether an action should be approved. *Curators of the University of Missouri,* CLI-95-1, 41 NRC at 121.

3. The Letter Identifies Germane Areas of Concern But Does Not Particularize An Injury-in-Fact

Operation of the White Mesa uranium mill, near Blanding, Utah, 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. *See* LBP-98-21 at 1, 10-11. NRC 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), provides that the Staff is to find that the material proposed for processing is "ore," that it does not contain hazardous waste, and that it is being processed primarily for its source material content. 60 Fed. Reg. 49296-49297.[9] As discussed further below, the matters raised by Petitioner relate generally to the operation of the White Mesa mill and do not particularize an "injury-in-fact" from the license amendment or a harm within the zone of interests of the NEPA or the AEA.[10]

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[9] 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).

[10] The Petition appears to have been filed by the November 14, 1998 deadline and, therefore, is timely.

Petitioner states that he is a general partner, and a resides at, the Park Creek Ranch (a tourist guest ranch), which is located in Moab Utah, in San Juan County. Petition at 1. He (1) 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 Ashland 2, (3) is an officer and stockholder in High Desert Adventures (a Utah corporation headquartered in St. George, Utah), which conducts boating rips on the San Juan River and Lake Powell, (4) 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 (5) 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* Petition at 1-3. Petitioner further asserts 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 would make the region less attractive and affect the local economy. *See* Petition at 2-4.

The injuries claimed result from general concerns about storage operations at White Mesa and general objections to nuclear activities in the region, which are not specific to the contested license amendment. Such general claims are not sufficient to support standing. Standing is not automatic in this proceeding as the intervenor must demonstrate that, as a

result of the amendment, he will likely suffer injury that is "distinct and palpable, particular and concrete, as opposed to being conjectural or hypothetical." *International Uranium (USA) Corp.*, CLI-98-6, 47 NRC 116 (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). Harm should be 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).

The need to show injury-in-fact is particularly important where the action has no obvious potential for offsite impacts given that the amount of material to be processed and disposed of onsite is only a small fraction of that already authorized at the site.[11]

It is difficult to conclude that Petitioner, a resident of Moab, Utah, which is almost 80 miles from the facility,[12] and who travels and works in the surrounding county, would be

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[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 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. citing* TER at 4-7.

[12]*See* Final Environmental Impact Statement related to operation of White Mesa

(continued...)

harmed by the small amount of uranium-bearing material that will be processed and stored onsite under the license amendment. The Petitioner offers no credible scenario or other 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) or otherwise explain why the Ashland 2 material would have impacts that are not encompassed by those associated with operation of the facility in general.[13] The injuries claimed, are remote and speculative. Petitioner has therefore failed to establish a causal nexus between the license amendment and his claimed injuries or 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.[14]

Petitioner has no standing to assert general concerns about the health and safety of other citizens in the region.[15] *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

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[12](...continued)
Uranium Project, dated May 1979 (FEIS), at 2-5, Fig. 2.1 (regional map) (Attachment A).

[13]Notably, as a result of discussions with the Licensee, the State of Utah has withdrawn its concern about the potential that the alternate feed material will 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.

[14]The 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)

[15]General 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.

of third parties). Further, Petitioner has not demonstrated that he is authorized to represents 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.[16]

The concerns raised in the petition are varied. Petitioner asserts that little information is available about the acceptance of hazardous waste from Tonawanda and argues that the activities authorized by the amendment (1) require environmental studies, (2) are contrary to environmental justice, (3) will harm Native American burial sites if further nuclear material is brought in, and (4) violate NRC and State requirements for a disposal facility. Petition at 2-5. Although compliance with non-NRC requirements may affect NRC decisions, general concerns about compliance with State requirements need not be considered in an NRC proceeding. *See Hydro Resources, Inc.*, CLI-98-16, 48 NRC ___ (September 15, 1998) (dismissing concern about failure to obtain proper permits). The other matters are generally germane to environmental concerns related to the license amendment, however,

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[16]Petitioner's claimed injury stemming from the fears 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), *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).

Petitioner's failure to establish his standing to intervene in the proceeding renders them inadmissible.

Therefore, the Petition should be denied.

CONCLUSION

For the reasons set forth above, the Staff opposes the Petition inasmuch as it fails to satisfy the requirements for intervention in that it does not particularize a distinct and palpable injury that would likely result from the licensing action contested.

Respectfully submitted,

Mitzi A. Young
Counsel for NRC Staff

Dated at Rockville, Maryland
this 30th day of November 1998

ES-4587

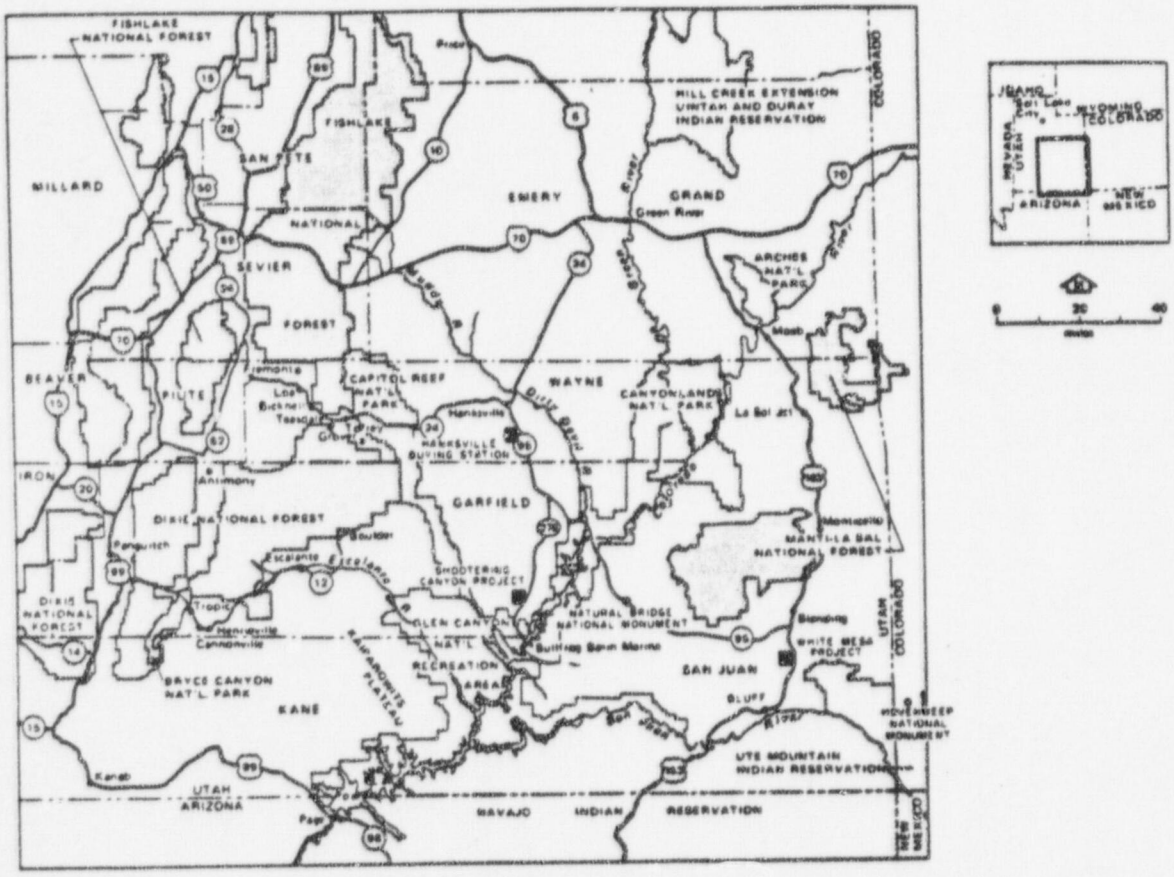

Fig. 2.1. Regional map of the White Mesa Uranium Project site. Source: Plateau Resources, Ltd., *Application for a Source Material License for the Blanding Ore Buying Station*, Grand Junction, Colo., Apr. 3, 1978.

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			
						1970		1977[a]	
	km²	sq miles	1970	1977[a]	Change (%)	km²	sq. mile	km²	sq. mile
Utah, total	213,180	82,340	1,058,273	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	3,600	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.

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	)	
(Receipt of Material from from Tonawanda, New York)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO PETITION FOR LEAVE OF INTERVENE OF KEN SLEIGHT" in the above-captioned proceeding have been served on the following by deposit in the United States Mail, first class, or, as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system this 30th day of November 1998:

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