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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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January 10, 2003 (10.18AM)

Before the Presiding Officer

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of
Nuclear Fuel Services, Inc.
(Blended Low-Enriched Uranium Project)

Docket No. 70-143
Special Nuclear Material License No. SNM-124

KATHY HELMS-HUGHES RESPONSE TO NUCLEAR FUEL SERVICES, INC.'S MOTION TO DENY HELMS-HUGHES' REQUEST FOR STANDING AND LEAVE TO INTERVENE

Applicant Nuclear Fuel Services Inc., or NFS, filed an answer to the Declaration of Kathy Helms-Hughes on Dec. 13, 2002, asking Nuclear Regulatory Commission Presiding Officer, Judge Alan Rosenthal, to reject that declaration for lack of standing and failure to submit an area of concern germane to the proceeding. NFS also asked Judge Rosenthal to deny an additional request to hold the proceeding in abeyance and put NFS's Blended Low-Enriched Uranium project on hold until after an Environmental Impact Statement is performed.

On Dec. 17, 2002, Judge Rosenthal issued an order giving hearing requesters until Jan. 6, 2003, to respond to NFS's opposition to the hearing request. In response, Ms. Helms-Hughes respectfully submits the following:

Lack of Standing

"Although it is not entirely clear that Ms. Helms-Hughes is requesting a hearing on the NFS license amendment application, NFS respectfully requests that the Presiding Officer reject the Declaration for lack of standing and for failure to submit an area of concern germane to this proceeding. ..."

Since NFS has difficulty in understanding my concerns, let me clarify: I request to be added to the list of members of the public seeking standing and leave to intervene through a public hearing. I am also respectfully requesting the NRC hold a hearing in abeyance until such time as NFS submits any and all license amendment requests for SNM-124 and the Blended Low-Enriched Uranium Project. Holding a hearing at this point in time, when the adjudicatory panel and the public have been fed baby bites of information rather than the three-course meal promised by NFS in the form of three license amendment requests, is a waste of this panel's and the public's time and money.

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After NFS submits to the NRC all three license amendment requests and other pertinent information pertaining to the BLEU Project, I request that a public hearing be held within 20 miles of NFS at an evening hour which affords the general public an opportunity to attend without interfering with their workweek.

Also, for clarity sake, I am requesting the NRC order NFS to perform a full Environmental Impact Statement in accordance with the National Environmental Policy Act, even though that might slow down NFS's planned production schedule and delay anticipated electricity cost savings to Tennessee Valley Authority customers.

As an affected TVA customer expected to reap savings from NFS's conversion of surplus high-enriched uranium to low-enriched uranium which will be manufactured into fuel assemblies for TVA nuclear plants, I am willing to forgo savings on electricity costs until a full EIS investigates the impact to human health and the environment in my Region of Interest, Carter County, Tennessee, (Population 56,742, an increase of 10.2 percent over 1990 figures; median income for 1999, \$27,371; residents living below the poverty level, 16.9 percent. Source: U.S. Census Bureau, 2000), as well as Unicoi, Washington, and Sullivan counties which also are located in the Region of Interest.

My interest in the proceeding derives from the fact that I live less than 20 miles downwind of NFS, which has been processing uranium and thorium since 1957. Emissions from those processes are carried on the prevailing wind right across my land, where some are conceivably inhaled or deposited into a mountain spring used by my family and other community residents who do not have a public utility source of drinking water available to them. Among those emissions are uranium, plutonium and thorium, which take years to decay, which could be present on the land and passed through the food chain via plant uptake and consumption by animals and humans which make this area their home, as well as present in the water, thus impacting the health of myself, my immediate family, relatives living nearby, and community members. Those contaminants also have the potential to impact streams and mountains in the Cherokee National Forest which immediately bounds my property, potentially causing a decrease in property value. The Cherokee National Forest, home to the Appalachian Trail, is an area I and thousands of others frequently hike. Potential contamination also could have an impact on tourism in this area, which is unincorporated and devoid of major industry.

On March 4, 2002, NRC issued a Notice of Intent to Prepare an Environmental Assessment (EA) for Amendment of Special Nuclear Material (SNM) License No. SNM-124 for NFS. NFS submitted environmental documentation for the three proposed license amendments, however, the NRC staff is expected to perform a separate safety evaluation and environmental review for each of the three license amendment requests.

On July 9, 2002, the NRC issued a notice of Opportunity for Hearing on the amendment of Materials License SNM-124, a notice of Finding of No Significant Impact and a summary of an Environmental Assessment for the amendment of Nuclear Fuel Services, Inc., Materials License SNM-124 to authorize construction and operation of the Uranyl Nitrate Storage Building. (67 FR 45555). The Federal Register notice published on July 9, 2002, provided inadequate identification

of the license amendment application, neither setting forth the date upon which the application had been filed nor supplying any information as to how the content of the application might be located. A revised notice was published Oct. 30, 2002 (Federal Register: Volume 67, Number 210) to correct those deficiencies.

According to the notice, radiological impacts from the proposed BLEU Project operations include release of uranium, thorium, plutonium, americium, actinium, and lesser quantities of fission products including technetium, cesium, and strontium.

NFS has not put forth an engineering assessment which addresses the cumulative effect of airborne emissions since the company began process operations in 1957 along with airborne emissions expected to result from the BLEU Project. The Environmental Assessment also fails to address the cumulative effect of future airborne emissions resulting from NFS's and International Uranium Corp.'s joint "USM Ore Program." That program was made public Nov. 14, 2002, by International Uranium Corp. — long after NFS submitted the current license amendment request and Environmental Assessment before the NRC. The program involves the development of a process and construction of yet another plant at NFS to blend currently unusable low-enriched uranium with depleted uranium bearing materials — a process which has never been conducted on a commercial basis — to produce a homogeneous ore which will be transported to White Mesa Mill near Blanding, Utah, and processed as an alternate feed material.

Feed materials to be used in the USM Ore Program will be transported from various DOE sites to NFS in Erwin for storage and processing. NFS plans to first design, construct and operate a pilot test. If the pilot test is successful, NFS plans to modify the pilot facility and convert it to a commercial facility, with commercial production expected to last up to 10 years, and possibly 14 years, depending on the amount of "orphaned" materials the Department of Energy makes available for the program.

"Orphaned" means contaminants in the materials make them unfit for sale or use as commercial nuclear fuel, or that they do not meet DOE waste disposal criteria. DOE is considering modifying the waste acceptance criteria at its Hanford, Wash., and Nevada Test Site facilities. Unless the material is submitted for further processing, contaminants exceed current ASTM standards for reintroduction into the nuclear fuel cycle. Handing over the orphaned materials to the USM Ore Program would eliminate DOE's need to modify the waste acceptance criteria.

DOE has an inventory of more than 4,700 metric tons of surplus LEU-bearing materials in the form of alloyed and unalloyed metals and oxides at its facilities in Hanford, Wash., and Fernald, Ohio, with an additional 5,000 metric tons of excess LEU-bearing materials held in inventory.

The proposed BLEU action currently before the U.S. Nuclear Regulatory Commission would allow NFS to construct and operate a Low-Enriched Uranyl Nitrate Storage Building (UNB) at the NFS site in Erwin, and to "increase NFS's possession limit of Uranium 235." That increase amounts to doubling the possession limit from 7,000 kilograms to 14,000 kilograms.

Under the USM Ore Program, which is expected to produce up to 3 million pounds of uranium per year, feed material will be converted into an oxide powder having U-235 concentrations of between 0.700 and 0.724 by weight.

I question whether the current license amendment request and increase in NFS's possession limit

of U-235 takes into account the additional U-235 concentrations projected under the proposed USM Ore Program and whether plans include the use of the proposed Oxide Conversion Building from the BLEU project to convert orphaned materials for the USM Ore Program. If that is the case, the NRC must be compelled to order an Environmental Impact Statement which would investigate the cumulative effects of both projects on the health of local residents and resulting impacts on the environment. An Environmental Impact Statement also must be performed to evaluate hazards associated with the transportation of 33 metric tons of high-enriched uranium, plus up to 9,700 metric tons of "orphaned" materials from DOE sites to NFS's Erwin facility.

I also respectfully submit that there is lack of data on the cumulative effect of airborne emissions from the Studsvik Processing Facility, located near NFS, due to the fact that the plant only became fully operational in 1999. On May 12, 2001, a "minor" leak in one of the process systems at Studsvik's Erwin plant shut down the facility for about four weeks.

Studsvik also has joined with Washington Group International Inc. to process federal nuclear waste for DOE. Testing and demonstration of the THOR process for the thermal treatment of various organic and inorganic radioactive wastes stored at DOE facilities possibly will be or have been carried out at the Erwin facility. The EA does not address any cumulative effects from these tests.

The Code of Federal Regulations states in Part 2, Section 2.1205, "Request for a hearing; leave to intervene: "Any person whose interest may be affected by a proceeding for the grant, transfer, renewal, or license-initiated amendment of a license subject to this subpart may file a request for a hearing."

I respectfully submit that nowhere in that section did it say I had to be a legal beagle, spouting CFR sections and environmental caselaw, in order to participate in my rightful position as a member of the public affected by the proposed action. I respectfully ask the panel to disregard NFS's request to deny Ms. Helms-Hughes lack of standing due to the fact that the safety issues regarding airborne contaminants put forth by Ms. Helms-Hughes are legitimate and have not been dealt with in the EA.

NFS states, "Ms. Helms-Hughes fails to demonstrate standing because she fails to show a realistic threat of direct, concrete, and palpable injury that is fairly traceable to the proposed license amendment."

Terrorists blew up the World Trade Center, killing thousands of people. How "realistic" was that?

Might I remind NFS and the NRC of the Radiation Exposure Compensation Act in which Congress found that fallout emitted during the government's above-ground nuclear tests in Nevada exposed individuals who lived in the downwind affected area in Nevada, Utah, and Arizona to radiation that is 'PRESUMED' to have generated an excess of cancers among these individuals," who, by the way, received an apology from Congress.

RECA Sect. 2 (c) Apology. -- "The Congress apologizes on behalf of the Nation to the individuals described in subsection (a) and their families for the hardships they have endured."

NFS is proposing to convert 33 metric tons of "off-spec," or contaminated, high-enriched

uranium into low-enriched uranium based on the conversion of test quantities of material for TVA in 1998. NFS says that it also has performed various HEU-to-LEU downblending efforts for other customers. I submit that NFS should produce documentation showing exactly how many metric tons of off-spec HEU it has converted to LEU using the same process which will be utilized during the life of the BLEU project. Lack of documentation, or lack of experience, further magnifies the need for an EIS. Downblending test quantities vs. downblending 33 metric tons does not take into account the safety issues surrounding storage, criticality and unfavorable geometry.

Primary hazards associated with the operation of the BLEU Project storage tanks involve: release of gaseous and particulate effluents (chemical and/or radioactive materials) due to fire, release of hazardous or explosive compounds such as hydrogen, hydrogen peroxide, ammonia, NOX, and nitric acid vapors, spill of chemical and or radioactive material in a building, leak in a storage tank or supply piping, and an upset in the control of process parameters leading to undesirable reactions.

Primary controls relied upon to guard against inadvertent nuclear criticality in storage operations include concentration limits and the use of favorable geometry. This does not provide suitable assurances given NFS's reviews by the NRC on SNM criticality issues, recent history surrounding the safeguarding of special nuclear materials, fires, and employee failure to follow procedure. NFS has been issued numerous Notices of Violation, some of which include:

- A Severity Level IV violation July 17, 2002, resulting from failure to follow procedures during the operation of tank WD-02 and an inadvertent discharge of fissile solution.
- A Severity Level IV violation resulting from a May 16, 2002, incident in which the licensee failed to personally attend containers having more than 50 grams U-235 which were not in a locked cage, not inside of processing equipment, and were not liquid laboratory waste.
- A Severity Level IV violation resulting from a March 2002 incident in which the criticality detection and evacuation alarm system testing was not performed and one individual unit was not checked, as required by NFS's license application.
- A Severity Level III violation on Sept. 24, 2001, involving the failure to maintain a criticality alarm system for storage of approximately 20 kilograms of highly enriched uranium;
- A Severity Level III violation on Oct. 19, 1999, for failure to conduct searches in accordance with the physical protection plan, failure to follow procedures for special nuclear material, and failure to control and account for SNM in assigned locations.

NFS has received 33 amendments to its SNM-124 license since its renewal July 2, 1999. Among those were several deletions of license conditions related to criticality safety.

Exhaust stacks at the proposed BLEU Complex are planned for the Uranyl Nitrate Building, the Oxide Conversion Building, and the Effluent Processing Building.

BLEU project air emissions of uranium and thorium are expected to increase four to five times current levels while NFS expects to almost double current hydrogen and nitrogen oxide emissions, exceeding current permitted limits for nitrogen oxides. NFS says it is requesting modification to its air pollution control permit "for the main stack due to changes in material input from the BPF." It does not say whether that request also mentions a permit increase from currently allowable limits

of air emissions.

Prevailing winds at the NFS site tend to follow the orientation of the valley, southwest to northeast, according to the NFS Environmental Assessment. According to the EA, the year 2000 showed a maximum sustained wind of 37 mi/hr and a peak gust wind of 62 mi/hr. The area is characterized by a system of alternating and parallel ridges and valleys which span in a southwest to northeast direction. Winds through the area are controlled by these ridge and valley systems, with winds generally moving northeasterly during the day and southwesterly during the night. Wind directions at NFS from 1991 to 1995 were reported to be from the south, south-southwest, and southwest 43 percent of the time.

According to NFS, "Construction and processing operations will result in the release of low levels of chemical and radioactive constituents to the environment. Under accident conditions, higher concentrations of materials could be released to the environment over a short period of time."

Current environmental monitoring stations do not provide adequate coverage of the expanded site area to be used in the BLEU project. "Additional monitoring locations (e.g., air, vegetation, soil, groundwater) will be proposed in a forthcoming license amendment request for the BLEU Project (Ref. 4)," according to NFS.

We're missing a piece of the picture here, folks. The public cannot be expected to paint a precise accident scenario and show harm in detail without a canvas to work from. Again, the EA is lacking in detail and alludes to a "forthcoming license amendment" which again deprives the public of important information need to draw an informed conclusion.

NFS analyzes air gross alpha/beta activity for plutonium and thorium isotopes annually. Gross alpha activity were shown to be significantly elevated in 2000 summary results. NFS states that the emissions are not representative of off-site environmental concentrations because the sampler was located within the plant protected area. Another sampler located near the offsite boundary also showed elevated readings, but was not seriously considered because no cause for the exceedance could be identified and the sampler was still within the protected area.

I submit that airborne emissions do not always fall within NFS plant boundaries. Emissions are sent up the stacks where they are carried by a sustained wind of 37 mph. They are not deposited within a few feet of the stack within the protected area as NFS would have the public believe. Simply because NFS cannot identify the cause of an elevated reading does not negate its existence. NFS also has been unable to explain an elevated plume of technetium which migrated outside the plant's protected area through groundwater. Because it could not be explained, that, too, was dismissed as an anomaly.

NFS uses an effective dose equivalent based on assumptions. It cavalierly dismisses elevated sampling results from a sampler located at Building 410 because "the sampler is actually located within the plant protected area boundary and the downwind area is an industrial area with no residences." This cavalier dismissal does not take into account the people who work in that industrial area.

NFS notes that concentrations of airborne effluents at off-site locations are significantly less than those reported at its stacks "due to atmospheric dispersion that occurs before the effluent exits the site." That atmospheric dispersion is exactly what we're talking about. It is dispersed on

the prevailing wind which blows to the northeast -- my direction -- 43 percent of the time, according to NFS. However, Attachment 2 of SNM-124, "Environmental Data for the 1st half of Calendar Year 2000" conservatively estimates that primary wind direction is from the south-southwest to the north-northeast only 18.1 percent of the time at an average speed of 7.50 mph. Surely NFS must have used a different mathematical model to arrive at this discrepancy. Which set of data is accurate, if either?

NFS does not state what the minimum detect limit is for its data in Table 7, "Radioactivity in Effluent Air, January 1, 2000 to June 30, 2000, nor does it state how many times that minimum detect limit has been changed. Also, the error estimate used to arrive at NFS's figures on radioactive air effluent tends to vary widely. A prudent person would be led to believe that an elevated reading, coupled with an error estimate of $6.00\text{E}-16$ or $9.56\text{E}-16$ would not constitute accurate data.

Looking at 10 CFR Sect. 51.20, "Criteria for and identification of licensing and regulatory actions requiring environmental impact statements," one must find any one of the above-listed reasons why NFS must perform an EIS. In addition, the blend-down of HEU to LEU involves the use of new processes. A new process shouts for an EIS to be performed and clearly this panel must rule for an EIS to be performed.

Section 5.1.1 of the EA evaluates the impacts of normal operations and Section 5.1.2 evaluates the impacts of "POSTULATED" accidents. Accident impacts are considered only at a general level of detail for the EA. "Detailed accident analyses (an integrated safety assessment) will be provided by NFS in a forthcoming license amendment request related to the BLEU Project."

The public cannot be expected to show "direct" harm when NFS's own accident calculations are based on suppositions and "what-ifs." The lack of information put forth in the EA would leave a prudent person to believe that information is either being hidden or distorted. Evaluation of "postulated" accidents shows neither "realistic threat" nor "direct, concrete, and palpable injury." Postulated accidents based on modeling give postulated results.

In April 2002, NFS was questioned about "trace" quantities of plutonium showing up in offsite groundwater monitoring wells located at Impact Plastics, which is now in litigation with NFS, seeking damages due to the contamination.

For the record, the NFS spokesman stated, "You know, if you really get into it, any well that you dig anywhere is going to have background levels of plutonium, based on, believe it or not, bomb tests."

When asked to explain, he said one explanation for the offsite plutonium could be the result of "fallout associated with nuclear testing in Nevada in the 1960s."

"We've got background wells upgradient from NFS that are not related to anything related to NFS and it shows background levels," he said.

Arjun Makhijani, Ph.D., president for the Institute for Energy and Environmental Research in Takoma Park, Md., disagreed with the theory. "First: Plutonium-238 is not a major component of

fallout. The isotopes in fallout are mainly Plutonium-239 and Plutonium-240 with some Plutonium-241. So high readings of Plutonium-238 in water are curious."

After reviewing NFS data, Makhijani said, "I would consider all of the measurements worthy of follow-up, presuming that the results are greater than the minimum detectable amounts, which seems to be the case . . .

"I would question whether this is due to fallout. It is possible that these are hot spots, but if this is all fallout, then they are pretty serious hot spots and worthy of attention by the government in their own right. . . . I think the burden of proof should be on the company to show it's fallout."

Between 1965 and 1972, NFS processed more than 800 kilograms of plutonium in its Erwin, TN fuel fabrication facilities. Plutonium 238 has a half-life of 87.74 years; Plutonium 239: 24,110 years; Plutonium 240: 6,537 years; Plutonium 241: 14.4 years; and Plutonium 242: 376,000 years.

Outside the body, plutonium and uranium pose minimal risks to human health unless exposure is on a sustained basis, according to the Institute for Energy and Environmental Research.

"Like plutonium, uranium is a health hazard when small particles are inhaled or absorbed through wounds. . . . Uranium is far less radioactive than plutonium, and uranium can cause acute damage to the kidneys by heavy metal poisoning well before radiation effects are manifest."

The rate of plutonium removal from the tissues of the body is very slow, occurring over years. Most of the plutonium that stays in the body is found in the lungs, liver, and skeleton though it can move to other body organs, where it generally stays for decades and continues to expose surrounding tissues to radiation.

Both my mother and an aunt, who grew up on this land downwind from NFS, suffered renal failure and underwent dialysis treatments. Mother's trips to the dialysis center were complicated by the oxygen tank she had to drag around with her due to respiratory illness and congestive heart failure. But her trips to the center on the van afforded area dialysis patients were always made brighter by other people from the area receiving the same type treatment.

Should I "presume," as in RECA, that downwind exposure could have perpetuated their illnesses?

Another point of note given the fact that long-term, sustained exposure to uranium may damage reproductive organs: My mother's first pregnancy resulted in miscarriage; my younger sister's first child died from Sudden Infant Death Syndrome; one of my children died 19 days after birth as a result of Zellweger Syndrome (frequency: 1 in 100,000 at the time).

I currently suffer from chronic asthma and my 10-year-old child also has respiratory problems.

Using a simple mathematical calculation, or "model" if you will, if I live less than 20 miles downwind of NFS, and the prevailing wind from NFS is blowing 37 miles per hour -- the maximum sustained wind shown in the year 2000 -- then any regulated emissions or unplanned emissions take less than an hour to get to my house and to the elementary school, located five minutes away, which my 10-year-old female child attends.

The prevailing wind has been depositing particles of uranium, plutonium and thorium from NFS stacks hourly, seven days a week since 1957 to areas downwind. Using gravity as a foregone

conclusion, these particles fall to earth, where they must find a place to settle. My land is located in their flight path.

A study conducted by Lawrence Livermore National Laboratory, "A Perspective on the Dangers of Plutonium," found: "Although the popular myth that 'plutonium is the most hazardous substance known to man' has been refuted many times, the misconception persists that even a small amount of plutonium taken into the body will be fatal. Plutonium is hazardous, but it is not as immediately hazardous to health as many more common chemicals. This is not to say that plutonium is not a dangerous, toxic material. Chronic exposure to even small amounts should be a matter of concern."

Concerns:

NFS attorneys, in its Dec. 13, 2002, filing, "Applicants answer to Declaration of Kathy Helms-Hughes," stated as grounds to deny my request for standing and that an EIS be performed, in accordance with NEPA, stated:

"... [S]he makes only impermissibly vague and speculative claims, lacking in all detail, about potential harm arising from the amendment."

In response, let me submit that it is difficult to demonstrate harm from an unplanned event which has yet to occur based on the sketchy, segmented information offered so far by NFS. NFS's continual denial of public access to information regarding the BLEU Project also should be noted.

Website

After the first petitions were filed Sept. 3, 2002, asking NRC to order NFS to perform an EIS, information pertaining to the BLEU project, along with NFS's website, disappeared.

One e-mail I received Sept. 13, 2002, stated: "Has anyone tried to access the NFS site recently? Tried & get back message: 'You are not authorized to view this site.' "

As a (former) reporter for the local newspaper, I contacted Tony Treadway, NFS spokesperson, to ask what happened to the website?

Treadway responded, "It was part of the orange alert notice by the federal government for all nuclear facilities to take down their web sites for a while."

Apparently, out of all the nuclear facilities the NRC regulates, only NFS was in compliance. BWX Technologies, Framatome, TVA, Duke, Exelon and others apparently ignored the NRC and left their web sites up.

A prudent person could be led to believe that any terrorist dedicated to his job would have copied any sensitive information long before the first Sept. 11 strike and any attempts to remove it a year later clearly is an attempt to deny the public access to information.

I asked NFS why no one else had taken down their website. I was told, "We were asked to take the site down for a while by the NRC as part of the orange alert. We complied with their request. That's all I can tell you."

What makes NFS so special? Why did BWX Technologies, Inc., another Category 1 facility, not

take down its website?

Public information

Prior to a series of stories I wrote about plutonium and uranium being found in groundwater outside the NFS protected area and stories about NFS being sued by Impact Plastics over offsite contamination, the company generated press releases and sent them out without the reporter having to request them. After my stories ran, the press releases were not as frequent. Later, I learned that NFS was submitting information to the press under the heading "For Release Upon Inquiry" rather than the standard "For Immediate Release." This appears to be a blatant attempt to keep the public in the dark as to what goes on inside the fence at NFS and infringes on Public Right to Know. News which put NFS in a positive light (i.e., donating money for scholarships) was for "Immediate Release" and apparently sent out to all persons on NFS's media list. News which might prompt the media and the public to start asking questions (i.e. offsite migration of uranium and plutonium) became "For Release Upon Inquiry." The media are not mind-readers and do not always instinctively know when to call and inquire about a press release which might have been issued but not released because the media failed to inquire. And the public does not learn the news by osmosis.

West Valley

As a reporter for the Kingsport Times-News in the 1980s, I found during research information related to Nuclear Fuel Services Inc. and West Valley, N.Y. I asked NFS if there was any connection between the NFS company which operated West Valley and NFS in Erwin. I was told there was no connection.

This past year, while researching an NFS story, I learned in fact that the two companies were the same. Why did NFS attempt to hide this information? A prudent person, looking at the evidence available, would be led to believe that it was because NFS opted against costly retrofitting of the West Valley facility and decided to cease reprocessing operations and transfer the management and long-term storage of approximately 600,000 gallons of high-level radioactive liquids and sludges at the West Valley Site to the site's landlord, the New York State Energy Research and Development Authority.

New York is still cleaning up the legacy left by NFS when it returned the facility to NYSERDA in 1982. Given information in the EA and in SNM-124 relative to decommissioning costs, the local public has no assurance that NFS's Erwin site will not become another West Valley at the end of plant life.

What type of financial assurance does NFS have to cover decommissioning activities at the Erwin site not covered by U.S. government funding? The decommissioning cost is to be borne by the Department of Energy only if the funds are "appropriated" by Congress. At this point in time, history shows that DOE does not always get the funds required for decommissioning.

According to Clause H.015 from the NFS/USDOE Contract DE-AC12-90SN39106, at the time decommissioning occurs, "DOE will pursue the necessary funding, however, nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient

to meet said deficiencies.”

The Memorandum of Understanding Concerning Decommissioning of the NFS Erwin Facilities (Clause H.025) states that the government is not obligated and shall not be liable for expenses related to any Erwin facilities which are acquired or added to the NFS site after the effective date of the Memorandum of Understanding (1992) and used for non-Naval Reactors activities; decommissioning of any non-contaminated portion of the NFS Erwin facilities where non-Naval Reactor activities occurring after Dec. 8, 1992, give rise to the need for decommissioning; and decommissioning any NFS Erwin facility that has been decommissioned in accordance with the provisions of Clause H.015 and is subsequently recontaminated due to the use of this facility for non-Naval Reactor activities.

In the event DOE has the appropriated decommissioning funds available but NFS continues to use a particular portion of the Erwin facilities for non-Naval Reactor purposes, delaying decommissioning activities set forth in the decommissioning schedules, the parties will negotiate “in good faith to determine the government’s specific liability for the decommissioning costs for that portion of the facilities.”

Given NFS’s foray into activities beyond the scope of producing fuel for U.S. Naval Reactors, i.e., producing fuel for TVA’s commercial nuclear reactors and producing feedstock for White Mesa Mills, NFS will need to provide decommissioning funds for these activities. As I recall, the NRC has previously denied TVA’s attempt to provide financial assurance through TVA bonds for the BLEU Project, as TVA bonds are not backed by the government and do not meet financial assurance criteria.

Additional information on NFS Financial Assurance shows that NFS will use one or more of the methods authorized in 10 CFR 70.25 (f). However, in Part 1, Chapter 1, Revision 5 of License SNM-124, NFS requested exemption from the requirements of 10 CFR 70.25 (f).

According to SNM-124 documentation on decommissioning: “The decommissioning cost estimates submitted to the NRC on September 19, 1994, have been reviewed and are valid and current as of October 1, 1998.” Though even the NRC stated in 1998 that NFS should update its 1994 decommissioning cost estimate, and that all plans and estimates should assume unrestricted release, NFS maintained that previous cost estimate scenarios had not changed and that current decommissioning cost estimates requested by the NRC also remained unchanged.

I respectfully submit that the cost estimate submitted in 1994 is ludicrous when applied against a 2003 operation, and that any cost estimate regarding decommissioning for “unrestricted release” derived in 1994 will be met by cost overruns in 2003 or the distant future.

NFS states that it has escrow accounts with First Tennessee Bank in Johnson City, Tenn., for:

- Additional equipment installed in Building 233 to support the conversion of the Rocky Flats UNH material to uranium oxide (established, 1997);
- Additional equipment installed in Building 230 for uranium hexafluoride cylinder cleaning (established, 1997) ;
- Newly installed equipment in Building 233 associated with the dissolution and conversion of uranium-aluminum to various forms (established, 1997) ; and,

- New downblending and Uranium Oxide Conversion equipment installed in Building 230 (established, 1998).

Installation of new downblending and Uranium Oxide Conversion equipment leads a prudent person to believe that NFS is going ahead with the BLEU Project even before it receives NRC approval. Also, one building to be used for the BLEU Project already has been erected at the NFS site. This is arrogance at its best. This also provides evidence that the NRC has already approved and this is a "done-deal."

Although NFS lists escrow accounts, it fails to state exactly how much money is going into those escrow accounts and what specifically that money in escrow is to be used to pay for.

NFS states it is still making payments on the "Getty Notes," payable to Getty Oil Co., and Skelly Oil Co. and purchased by NFS Services, Ltd. The financial information states, however, that NFS Inc. will not be required to make any payment on the "Getty Notes" which will cause the current liabilities reflected on the most recent balance sheet of Nuclear Fuel Services, Inc., to exceed the current assets reflected on that balance sheet.

This information fails to outline what NFS's current liabilities are and leaves open-ended the schedule for payment in full on the "Getty Notes." The financial information also mentions restrictions on payment of the "Getty Notes" imposed by a Settlement Agreement, Stipulation, and Order among Nuclear Fuel Services, Inc., Getty Oil Co., and the New York State Energy, Research, and Development Authority dated Feb. 18, 1982. This clearly shows that NFS still has major financial obligations related to cleanup of the West Valley, N.Y., site and clearly impacts the financial future of this site in Erwin, Tenn.

NFS has failed to demonstrate financial assurance for the proposed BLEU project and also has failed to demonstrate financial assurance for end-of-plant-site decommissioning. This should further compel the NRC to order NFS to perform an EIS.

Ownership

In Appendix D of SNM-124, NFS provides a list of its affiliates. At the top of the heap is NFS Services, LLC., a limited partnership chartered in the state of Georgia which owns 100 percent of the stock of NFS Holdings, Inc., a corporation which owns 100 percent of the stock of Nuclear Fuel Services, Inc., NFS Technologies, Inc., and the majority of the public relations firm, Creative Energy Group, Inc. Five of the affiliates listed appear to exist only on paper, as they neither conduct business nor are currently operational.

Nowhere in NFS's EA or SNM-124 is there a detailed listing of the parties involved in ownership of NFS Services, LLC, NFS Holdings, NFS, Inc., or Creative Energy Group, Inc. This would lead a prudent person to ask who owns NFS and why are their names not available to the public. The public has a right to know who they are dealing with and who is responsible for these companies. The NRC also should compel NFS to submit this information.

SNM-124

It is my understanding that each manufacturing facility in the United States has a special identification number designated for its use. It is their own personal number. It is a number that is

significant only to that manufacturing facility, but again NFS is showing to be special in the eyes of the NRC.

NFS's Special Nuclear Material License number assigned by the NRC is SNM-124, Docket No. 70-143. However, In researching NRC's ADAMS website, it came to my attention that several documents pertaining to General Atomics also used the same reference number: License SNM-124. The Docket Number, 70-734, was different, however. Ironically, the chairman for General Atomics was named J. Neal Blue.

This would lead a prudent person to question whether there is a connection between General Atomics and NFS, and whether NFS's "BLEU Project" might be connected to General Atomics Chairman J. Neal Blue.

How is it that two separate nuclear companies were using the same Special Nuclear Material license number? What information does the NRC staff and NFS have that is not being acknowledged through this process that could impact the outcome?

Conclusion

NFS is denying the health and environmental impacts of cumulative airborne emissions from its facilities since 1957 and at the same time has not submitted any kind of criteria to address the issue.

NFS also has not adequately demonstrated financial assurance for the BLEU Project and decommissioning activities related to that project, nor has it demonstrated financial assurance for other activities conducted at the plant not related to the production of nuclear fuel for the U.S. Navy. The NRC does not accept a letter of intent. The Nuclear Regulatory Commission requires that financial stability is a condition of license. NFS has not demonstrated financial stability. If anything, the EA and SNM-124 raise more questions than answers. Why is it that the NRC is siding with NFS against the general public over these questions of safety issues and money when the NRC is required under congressional mandate to protect public health and safety?

NFS has notified the NRC of its intent to file three separate license amendment requests which are to be further supplemented with more environmental information by the NRC. Yet the NRC is asking the public to respond conclusively to this absence of information. This three-part submission of the license amendment request and environmental information appears to involve new processes which so far have only been demonstrated in a limited test. This further calls for a full EIS as required by NEPA.

NFS's obligations to West Valley, N.Y., raise questions about the company's past practices, whether history will repeat itself in Erwin, why NFS was reluctant to let the public know the same company operated both facilities, and whether NFS will pull out of Erwin and leave a legacy of waste as it did in New York if cleanup costs and regulatory fines become cost-prohibitive. This, coupled with the fact that NFS and General Atomics' were using the same Special Nuclear Material license number at the same time brings into question just who the players are at NFS, as well as the NRC's ability to regulate its licensees. It appears that the NRC surely would know whether two separate, supposedly unrelated facilities were conducting activities under the same SNM license number.

NFS appears to have attempted to prevent the public from learning more about the BLEU Project by taking down its website at a time when no other Category 1 facility did so, and also denied the public valuable information by tightening its grip on what information was disseminated.

All of these point to the need for an EIS to further investigate the BLEU Project, identification of the owners behind the corporation, NFS's obligations to the former West Valley Demonstration Project, and investigation of the cumulative effects from NFS's participation in the USM Ore Project which promises to bring nearly 10,000 metric tons of "orphaned" nuclear materials to Erwin along with the 33 metric tons of high-enriched uranium planned for the BLEU Project.

It is imperative the NRC order an Environmental Impact Statement to address these issues since the EA fails to address them. The NRC offering an environmental assessment after the decisions have been made is a prime example of the NRC denying that a problem exists with a process that has not been tested in this country on a commercial scale of such magnitude.

Notices of violation received by NFS regarding Special Nuclear Material date back to at least 1998. Recent NOV's issued by the NRC to NFS regarding Special Nuclear Material, criticality issues, and failure to follow procedure point to deficiencies in NFS's management methods and quality assurance. All of these need further investigation before NFS is allowed to begin a new process such as the BLEU Project.

Therefore, I respectfully request legal standing and leave to intervene at a public hearing. And any hearing be held in abeyance until such time as NFS submits all of the license amendment requests instead of the baby bites that are being handed out at this time. Looking at the LAR submitted by NFS would lead a prudent person to believe that NFS is simply trying to use up resources, time and effort to dissuade the public from their rightful participation in the public process through extended legal manipulations and denial of information.

CERTIFICATE OF SERVICE

I certify that on January 6, 2003, copies of KATHY HELMS-HUGHES RESPONSE TO NUCLEAR FUEL SERVICES, INC.'S MOTION TO DENY HELMS-HUGHES' REQUEST FOR STANDING AND LEAVE TO INTERVENE were served on the persons listed below by electronic transmission with hard copies to follow in first-class mail.

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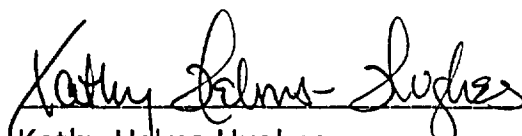
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