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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

August 26, 2002 (3:08PM)

Before the Presiding Officer

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)	
)	Docket No. 70-143- MLA
NUCLEAR FUEL SERVICES, INC.)	Special Nuclear Material
)	License No. SNM-124
(Blended Low Enriched Uranium Project))	

**APPLICANT'S ANSWER TO REQUEST FOR A HEARING AND AREAS OF
CONCERN OF THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE**

Applicant Nuclear Fuel Services, Inc. ("Applicant" or "NFS") files this answer to the request for a hearing of the Blue Ridge Environmental Defense League ("BREDL") dated August 8, 2002 ("BREDL Req.").¹ NFS submits this answer pursuant to 10 C.F.R. § 2.1205(g). NFS respectfully requests that the Presiding Officer deny BREDL's request for a hearing for lack of standing and for failure to submit an admissible area of concern.

I. FACTUAL AND LEGAL BACKGROUND

On February 28, 2002, NFS submitted a request for an amendment to Special Nuclear Material License SNM-124 to authorize the storage of low-enriched uranium ("LEU")-bearing materials at the Uranyl Nitrate Building ("UNB") at NFS's nuclear fuel fabrication and uranium recovery facilities in Erwin, Tennessee.² On July 9, 2002, the NRC published a notice in the Federal Register that it was considering the NFS license amendment and had prepared an Environmental Assessment ("EA") and had made a Finding Of No Significant Impact ("FONSI") for the amendment. 67 Fed. Reg. 45,555,

¹ The Request of the Blue Ridge Environmental Defense League for a Hearing on a License Amendment for Nuclear Fuel Services (Aug. 8, 2002).

² Letter from B. Marie Moore, Vice President, Safety and Regulation, NFS, to Director, Office of Nuclear Materials Safety and Safeguards, U.S. NRC (Feb. 28, 2002) ("NFS Letter").

45,558 (2002).³ The notice stated that interested persons could file a written request for hearing on the license amendment pursuant to 10 C.F.R. § 2.1205(a) by August 8, 2002.

Id.

The license amendment is the first of three amendments that will be necessary to support process operations associated with the Blended Low-Enriched Uranium ("BLEU") Project. Id. The BLEU Project is part of a Department of Energy ("DOE") program to reduce stockpiles of surplus high enriched uranium ("HEU") through re-use or disposal as radioactive waste.⁴ Re-use of the HEU as LEU is the favored option because it converts nuclear weapons grade material into a form unsuitable for weapons, it allows the material to be used for peaceful purposes, and it allows the recovery of the commercial value of the material. Framatome ANP, Inc. has contracted with NFS to downblend surplus HEU material to an LEU nitrate solution which will be transferred to the UNB. Id.

The UNB will be located on the NFS site in Erwin, Tennessee, and will store LEU solutions prepared by and shipped from the DOE Savannah River site. EA at 1-2. The UNB will also store solutions prepared at the NFS site, if license amendments for such operations are approved. Id. at 2-5. The solutions will be stored in tanks within a diked area of the UNB.

BREDL filed its hearing request on August 8, 2002. BREDL is apparently an environmental group, although it does not state that anywhere in its request. BREDL assertedly has "members living and working within 10 and 20 miles of NFS." BREDL

³ On March 4, 2002, the NRC published a notice in the Federal Register that it was considering the license amendment and intended to prepare an EA on it and two additional related license amendments proposed by NFS. 67 Fed. Reg. 9,791 (2002).

⁴ Environmental Assessment for Proposed License Amendments to Special Nuclear Material License No. SNM-124 Regarding Downblending and Oxide Conversion of Surplus High-Enriched Uranium (June 2002) ("EA") at 1-3.

Req. at 1. The Request, however, includes no statements from any members supporting BREDL's claims or indicating a desire to participate in a hearing.

NFS requests that the Request be denied because BREDL lacks standing, in that BREDL does not show that either it or its members would suffer any injury-in-fact from the granting of the license amendments. NFS also requests that the Request be denied because BREDL has failed to articulate any areas of concern that warrant a hearing on the amendments.

II. ANALYSIS

Under the notice of opportunity for hearing, requests for a hearing on the NFS license amendment are to be evaluated under 10 C.F.R. Part 2, Subpart L. 67 Fed. Reg. at 45,558. Under Subpart L, a petitioner requesting a hearing must demonstrate the timeliness of its request, that it has standing, and that it has areas of concern "germane" to the subject matter of the proceeding. Atlas Corp. (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 422 (1997); 10 C.F.R. §§ 2.1205(e), (h). The Commission does not permit "notice pleadings" with respect to standing and areas of concern. Shieldalloy Metallurgical Corp. (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 353-54 (1999). Rather, it "insist[s] on detailed descriptions of the Petitioner's positions on issues going to both standing and the merits." Id. at 354.

A. BREDL Does Not Have Standing

In determining whether to grant a petitioner's request to hold a hearing, the Presiding Officer must first determine whether the petitioner meets the judicial standards for standing and must consider, among other factors:

1. the nature of the requestor's right under the [Atomic Energy] Act to be made a party to the proceeding;
2. the nature and extent of the requestor's property, financial, or other interest in the proceeding; and

3. the possible effect of any order that may be entered in the proceeding on the requestor's interest.

10 C.F.R. § 2.1205(h). This is the test for standing familiar in NRC proceedings. See, e.g., Sequoyah Fuels Corp. (Gore, Oklahoma Site Decommissioning), CLI-01-02, 53 NRC 9, 13 (2001).

In order to establish standing, an organization must show potential injury to the interests of the organization or its members. See Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994). Injury to an organization's interests must constitute "discrete institutional injury to itself." See International Uranium (USA) Corp. (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001). Injury to general environmental and policy interests is clearly not sufficient. Id.; see also International Uranium (USA) Corp. (White Mesa Uranium Mill), LBP-02-03, 55 NRC 35, 46 (2002). If an organization seeks standing through asserted harm to its members' interests (i.e., representational standing), "the organization must show how at least one of its members may be affected by the licensing action, must identify the member, and must show that the organization is authorized to represent that member." White Mesa, CLI-01-21, 54 NRC at 250.

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

Sequoyah Fuels, CLI-01-02, 53 NRC at 13. The burden of establishing the alleged injuries is on the petitioner. Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility – Decommissioning Plan), LBP-93-4, 37 NRC 77, 81 (1993). Furthermore, "section 2.1205(e) of [the Commission's] procedural regulations requires petitioners seeking a hearing to provide a detailed description as to why they have standing." Shieldalloy, CLI-99-12, 49 NRC at 354. "Since a license amendment involves a facility

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

To provide standing, asserted harms must be more than "unfounded conjecture;" petitioners must show "a realistic threat . . . of direct injury." Id. at 253. Even in a reactor license amendment case, a petitioner cannot establish standing by simply enumerating the proposed license changes and alleging without substantiation that the changes will lead to offsite radiological consequences. Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 & 2), CLI-99-4, 49 NRC 185, 192 (1999). Vague or cryptic statements regarding petitioners' location, their activities, or their potential injuries are clearly insufficient. See Atlas, LBP-97-9, 45 NRC at 426. Petitioners alleging harm from facility effluents or contamination must explain how the effluents or contamination would have concrete impact upon them. Babcock and Wilcox, LBP-93-4, 37 NRC at 84; see Atlas, LBP-97-9, 45 NRC at 426 (alleged radiological contacts must be concretely delineated); see also White Mesa, CLI-01-21, 54 NRC at 252-53. Furthermore, mere potential exposure to small doses of radiation within regulatory limits is not sufficient, as it does not constitute "distinct and palpable" injury. See Babcock and Wilcox, LBP-93-4, 37 NRC at 87-88.

Unlike nuclear power reactor licensing proceedings,⁵ in materials licensing proceedings there is no presumption that a petitioner has standing merely because he or she lives in or frequents a location some distance from a facility. Informal Hearing Procedures for Materials Licensing Adjudications, Proposed Rule, 52 Fed. Reg. 20,089,

⁵ NRC case law has applied a "50-mile rule" in reactor licensing proceedings providing standing to petitioners living within 50 miles of the plant. 52 Fed. Reg. at 20,090.

20,090 (1989). To show injury-in-fact petitioners “must provide some evidence of a causal link between the distance they reside from the facility and injury to their legitimate interests.” Babcock and Wilcox, LBP-93-4, 37 NRC at 83-84, 87 (rejecting *per se* standing for petitioners living as close as one-eighth of a mile from and visiting an apartment “within one foot” of the facility).

The fact that BREDL asserts that its interests include having the NRC submit an EIS for the NFS license amendments, BREDL Req. at 1, does not obviate the need for BREDL to otherwise establish standing. Although having an EIS prepared is a procedural right, the “petitioner must suffer some concrete injury from the proposed agency action, which must still be shown apart from having any interest in having the procedures observed.” Babcock and Wilcox, LBP-97-9, 37 NRC at 93. Petitioners unable to show concrete injury to legitimate health, safety, or environmental interests “are unable to establish their standing to pursue their concerns about the agency’s compliance with NEPA’s procedural requirements.” Id. at 94.

Here, BREDL fails to demonstrate standing because it fails to show a realistic threat of direct, concrete, and palpable injury that is fairly traceable to the proposed license amendment. BREDL impermissibly points to asserted harms connected to past or ongoing operations at the NFS facility and it makes only impermissibly vague and speculative claims, lacking in all detail, about potential harm arising from the amendment.

1. BREDL Has Shown No Injury-In-Fact to Itself

BREDL appears to assert institutional injury to what it describes as “BREDL’s property, financial, or other interest in the proceeding” arising from its offices in Glendale Springs, North Carolina. BREDL Req. at 2. It claims that it “seeks to reduce the extent of radionuclide contamination of air, water, and soil in the region affected by NFS.” Id.

It does not state in any further respect, however, how the NFS license amendment would cause injury to its property interests in Glendale Springs.

BREDL's assertion is clearly insufficient to establish standing on the basis of injury to its property. First, although BREDL does not mention it, Glendale Springs, North Carolina, is approximately 44 miles from the NFS plant and approximately 37 miles from the closest point of the Nolichucky River (which flows into Tennessee, not into North Carolina). Further, the NFS site and Glendale Springs are separated by mountains. Thus, it is impossible to see how the NFS license amendment would cause harm to BREDL's property. Even if it had stated the location of its offices, however, distance alone is not sufficient to establish the likelihood of concrete and palpable harm. Rather, a petitioner "must show, in accordance with section 2.1205(g), what particular impact the planned licensing action will have upon [its] legitimate (e.g., health, safety, or environmental) interests." Babcock and Wilcox, LBP-93-4, 37 NRC at 83-84; see also Shieldalloy, CLI-99-12, 49 NRC at 355 (standing claims must be supported by "requisite detail"). Hence, the petitioner must "provide some evidence of a causal link" between the distance between its property and the facility and injury to its interests. Babcock and Wilcox, LBP-93-4, 37 NRC at 84. Since BREDL has not made these showings, it cannot derive standing from alleged injury to its property.

2. BREDL Has Shown No Injury-In-Fact to Its Members

BREDL also claims that it has representational standing, in that it has members whose health would allegedly be harmed by radionuclide emissions occurring under the NFS license amendments. BREDL Req. at 1. BREDL, however, fails to meet the elementary requirements of representational standing to "identify the member, and . . . show that the organization is authorized to represent that member." White Mesa, CLI-01-21, 54 NRC at 250. BREDL has not named any members nor has it shown anywhere that the members have authorized BREDL to represent them in a hearing. See generally

BREDL Req. Furthermore, merely stating the towns where its members live, see id. at 1, is clearly insufficient under NRC rules of practice. See Houston Lighting and Power Co. (South Texas Project, Units 1 & 2), ALAB-549, 9 NRC 644, 646-47 (1979). Therefore, BREDL lacks representational standing as well and its request for a hearing should be denied.

BREDL states that it has “members living and working within 10 and 20 miles of NFS in Elizabethton, TN and Mars Hill NC, who’s [sic] health and well-being would be directly affected by the increase in radionuclide emissions caused by the proposed license amendment.” BREDL Req. at 1. The Request alleges further that “[r]adioactive contamination caused by NFS would be increased by the operations under the proposed license amendment.” Id. As noted above, BREDL claims that it seeks to reduce the extent of radionuclide contamination “in the region affected by NFS.” Id. at 2. It states that NFS “has several contaminated buildings on site” and it asserts that “[t]he groundwater beneath the NFS property is contaminated with numerous toxic chemicals” to which people along the Nolichucky River and the Tennessee River are allegedly exposed. Id.

These claims are insufficient to establish BREDL’s standing. At the outset, Elizabethton is approximately 17 miles from the NFS site and the Nolichucky River and Mars Hill is approximately 24 miles from the NFS site and 17 miles from the Nolichucky River at a point upstream of NFS. As to the Tennessee River, it does not have any direct connection with the Nolichucky River and in any event, is well over 50 miles from the NFS site. Further, as discussed above, BREDL fails to name its members, state their addresses, and describe their activities in the vicinity of the facility. Even had BREDL done that, however, its claims fall far short of what is required to establish standing because it does not show that its members would suffer any injury from the proposed NFS license amendments.

While BREDL states that its members live 10 and 20 miles from the NFS plant, distance alone is not sufficient to establish the likelihood of concrete and palpable harm. Rather, a petitioner must show what “particular impact” the planned action will have upon its interests. Babcock and Wilcox, LBP-93-4, 37 NRC at 83. Hence, the petitioner must “provide some evidence of a causal link” between the distance between the NFS plant and where its members live. Id. at 84. In addition, merely claiming that “emissions” or “contamination” from the plant would cause its members harm, without describing in any respect their nature and extent and the nature and extent of the harm they will allegedly cause also renders BREDL’s claim inadequate to establish standing. “[A] petitioner who wants to establish ‘injury in fact’ for standing purposes must make some specific showing outlining how the particular radiological (or other cognizable) impacts from the nuclear facility or materials involved in the licensing action at issue can reasonably be assumed to accrue to the petitioner.” Atlas, LBP-97-9, 45 NRC at 426. In short, because BREDL’s Request is sorely lacking in requisite detail, Shieldalloy, CLI-99-12, 49 NRC at 354, it is insufficient to establish standing for BREDL’s members.

BREDL’s claims are also inadequate because some of them are tied to past or ongoing operations at the NFS facility as opposed to the license amendments. White Mesa, CLI-01-21, 54 NRC at 251. BREDL makes claims about contaminated buildings at the NFS site and groundwater contamination that allegedly affects the Nolichucky and Tennessee Rivers, BREDL Req. at 2, but those claims allegedly relate to past operations at the NFS plant. Thus, they do not establish BREDL’s standing here.

BREDL mentions in passing the alleged potential for harm to “the general public,” BREDL Req. at 1, and “the people of east Tennessee,” id. at 2. Neither of those assertions can establish BREDL’s standing. One cannot establish standing on the basis of potential harm to others. Atlas, 45 NRC at 426 n.2 (citing Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 474 n.1 (1978)); Florida

Power and Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989).

3. Conclusion

BREDL has not shown that either it or its members will suffer any injury-in-fact from the NFS license amendment. Therefore, BREDL does not have standing and its petition should be denied.

B. BREDL Has Not Proffered an Admissible Area of Concern

To obtain a hearing under Subpart L, a petitioner must “describe in detail” “areas of concern” about the licensing activity in question. 10 C.F.R. § 2.1205(e)(3); see Shieldalloy, CLI-99-12, 49 NRC at 354. Areas of concern must be “germane to the subject matter of the proceeding.” 10 C.F.R. § 2.1205(h). If the proceeding concerns a license amendment, germane areas of concern are limited to activities to be authorized by the amendment and do not include those authorized by the underlying license. See Energy Fuels Nuclear, Inc. (Source Materials License No. SUA-1358), LBP-94-33, 40 NRC 151, 153 (1994).

Areas of concern must have some factual basis. “Prior to acceptance of an area of concern, there must at least be a reference to some authority giving rise to the concern.” Molycorp., Inc. (Washington, Pennsylvania), LBP-00-10, 51 NRC 163, 175 (2000). “‘Information and belief’ is patently inadequate.” Id. Concerns must be particularized in some respect and show some significance so as to “appear that the concern is at least worthy of further exploration.” See International Uranium (USA) Corp. (White Mesa Uranium Mill), LBP-02-06, 55 NRC 147, 153 (2002). BREDL has submitted no admissible concerns here.

BREDL asserts that its members’ health and well-being would be affected by increased “radionuclide emissions” and “[r]adioactive contamination” arising from the

proposed license amendment. This concern is inadmissible because it has no factual support, Molycorp, LBP-00-10, 51 NRC at 175, and provides no indication whatsoever that the alleged emissions and contamination would be significant in any respect. The concern is little more than a bare assertion -- BREDL has clearly not shown that it is "worthy of further exploration." See White Mesa, LBP-02-06, 55 NRC at 153.

BREDL also states that it is interested in the submittal of a complete EIS "to determine the full extent of the proposed action on the environment and public health." BREDL Req. at 1. This concern is also inadmissible in that it is not even an assertion that the license amendment, or the NRC Staff's EA, are in any way inaccurate or incomplete. Nowhere does BREDL show or even claim that an EIS is required for the NFS license amendments.

BREDL makes statements about contaminated buildings at the NFS site and contamination of the groundwater beneath the NFS site. BREDL Req. at 2. But those issues are not germane to this proceeding because they relate only to past operations, not the proposed license amendments. See Energy Fuels Nuclear, LBP-94-33, 40 NRC at 153-54.

BREDL has submitted no admissible areas of concern. Therefore, its petition should be denied.

III. CONCLUSION

For the foregoing reasons, the Presiding Officer should deny BREDL's request for a hearing on the license amendment.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Daryl Shapiro by DR", is written over a horizontal line.

Daryl Shapiro

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Dated: August 23, 2002

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NUCLEAR REGULATORY COMMISSION**

Before the Presiding Officer

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Applicant's Answer To Requests For Hearing and Areas of Concern of the Blue Ridge Environmental Defense League" were served on the persons listed below by deposit in the U.S. mail, first class, postage prepaid, this 23rd day of August, 2002.

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