

RAS 6350

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 04/29/03

COMMISSIONERS:

SERVED 04/29/03

Nils J. Diaz, Chairman
Greta Joy Dicus
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

In the Matter of)
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NUCLEAR FUEL SERVICES, INC.)

Docket No. 70-143-MLA

(Erwin, Tennessee))
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_____)

CLI-03-03

MEMORANDUM AND ORDER

Before the Commission is an “Emergency Request to Enjoin Construction,” filed by the Friends of the Nolichucky River Valley, the State of Franklin Group of the Sierra Club, the Oak Ridge Environmental Peace Alliance, and the Tennessee Environmental Council, all petitioners in this license amendment proceeding.¹ The petitioners seek to halt construction by Nuclear Fuel Services, Inc. (“NFS”) of any buildings intended for use as part the Blended Low-Enriched Uranium (“BLEU”) project at NFS’s Erwin, Tennessee site. While the petitioners’ request falls beyond the scope of this adjudicatory proceeding, a point we clarify further below, the Commission nonetheless has reviewed the petitioners’ claims. For the reasons we provide below, we deny the request to enjoin construction.

¹ Petitioners’ Emergency Request to Enjoin Construction By NFS of BLEU Project Facilities (Jan. 21, 2003).

1. Background

The license amendment at issue in this proceeding is the first of three license amendments NFS seeks to implement to participate in the BLEU Project, part of a Department of Energy program to reduce the stockpiles of surplus high enriched uranium (HEU) through re-use as low enriched uranium (LEU) or disposal as radioactive waste.² In furtherance of the BLEU project, Framatome ANP Inc. has contracted with NFS to downblend surplus high enriched uranium material to a low enriched uranium nitrate and to convert the low enriched uranium nitrate to an oxide form.³ NFS seeks to obtain three related license amendments, which together would authorize it to produce LEU oxide, receive and store LEU nitrate, downblend HEU to LEU, and convert LEU nitrate to LEU oxide.⁴

The first license amendment application, filed on February 28, 2002, requests authority to “store LEU-bearing material at the Uranyl Nitrate Building.”⁵ Low-enriched uranyl nitrate solutions would be shipped from the Department of Energy’s Savannah River site to NFS’s Erwin site for storage in the Uranyl Nitrate Building.⁶ The building will contain approximately 24 low enriched uranyl nitrate tanks, each having a capacity of 10,500 gallons.⁷ The Uranyl Nitrate Building is also intended to store low-enriched nitrate solutions that will be produced onsite at

² 67 Fed. Reg. 66,172, 66,173 (Oct. 30, 2002); 68 Fed. Reg. 796 (Jan. 7, 2003).

³ 67 Fed. Reg. at 66,174.

⁴ *Id.*

⁵ Letter from B. Marie Moore, Vice President, Safety and Regulation, NFS, to Director, Office of Nuclear Materials Safety and Safeguards, NRC (Feb. 28, 2002); *see also* 67 Fed. Reg. 66,172 (Oct. 30, 2002); 68 Fed. Reg. 796 (Jan. 7, 2003).

⁶ 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)(“Environmental Assessment”) at 1-2.

⁷ *Id.*

an NFS downblending facility.⁸ As part of this license amendment, NFS requests authority to increase its possession limit of U-235.⁹

A second license amendment application, submitted to the NRC by letter dated October 11, 2002, requests the license changes necessary to downblend highly enriched uranium/aluminum alloy and HEU material metal to low enriched uranyl nitrate solutions.¹⁰ NFS intends to relocate processing equipment previously used elsewhere at its Erwin site to an existing but inactive production area that will be modified and designated the Blended Low-Enriched Uranium Preparation Facility (BPF).¹¹ A third license amendment application, which NFS expects to submit in May or June 2003, would request the authority to convert uranyl nitrate solutions to UO₂ powder and conduct associated effluent processing. The UO₂ powder would be shipped to Framatome ANP, Inc., for conversion to commercial reactor fuel to be used in the Tennessee Valley Authority (TVA) nuclear power reactors. Activities associated with the third license amendment would include the construction and operation of an Oxide Conversion Building (OCB) and an Effluent Processing Building (EPB).¹² In total, the three related license amendments involve the construction of three new buildings -- the Uranyl Nitrate Building, the Oxide Conversion Building, and the Effluent Processing Building -- on a site referred to as the "BLEU Complex."¹³

⁸ *Id.*

⁹ 67 Fed. Reg. At 66,173.

¹⁰ 68 Fed. Reg. 796 (Jan. 7, 2003); Environmental Assessment at 2-1.

¹¹ *Id.*

¹² See Environmental Assessment at 1-1, 1-3, 2-5, 2-7; 67 Fed. Reg. At 66,174.

¹³ Environmental Assessment at 2-1.

In this adjudicatory proceeding, the petitioners seek a hearing to challenge the first of the three related license amendments. The Nuclear Regulatory Commission staff has issued a Finding of No Significant Impact (FONSI) for the first proposed amendment,¹⁴ but has not issued the amendment itself. Whether the petitioners satisfy all requirements for intervention and can be admitted as parties to a hearing has yet to be determined by the Presiding Officer.

At the petitioners' request, the Presiding Officer has placed this proceeding in abeyance until the filing of the third license amendment application.¹⁵ Given that many of the issues the petitioners seek to raise are "global" -- pertaining to all three license amendments -- and that "neither the Licensee nor the Staff provided any good practical reason to conduct a piecemeal adjudication of the challenges to the overall BLEU project,"¹⁶ the Presiding Officer found that holding the proceeding in abeyance made "good sense from a case management standpoint."¹⁷

Although NFS opposed the abeyance order, it acknowledged that "attempting to litigate only those environmental issues related to the first amendment would require that the parties and the Presiding Officer make an effort to isolate them from issues related to the other two amendments," a "problem[atic] ... approach [in] that it may be difficult to assign each environmental issue to one of the three amendments."¹⁸

In their "injunction" motion before us, the petitioners seek to enjoin NFS from: continuing construction of the Uranyl Nitrate Storage Building (UNB) (associated with the first license amendment); making modifications to the Blended Low-Enrichment Processing Building

¹⁴ 67 Fed. Reg. 45,555 (July 9, 2002).

¹⁵ Order (Directing the Holding of the Proceeding in Abeyance)(Jan. 21, 2003).

¹⁶ LBP-03-01, _ NRC ____ (2003), slip op. at 7.

¹⁷ Order Holding Proceeding in Abeyance at 3.

¹⁸ Applicant's Motion for Clarification of Scope of Hearing (Nov. 12, 2002) at 4.

(associated with the second amendment); and commencing construction of the Oxide Conversion Building (OCB) or Effluent Processing Building (EPF) (associated with the third license amendment).¹⁹ The petitioners state that they “observed” construction activities at the NFS site in December 2002 and January 2003,²⁰ and that NRC staff counsel has informed them that “construction of the UNB [uranyl nitrate building] [is] well underway, and that NFS plan[s] to commence construction of the OCB [oxide conversion building] within a week or two.”²¹

The petitioners request the Commission to enjoin all construction activities associated with the BLEU project license amendments “because NFS’s construction is proceeding *before* the NRC staff has complied with NEPA by completing its environmental review and determining whether an Environmental Impact Statement (EIS) is required for the proposed BLEU project.”²²

To allow construction to go forward, the petitioners claim, “will influence the NRC’s decisionmaking process regarding the proposed BLEU Project, by committing resources to a pre-ordained course of action before the agency has decided whether to prepare an EIS that evaluates the impacts of that course of action or reasonable alternatives.”²³ The petitioners “contend that the NRC should prepare an EIS for the [entire] BLEU project because it will have significant adverse impacts on the environment.”²⁴ They further claim that the NRC staff has “not complete[d] an environmental review for any of the three license amendments, because

¹⁹ Emergency Request at 1-2.

²⁰ *Id.* at 5.

²¹ *Id.*

²² *Id.* at 2 (emphasis in original).

²³ *Id.* at 7.

²⁴ *Id.* at 2.

such review could only follow completion of a safety review,” which the staff has not concluded.²⁵

In response, NFS claims that the staff’s Environmental Assessment already examined the impacts of the “*entire* BLEU project.”²⁶ NFS states that “unless NFS changes the project, the EA will be the NRC’s final environmental review for the BLEU project.”²⁷ Thus, argues NFS, any NFS construction “activities cannot possibly foreclose an [environmental] analysis that is already complete.”²⁸ NFS also insists that it “has neither violated nor is about to violate any Commission regulation” because [t]here is no prohibition on pre-licensing construction in the Commission’s regulations applicable to NFS.”²⁹

While the NRC staff is not currently a party to this proceeding, it has submitted to the Commission an “Amicus Clarification of Record,” seeking to “correct an error contained in Applicant’s Opposition.”³⁰ The error, the staff claims, was NFS’s assertion that the Staff “does not intend to submit additional Environmental Assessments absent new information.”³¹ Instead, the staff claims, it “has repeatedly made clear to the applicant” that “[t]he staff has always intended to prepare a separate EA and Finding of No Significant Impact (FONSI) or

²⁵ *Id.* at 4.

²⁶ Applicant’s Opposition to Petitioners’ Emergency Request to Enjoin Construction By NFS of BLEU Project Facilities (Feb. 5, 2003)(Applicant’s Opposition) at 5 (emphasis in original).

²⁷ *Id.*

²⁸ *Id.* at 8.

²⁹ *Id.* at 4-5 (citing 10 C.F.R. § 51.101).

³⁰ NRC Staff’s Amicus Clarification of Record (Feb. 10, 2003) at 1.

³¹ *Id.*

Environmental Impact Statement, if such review is deemed necessary for the second amendment, noticed on January 7, 2003, and the proposed third amendment.”³²

Earlier, at a telephone conference with the Presiding Officer on January 17, 2003, the staff repeatedly emphasized that while “the EA involves some issues on the second and third amendments for environmental NEPA purposes,” to consider “cumulative impact[s]” and “avoid segmentation problems,” the EA “was not meant to address a final approval of the BLEU project.”³³ Instead, “the staff will be doing a separate, independent environmental assessment, or an EIS, if a FONSI is not issued, for ... the second and the third [amendments]”:³⁴

[A]nd that leads into the clarification of something that [NFS counsel] stated, which was that it was their belief that the EA covered and was final for all three amendments that would only be revisited if the staff determined that there had been some changes when the second and third amendments came in.

And we want to clarify again on the record, and we have stated this numerous times, that when the EA looked at information on all three amendments, the EA only covered the first amendment. And that when the second amendment, which has now come in, has been reviewed, an EA or an EIS *will be prepared* on the second amendment; and if they choose to come in with a third amendment, we will do the same for that....

A new environmental review, a complete environmental review for the second amendment, will be undertaken and will be expressed in either

³² *Id.* at 1-2.

³³ Transcript, Telephone Conference Call (January 17, 2003) at 38-41.

³⁴ *Id.* at 31.

an EA or an EIS. And we just want to make sure that is clear to the licensee.³⁵

The staff “apologize[d]” if the Environmental Assessment “is misleading and maybe confused” NFS.³⁶

NFS, however, apparently continues to take issue with the staff’s characterization of the scope and completeness of the issued EA, and likewise of the extent of the environmental reviews which will be conducted for the second and third amendments.³⁷ This is a matter we do not resolve today. Our decision to deny the petitioners’ “injunction” request does not rest on NFS’s assertion that the EA represents a full and complete review of the impacts of all three license amendments.

2. The Nature of the Petitioners’ Request

The petitioners’ emergency request for an injunction, while cast as an adjudicatory matter, in actuality falls outside our adjudicatory rules (10 C.F.R. Part 2). The nearest pertinent rule, 10 C.F.R. § 2.1263, provides for stay requests in Subpart L cases. (This is a Subpart L case.) But section 2.1263 authorizes stays of only “any decision or action of the Commission, a presiding officer, or any action by the NRC staff in issuing a license.”³⁸ It does not provide for enforcement-type “injunctions” against licensees. In this proceeding, there has been no final

³⁵ *Id.* at 38-40 (emphasis added).

³⁶ *Id.* at 43.

³⁷ NFS requested that the Commission allow it the opportunity to respond to the staff’s Amicus Clarification, a request we now grant. See Applicant’s Motion for Leave to File Response to NRC Staff Amicus Clarification of Record (Feb. 13, 2003). NFS filed its response at the same time as its request.

³⁸ 10 C.F.R. § 2.1263. Section 2.1263 incorporates the traditional 4-part inquiry for stays set out in 10 C.F.R. § 2.788 -- likelihood of success, irreparable injury, harm to others, and the public interest.

decision by the Presiding Officer. Nor has the NRC staff issued any license amendment related to the BLEU project. The petitioners' request therefore does not challenge any decision within the scope of this adjudicatory proceeding.

Instead, the emergency request for an injunction more appropriately should be viewed as akin to a petition for enforcement under 10 C.F.R. § 2.206. At bottom, the petitioners' allegation is that under NRC rules NFS cannot be allowed to proceed with construction activities before the staff has completed its environmental review of the BLEU project:

NRC regulations at 10 C.F.R. § 70.23(a)(7) also contemplate that construction of a special nuclear materials facility should not begin until the NRC has completed its environmental review. Here, the NRC staff has yet to make a conclusive determination regarding the question of whether the proposed BLEU Project will have a significant impact on the environment. Therefore, construction should not be allowed to continue or commence.³⁹

The petitioners thus seek Commission enforcement action against the licensee -- that we "order NFS to suspend" its construction activities.⁴⁰ While we ordinarily might refer this controversy to the staff to evaluate whether the licensee's current or planned activities violate any NRC regulations, in exercise of our supervisory authority (and in view of the petitioners' claim of a true emergency) the Commission itself has chosen to review and decide the petitioners' emergency request.⁴¹

3. Analysis

³⁹ Emergency Request at 9.

⁴⁰ *Id.* At 6.

⁴¹ See *Texas Util. Elec. Co.* (Comanche Peak Station Elec. Station), CLI-93-2, 37 NRC 55, 58 (1993).

Given the record before us, we do not find it necessary to order NFS to cease all construction activities associated with the BLEU project. To begin with, it is questionable whether the Commission has authority to halt NFS's pre-licensing construction activities in the circumstances of this case. The record before us does not reveal any statute or regulation that requires NFS to obtain a construction permit or similar authorization prior to beginning construction. The Atomic Energy Act provisions authorizing NRC construction permits in some settings do not apply here.⁴² The petitioners themselves state that "NFS's building construction does not require federal action in the form of issuance of an NRC safety permit."⁴³ And the NRC staff presumably agrees, for it currently is standing by even as NFS goes forward on construction with its amendment application still pending.

We, too, do not understand applicable NRC regulations or statutes to prohibit outright NFS's construction activities. But the petitioners undoubtedly are correct that our rules "*contemplate* that construction ... should not begin until the NRC has completed its environmental review."⁴⁴ To that effect, both 10 C.F.R. § 51.101(a) and 10 C.F.R. § 70.23(a)(7) discourage construction activities until the staff has completed an environmental review.⁴⁵ For example, section 51.101(a) provides that certain actions taken prior to

⁴² See, e.g. Atomic Energy Act, 42 U.S.C. § 2235 (2001)(construction permits for production and utilization facilities).

⁴³ Emergency Request at 6.

⁴⁴ Emergency Request at 9 (emphasis added).

⁴⁵ Section 51.101(a)(2) reads as follows:

Until a record of decision is issued in connection with a proposed licensing or regulatory action for which an environmental impact statement is required under § 51.20, or until a final finding of no significant impact is issued in connection with a proposed licensing or regulatory action for which an environmental assessment is required under § 51.20:

Any action concerning the proposal taken by an applicant which would (i) have

completion of the NRC's environmental review "may be grounds for denial of the license."

Thus, while not absolutely barring pre-licensing construction, NRC rules provide a disincentive to early construction by raising the possibility of ultimate denial of the license application should an applicant move forward precipitously, despite open environmental issues.

In short, NFS proceeds at its own risk with construction activities. If NFS begins or continues to construct buildings associated with license amendments for which the staff's environmental review is incomplete, NFS's construction may prove grounds for denial of one or more of the license amendments. As to the first license amendment -- involving the Uranyl Storage Building -- the NRC staff *has* completed an environmental review and issued a final Finding of No Significant Impacts (FONSI).⁴⁶ The petitioners will have full opportunity to

an adverse environmental impact, or (ii) limit the choice of reasonable alternatives may be grounds for denial of the license. In the case of an application covered by ... 70.21(f) ... the provisions of this paragraph will be applied in accordance with ... 70.23(a)(7).

Key portions of § 70.23(a)(7) read as follows:

An application for a license will be approved if the Commission determines that:

... the Director of Nuclear Material Safety and Safeguards or his designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made pursuant to subpart A of part 51 of this chapter, has concluded, after weighing the environmental, economic, technical, and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to this conclusion is grounds for denial to possess and use special nuclear material in the plant or facility. As used in this paragraph, the term 'commencement of construction' means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site.

⁴⁶ The petitioners incorrectly assume that the staff cannot have completed an environmental review for *any* of the license amendments, not even of the first amendment, because "such review could only follow completion of a safety review." Emergency Request at 4, 8-9. But as the Commission stated last year, the NRC's NEPA review need not be delayed "until completion of the agency's operational safety review." *Duke, Cogema, Stone, & Webster*

challenge the adequacy of the Environmental Assessment upon which the FONSI is based, assuming they are found to satisfy the threshold intervention standards for an adjudicatory hearing.

As to any construction activities associated with the second or third BLEU Project license amendments, however, the Commission expects NFS to consult the NRC staff on the status of the environmental reviews. Recent statements by the staff, described earlier in this decision, suggest that while there has been some environmental review of the impacts of the second and third license amendments, the staff expects to conduct additional, more extensive reviews, and to issue a “separate, independent environmental assessment” or EIS on those amendments.⁴⁷ As of now, the staff has issued no FONSI for the second or third amendments. It is therefore incumbent upon NFS to confirm the status of the environmental reviews for the second and third amendments prior to proceeding with construction.

Having pointed to no NRC rule as a basis for a Commission injunction against NFS, the petitioners rely on NEPA, suggesting that the “Commission can treat NFS’s construction activities as a ‘federal action’ and order NFS to suspend them.”⁴⁸ In support of this claim, the petitioners cite *Maryland Conservation Council v. Gilchrist*,⁴⁹ which found that “[a] non-federal project is considered a ‘federal action’ if it cannot ‘begin or continue without prior approval of a

(Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-02-7, 55 NRC 205, 220 (2002). While the safety and environmental reviews may address many similar issues, “the two inquiries are not coextensive” and, in any event, there is no requirement that both reviews must be completed and published at the same time. *Id.* Here, the NRC staff has declared that the FONSI issued for the first proposed license amendment is the “final agency determination on the first amendment.” See Transcript at 31.

⁴⁷ *Supra* at 7-8.

⁴⁸ Emergency Request at 6.

⁴⁹ 808 F.2d 1039 (4th Cir. 1987)

federal agency.”⁵⁰ Because the purpose of constructing the Uranyl Nitrate Building, the Oxide Conversion Building, and the Effluent Processing Building is “to operate them under a permit granted by the NRC,” the petitioners argue, the construction activities themselves should be deemed a “federal action” and enjoined.⁵¹ They further claim that “[c]onstruction of the BLEU Project facilities will influence NRC’s decisionmaking process regarding the BLEU Project, by committing resources to a pre-ordained course of action before the agency has decided whether to prepare an EIS that evaluates the impacts of that course of action or reasonable alternatives.”⁵²

But as we explained above, while NFS will require license amendments before it can begin the process operations associated with the BLEU Project (and before it can exceed its current U-235 possession limit), NFS does not appear to require any NRC permit to begin construction activities, thus rendering uncertain our current authority to halt those actions. In contrast to the holding in *Gilchrist*, NFS seemingly can “begin or continue [construction] without prior approval” of the NRC.

Nor does NFS’s construction activities “pre-ordain” or restrict the NRC’s decision-making. The staff retains full discretion to deny any or all of the three license amendments, or to impose licensing conditions, as needed. And assuming the petitioners have standing to intervene and are admitted as parties to an adjudicatory hearing, they will have the opportunity to challenge the environmental review of all aspects of NFS’s BLEU project. If the Presiding Officer finds the environmental review of any of the three license amendments inadequate, we would expect that he will deny or condition the license[s] as appropriate. NFS therefore

⁵⁰ *Id.*, 808 F.2d at 1042.

⁵¹ Emergency Request at 6.

⁵² *Id.* at 7.

commits construction resources at its own financial risk, and as we noted above may in fact jeopardize issuance of the license amendments by embarking on construction prior to completion of the staff's environmental review. In *Gilchrist*, where stretches of highway were being constructed immediately adjacent to both sides of a federally funded park, there was strong potential to influence the ultimate decision of which route to take through the park. No comparable potential exists here. Yet not even in *Gilchrist* did the court grant the "extraordinary" relief of the requested injunction.⁵³

The circumstances of our case bear similarity to those in *Natural Resources Defense Council, Inc. v. EPA*,⁵⁴ where EPA had sought by rule to bar the construction of new sources of pollution discharge pending issuance of a National Pollution Discharge Elimination System (NPDES) permit, which incorporated a NEPA review. EPA's construction ban was "designed to preserve the status quo for as long as necessary to complete [the] NEPA review."⁵⁵ In striking down the construction ban, the court reasoned that the Clean Water Act did not "prohibit construction of a new source without a permit."⁵⁶ While the Act prohibited new sources from discharging pollutants without a permit, and from discharging pollutants in violation of existing applicable standards, it did not actually "prevent such sources from being built."⁵⁷ The construction ban thus lay outside the agency's jurisdiction. Analogous circumstances are

⁵³ *Gilchrist*, 808 F.2d at 1043 (remanding to district court to determine whether highway program in fact violates NEPA by limiting the choice of alternatives available to decisionmakers); *Quince Orchard Valley Citizens Ass'n v. Hodel*, 872 F.2d 75, 78 (4th Cir. 1989)(noting that on remand district court "declined to preliminarily enjoin construction").

⁵⁴ 822 F.2d 104 (D.C. Cir. 1987).

⁵⁵ *Id.* at 127.

⁵⁶ *Id.* at 128.

⁵⁷ *Id.*

present here, where the AEA and NRC rules require a license to conduct the BLEU project, but neither statute nor rule prevents NFS from beginning construction of BLEU Project buildings.

The court in *NRDC v. EPA* rejected EPA's argument that it had authority under NEPA to impose a construction ban. Because NEPA is at its core "a procedural device," it did not "work a broadening of the agency's substantive powers."⁵⁸ In arguments virtually identical to the petitioners' in our case, EPA had emphasized that construction of the discharge source proceeded in reliance on the future issuance of a NPDES permit, and that, therefore, "[w]ithout the permit the source would be unable to operate as intended."⁵⁹ But while acknowledging that ordinarily facility planning and the permit process proceed "hand in hand, due to EPA's close examination of the planned facility in establishing permit conditions," and also the "practical reality" that "it would be most desirable" for the environmental review to precede construction, the court nonetheless found it a "considerable leap ... to conclude that the agency is vested with power to call a halt to construction activity."⁶⁰ In the end, "NEPA does not mandate action which goes beyond the agency's organic jurisdiction."⁶¹

It obviously makes sense for NRC licensees not to proceed with construction that, after a NEPA and licensing review, might prove fruitless. That is the purpose underlying §§ 51.101 and 70.23(a)(7), which seek to discourage premature construction. But as in *NRDC v. EPA*, we draw a distinction between those actions we can discourage by our authority over licensing, and those actions we prevent outright.

⁵⁸ *Id.* at 129.

⁵⁹ *Id.* at 130.

⁶⁰ *Id.*

⁶¹ *Gage v. Atomic Energy Commission*, 479 F.2d 1214, 1120 n.19 (D.C. Cir. 1973).

Finally, even if our power to halt NFS's construction activities were clearer, petitioners have given us no reason to take emergency action. They nowhere indicate how they might suffer immediate environmental harm simply as a result of new building construction within the boundaries of NFS's existing site. The petitioners' request does not allege any direct environmental impacts to them from the construction process, *e.g.*, dust, noise, etc., or from the mere buildings themselves. The potential environmental or radiological harm that the petitioners fear essentially relate to the processing operations associated with the BLEU project. But NFS may not begin those operations without the appropriate license amendments, none of which has been issued. In the event that the first license amendment -- or either of the later amendments -- is issued, the petitioners will have an opportunity under our rules to request a stay of the licensing action.⁶² In the absence of a compelling threat of immediate and irreparable injury to the petitioners from NFS's construction activities, an extraordinary Commission "injunction" order is unwarranted.

⁶² See 10 C.F.R. § 2.1263.

4. Conclusion

For the foregoing reasons, the Commission denies the petitioners' Emergency Request to Enjoin Construction.

IT IS SO ORDERED.

For the Commission

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 29th day of April 2003.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
NUCLEAR FUEL SERVICES, INC.)	Docket No. 70-143-MLA
ERWIN, TENNESSEE)	
)	
(Material License Amendment))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION MEMORANDUM AND ORDER (CLI-03-03) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution with copies by electronic mail or facsimile as indicated.

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Docket No. 70-143-MLA
COMMISSION MEMORANDUM AND ORDER
(CLI-03-03)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 29th day of April 2003