

RAS 7605

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 04/15/04

SERVED 04/15/04

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Paul B. Abramson
Dr. Charles N. Kelber

In the Matter of

LOUISIANA ENERGY SERVICES, L.P.

(National Enrichment Facility)

Docket No. 70-3103-ML

ASLBP No. 04-826-01-ML

April 15, 2004

MEMORANDUM AND ORDER
(Initial Prehearing Order)

In the above-captioned proceeding, Louisiana Energy Services, L.P., (LES) has applied under 10 C.F.R. Part 70 for a license to possess and use source, byproduct, and special nuclear material and to enrich natural uranium to a maximum of five percent uranium-235 by the gas centrifuge process. The facility at which it would perform these enrichment activities, to be known as the National Enrichment Facility (NEF), would be constructed in Eunice, New Mexico. LES itself is a limited partnership consisting of two general partners, Urenco Investments, Inc., and Westinghouse Enrichment Company, and six limited partners. In a January 30, 2004 issuance (CLI-04-03, 59 NRC 10 (2004); 69 Fed. Reg. 5873 (Feb. 6, 2004)), in addition to providing notice of the receipt and availability of the LES application and the accompanying environmental report (ER) and of the opportunity for a hearing on the application, the Commission provided guidance on a number of matters relating to a potential adjudicatory hearing, including the determination of contentions, novel legal issues, discovery management, and scheduling.

In accordance with 10 C.F.R. §§ 2.318(a), 2.319, the following directives shall apply to the conduct of this proceeding:

I. SUPPLEMENT TO HEARING REQUESTS/INTERVENTION PETITIONS

As was noted in the Commission's January 30 issuance, any intervention petition seeking to challenge the LES application and its associated ER were to be filed by April 6, 2004, with contentions and their supporting bases required to conform to the requirements of 10 C.F.R. § 2.309. In petitions dated March 23, 2004, and April 5, 2004, respectively, petitioners New Mexico Environment Department (NMED) and the Attorney General of New Mexico (AGNM) have submitted contentions contesting the LES application.¹ Nonetheless, to aid the Licensing Board and the other participants in identifying their concerns, the Board requests that on or before Friday, April 23, 2004, both NMED and AGNM provide a supplement to its petition that for each of its already-specified contentions assigns a separate numeric or alpha designation within one of the following groups:

1. Technical - - primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the LES safety analysis report (SAR) for the application (including issues related to emergency planning and physical security to the extent such matters are discussed or referenced in the application).
2. Environmental - - primarily concerns issues relating to matters discussed or referenced in the ER for the application.
3. Miscellaneous - - does not fall into one of the categories outlined above.

¹ Additionally, by petition dated April 6, 2004, the Nuclear Information Resource Service and Public Citizen (NIRS/PC) have challenged the LES application. That petition currently is pending with the Commission.

If a petitioner believes a contention raises issues that cannot be classified as primarily falling into only one of these categories, it should identify the contention separately for each category into which it is asserted to fall with a separate designation for that category (e.g., Technical-3 and Environmental-3).

As specified in 10 C.F.R. § 2.309, if two or more petitioners seek to co-sponsor a contention or propose substantially the same contention, the petitioners will be required to jointly designate a single representative who shall have the authority to act for the petitioners with respect to that contention within ten (10) days after admission of such contention. In this regard, NMED and AGNM should examine the previously filed contentions of the other petitioner and on or before Friday, April 23, 2004, identify to the Board which, if any, of its contentions are in substance the same as one or more of the contentions of the other petitioner. Additionally, if either of the petitioners now before the Board wishes to adopt one or more of the contentions of the other petitioner, it should do so on or before Friday, April 23, 2004.

II. ADMINISTRATIVE MATTERS

A. Notice of Appearance

If they have not already done so, within seven days of the date of this memorandum and order, each counsel or representative for each participant shall file a notice of appearance complying with the requirements of 10 C.F.R. § 2.314(b). In each notice of appearance, besides providing a business address and telephone number, if an attorney or representative has a facsimile number and/or an Internet e-mail address, the attorney or representative should provide that information as well. Counsel or representatives who have already submitted a notice of appearance that does not provide facsimile or e-mail information should file a supplemental statement with that information within seven days of the date of this issuance.

B. Service on the Licensing Board and Other Participants

1. Service on the Licensing Board

For each pleading or other submission filed before the Board or the Commission in this proceeding,² subject to the requirement of section II.B.1.g below, in addition to submitting an original and two conforming copies to the Office of the Secretary as required by 10 C.F.R. § 2.304(f) and serving a copy on every other participant in this proceeding in accordance with section 2.305(b), a participant should serve conforming copies on the Licensing Board as follows:

a. Regular Mail. To complete service on the Licensing Board, a participant should send conforming copies to each of the Board members at the following address:

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

For regular mail service, the NRC staff may use the NRC internal mail system (Mail Stop T-3F23) in lieu of first-class mail.

b. Overnight or Hand Delivery. To complete service on the Licensing Board via overnight (e.g., express mail) or hand delivery, a participant should send conforming copies to the Board members at the following address:

Atomic Safety and Licensing Board Panel
Third Floor, Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738

It should be noted that use of the Board's regular mail address (see section II.B.1.a above) on an overnight/hand delivery (such as Federal Express) may delay receipt of the filing.

² Pending referral of the NIRS/PC petition to the Licensing Board, the Board requests that a copy of any pleadings or other submissions by petitioners NIRS/PC or the other participants filed with the Commission be served on the Board members in accord with the procedures set forth below.

c. Facsimile Transmission. To complete service on the Licensing Board by facsimile transmission, a participant should (i) send one copy by rapifax to the attention of the Licensing Board Chairman at (301) 415-5599 (verification (301) 415-7399); and (ii) that same date, send conforming copies to the Board members by regular mail at the address given in section II.B.1.a above.

d. E-Mail. To complete service on the Licensing Board by e-mail transmission, a participant should (i) send the filing (which should include the certificate of service) as a file attached to an e-mail message directed to the Board members (gpb@nrc.gov, pba@nrc.gov, and cnk@nrc.gov); and (ii) send paper conforming copies that same date to the Board members by regular mail at the address given in section II.B.1.a above.

If a participant has a pleading it wishes to send by e-mail that includes attachments it is unable to convert to electronic form, it should do one of the following:

- i. If the attachments the participant is unable to convert to electronic form are fifteen pages or less, contemporaneous with the transmission of the pleading by e-mail the attachments should be sent by a separate facsimile transmission. The e-mail and facsimile transmissions should note that separate transmission modes are being used. The paper conforming copies of the pleading and attachments should be sent to the presiding officer by regular mail at the address given in section II.B.1.a above.
- ii. If the attachments the participant is unable to convert to electronic form are more than fifteen pages, the pleading should be sent by e-mail and the paper conforming copy of the pleading with the attachments should be sent to the presiding officer by express mail or other means that will ensure delivery on the next business day. The e-mail should note that there will be next-day service of the pleading with the attachments.

e. Timely Service by Hand Delivery, Facsimile Transmission, or E-Mail. To make timely service on the Licensing Board, any pleading or other submission served by (i) hand delivery must be received by 4:30 p.m. Eastern Time; and (ii) facsimile transmission or e-mail must be received by the Board on the due date no later than midnight Eastern Time.

f. Service on Other Participants. Whichever of the methods outlined above (e.g., facsimile or e-mail with conforming paper copies to follow by mail) is used for service on the Licensing Board, the participant serving the pleading should make service on all other participants and the Office of the Secretary (e-mail: hearingdocket@nrc.gov; facsimile number: (301) 415-1101 (facsimile verification number: (301) 415-1966)) by the same or a comparable method.

g. Service of all Filings. Absent some other directive from the Licensing Board, all filings in these cases directed to the Board shall be served on the Board and the other participants so as to ensure receipt on the day of filing. Absent some other directive from the Board, the participants may use any of the methods outlined above so long as the filing is timely received by the Board and the other participants.

C. Limitations on Pleading Length and Reply Pleadings

1. Page Limitation

Any motion filed after the date of this memorandum and order and any related responsive pleadings shall not exceed ten pages in length (including signature page) absent preapproval of the Licensing Board.³ A request for Board preapproval to exceed this page limitation shall be sought in writing no less than three business days prior to the time the motion or responsive pleading is filed or due to be filed. A request to exceed this page limitation must (1) indicate whether the request is opposed or supported by the other participants to the proceeding; (2) provide a good faith estimate of the number of additional pages that will be filed; and (3) demonstrate good cause for being permitted to exceed the page limitation.

³ The intervention petition supplements permitted under section I above are not subject to this page limitation. However, any subsequent motion for admission of a late-filed contention and responses thereto are subject to this page limitation.

2. Reply Pleadings

In accordance with the agency's rules of practice, leave must be sought to file a reply to a response to a motion. See 10 C.F.R. § 2.323(c). A request for Licensing Board preapproval to file a reply shall be sought in writing no less than three business days prior to the time the reply will be filed.⁴ A request to file a reply must (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate good cause for permitting the reply to be filed.

D. Motions for Extension of Time

A motion for extension of time filed with the Licensing Board in these proceedings shall be submitted in writing at least three business days before the due date for the pleading or other submission for which an extension is sought. A motion for extension of time must (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate appropriate cause that supports permitting the extension.

E. Opposing a Request to Exceed the Page Limitation, to File a Reply, or to Extend the Time for Filing a Pleading

Any written opposition to a request to exceed the page limit, to file a reply, or to extend the time for filing a pleading shall be served on the Licensing Board, the Office of the Secretary, and counsel for the other participants in the particular proceeding by facsimile transmission, e-mail, or other means that will ensure receipt on the next business day after the filing of the request.

⁴ Although the agency's rules of practice do not provide for reply pleadings, the Board will presume that for a reply to be timely, it would have to be filed within ten days of the date of service of the response it is intended to address.

F. Exhibits/Attachments to Filings.

If a participant files a pleading or other submission with the Licensing Board that has additional documents appended to it as exhibits or attachments, a separate alpha or numeric designation for each appended document (e.g., Exhibit 1; Attachment A) should be given to each appended document, either on the first page of the appended document or on a cover/divider sheet in front of the appended document.

Exhibits and attachments to a motion and any related responsive pleadings are not subject to the page limitation set forth in section II.C.1 above.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁵

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

April 15, 2004

⁵ Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel or a representative for (1) applicant LES; (2) petitioners NMED, AGNM, and NIRS/PC ; and (3) the staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
LOUISIANA ENERGY SERVICES, L.P.) Docket No. 70-3103-ML
)
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (INITIAL PREHEARING ORDER) have been served upon the following persons by electronic mail, followed by deposit of paper copies in the U.S. mail, first class, and NRC internal mail.

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Washington, DC 20555-0001

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Docket No. 70-3103-ML
LB MEMORANDUM AND ORDER (INITIAL
PREHEARING ORDER)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 15th day of April 2004