

RAS 8194

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

DOCKETED 07/26/04

SERVED 07/26/04

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

July 26, 2004

NOTICE OF HEARING

(Application to Possess and Use Nuclear Material to
Enrich Natural Uranium by the Gas Centrifuge Process)

This proceeding concerns the December 12, 2003 application of Louisiana Energy Services, L.P., (LES) for authorization to possess and use source, byproduct, and special nuclear material in order to enrich natural uranium to a maximum of five percent uranium-235 (U²³⁵) by the gas centrifuge process. LES proposes to do this at a facility -- denominated the National Enrichment Facility (NEF) -- to be constructed near Eunice, New Mexico. In a January 30, 2004 issuance, the Commission provided notice of the receipt and availability of the LES application and of the opportunity for a hearing on the application. (Louisiana Energy Services, L.P. (National Enrichment Facility), CLI-04-3, 59 NRC 10 (2004).) That notice was published in the Federal Register on February 6, 2004. (69 Fed. Reg. 5873 (Feb. 6, 2004).) Responding to the February 2004 notice, two intervention petitions were filed by governmental entities associated with the State of New Mexico -- the New Mexico Environment Department (NMED) and the Attorney General of New Mexico (AGNM) -- while a third was submitted by two public interest organizations, the Nuclear Resource and Information Service and Public Citizen

(NIRS/PC). Each of their hearing requests/petitions to intervene sought in accordance with 10 C.F.R. § 2.309 to interpose various contentions challenging the application. In response to those hearing requests, the petitions were referred by the Commission to the Atomic Safety and Licensing Board Panel to conduct any subsequent adjudication. On April 15, 2004, this Licensing Board was appointed to preside over this proceeding. (69 Fed. Reg. 22,100 (Apr. 23, 2004).) The Board consists of Dr. Paul B. Abramson, Dr. Charles N. Kelber, and G. Paul Bollwerk, III, who serves as Chairman of the Board.

On June 15, 2004, the Board conducted an initial prehearing conference in Hobbs, New Mexico, during which it heard oral presentations regarding the admissibility of thirty-two contentions proffered by the petitioners. Thereafter, in a July 19, 2004 issuance the Board noted that all the petitioners have established the requisite standing to intervene in this proceeding and ruled that each has submitted at least one admissible contention concerning the LES application so that each can be admitted as a party to this proceeding. (Louisiana Energy Services, L.P. (National Enrichment Facility), LBP-04-14, 60 NRC __ (July 19, 2004).)

In light of the foregoing, please take notice that a hearing will be conducted in this contested proceeding. This hearing will be governed by the formal hearing procedures set forth in 10 C.F.R. Part 2, Subparts C and G (10 C.F.R. §§ 2.300-.390, 2.700-.713). Further, with respect to matters of law and fact regarding whether the LES application satisfies the standards set forth in the Commission's January 30, 2004 order and the applicable standards in 10 C.F.R. §§ 30.33, 40.32, and 70.23 that are not covered by admitted contentions, without conducting a de novo evaluation of the application the Board will determine (1) whether the application and the record of the proceeding contain sufficient information and whether the NRC staff's review of the application has been adequate to support findings to be made by the Director of the Office of Nuclear Materials Safety and Safeguards, regarding the standards set forth above;

and (2) whether the review conducted by the staff pursuant to 10 C.F.R. Part 51 is adequate. Also, in accordance with Subpart A of 10 C.F.R. Part 51, the Board in its initial decision will (1) determine whether the requirements of sections 102(2)(A), (C), and (E) of the National Environmental Policy Act of 1969 and 10 C.F.R. Part 51, Subpart A, have been complied with in the proceeding; (2) independently consider the final balance among conflicting factors contained in the record of proceeding with a view to determining the appropriate action to be taken; and (3) determine whether a license should be issued, denied, or conditioned to protect the environment.

During the course of the proceeding, the Board may conduct an oral argument, as provided in 10 C.F.R. § 2.331, may hold additional prehearing conferences pursuant to 10 C.F.R. § 2.329, and may conduct evidentiary hearings in accordance with 10 C.F.R. §§ 2.327-.328, 2.711. The public is invited to attend any oral argument, prehearing conference, or evidentiary hearing. Notices of those sessions will be published in the Federal Register and/or made available to the public at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC web site, www.nrc.gov.

Additionally, as provided in 10 C.F.R. § 2.315(a), any person not a party to the proceeding may submit a written limited appearance statement. Limited appearance statements, which are placed in the docket for the hearing, provide members of the public with an opportunity to make the Board and/or the participants aware of their concerns about matters at issue in the proceeding. A written limited appearance statement can be submitted at any time and should be sent to the Office of the Secretary using one of the methods prescribed below:

Mail to: Office of the Secretary
Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Fax to: (301) 415-1101 (verification (301) 415-1966)

E-mail to: hearingdocket@nrc.gov

In addition, a copy of the limited appearance statement should be sent to the Licensing Board Chairman using the same method at the address below:

Mail to: Administrative Judge G. Paul Bollwerk, III
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Fax to: (301) 415-5599 (verification (301) 415-7550)

E-mail to: gpb@nrc.gov

At a later date, the Board may entertain oral limited appearance statements at a location or locations in the vicinity of the proposed NEF. Notice of any oral limited appearance sessions will be published in the Federal Register and/or made available to the public at the NRC PDR and on the NRC website, www.nrc.gov.

Documents relating to this proceeding are available for public inspection at the Commission's PDR or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC web site at www.nrc.gov/reading-rm/adams.html (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in

ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

It is so ORDERED.

FOR THE ATOMIC SAFETY^{*}
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

July 26, 2004

^{*} Copies of this notice of hearing were sent this date by Internet e-mail transmission to counsel for (1) applicant LES; (2) petitioners NMED, the AGNM, and NIRS/PC; and (3) the staff.

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NUCLEAR REGULATORY COMMISSION

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(National Enrichment Facility))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB NOTICE OF HEARING (APPLICATION TO POSSESS AND USE NUCLEAR MATERIAL TO ENRICH NATURAL URANIUM BY THE GAS CENTRIFUGE PROCESS) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
G. Paul Bollwerk, III, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Paul B. Abramson
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Charles N. Kelber
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Lisa B. Clark, Esq.
Angela B. Coggins, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Claybourne F. Clarke, Esq.
Assistant General Counsel
Tannis L. Fox, Esq.
Deputy General Counsel
Office of General Counsel
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, NM 87502-6110

Docket No. 70-3103-ML
LB NOTICE OF HEARING (APPLICATION TO
POSSESS AND USE NATURAL MATERIAL TO
ENRICH NATURAL URANIUM BY THE GAS
CENTRIFUGE PROCESS)

James R. Curtiss, Esq.
David A. Repka, Esq.
Martin J. O'Neill, Esq.
Winston & Strawn LLP
1400 L Street
Washington, DC 20005-3502

David M. Pato, Esq.
Stephen R. Farris, Esq.
Christopher D. Coppin, Esq.
Assistant Attorneys General
Glenn R. Smith, Esq.
Deputy Attorney General
Office of the New Mexico Attorney General
P.O. Box Drawer 1508
Santa Fe, NM 87504-1508

Lindsay A. Lovejoy, Jr.
618 Paseo de Peralta, Unit B
Santa Fe, NM 87501

Lisa A. Campagna, Esq.
Assistant General Counsel
Westinghouse Electric Company LLC
P.O. Box 355
Pittsburgh, PA 15230-0355

John W. Lawrence, Esq.
Louisiana Energy Services, L.P.
2600 Virginia Ave., NW, Suite 610
Washington, DC 20037

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 26th day of July 2004